

Ashok Kumar and Others Vs. Uoi and Others

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Court : Delhi

Decided On : Oct-09-2012

Judge : Vipin Sanghi

Appeal No. : W.P.(C.) NO. 13728 OF 2009 & C.M. NO. 15445 OF 2009

Appellant : Ashok Kumar and Others

Respondent : Uoi and Others

Judgement :

VIPIN SANGHI, J.

1. The present writ petition has been preferred by 16 petitioners to assail the order dated 30.10.2009 passed by the Appellate Tribunal for Forfeited Property, New Delhi, (for short, "the Appellate Tribunal") whereby the Appellate Tribunal constituted under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as, "the Act"), has dismissed the appeals preferred by the petitioners as being not maintainable.

2. The case of the petitioners is that they purchased small parcels of land carved out of plot No. 8 (NIT), Industrial Area, Faridabad (hereinafter referred to as, "the plot") between the period 1992 to 1995 from the owners. The plot had been allotted to M/s Bharat Rasain Pvt. Ltd. (BRPL) by the Government of India on leasehold basis in the year 1963. The same was registered in favour of BRPL on 28.8.1963. BRPL was wholly owned subsidiary of M/s South India Carbonic

Industries Ltd. (SICIL). The paid-up equity of BRPL was Rs. 3,63,000/- consisting of 363 shares of Rs. 1,000/- each held by SICIL. SICIL sold 359 out of 363 shares of BRPL (leaving only four shares) to M/s Lone Star Works Pvt. Ltd. (for short, "Lone Star") in December, 1975. It appears that the remaining shares were held by Shri Asan Dass Wahi and Shri Iqbal Singh Atwal.

3. Lone Star was a company incorporated on 12.6.1973. Mr. Henry H. Le. Febvre and his wife Mrs. Laluhumi H. Le. Febvre were directors and shareholders of Lone Star. Mr. Henry H. Le. Febvre was detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short, "the COFEPOSA Act") on 14.11.1976 and was released on 23.3.1977. Notice was issued under Section 6(1) of the Act to Mr. Henry H. Le. Febvre on 4.7.1980. The schedule to this notice, inter alia, include the following:

THE SCHEDULE

S. No.	Description of the property	Name of the present holder of the property
1.	Right, title and interest in the Business carried on under the name and style Lone Star Engineering Works Pvt. Ltd. 8, Industrial Area, Faridabad in the form of machinery, Patents, know-how or any other Form	Mr. Henry H. Le. Febvre
2.
3.
4.
5.	Plot No. 8, Industrial Area, Faridabad	- do -

Mrs. Laluhumi H. Le. Febvre was also issued a notice under Section 6(1) of the Act on 3.2.1981. Apart from the assets indicated in the schedule, the said notice, inter alia, also covered the right title and interest in the following:-

(i) the business carried on under the name and style Lone Start Engineering Works Pvt. Ltd., 8,

Industrial Area, Faridabad, in the form of machinery, patents, know-how or any other form.

(ii) The business carried on under the name Bharat Rasayan Pvt. Ltd. in the form of machinery, patents, know-how or any other form.

(iii) Shares debentures or deposits held in M/s Lone Star Engineering Works Pvt. Ltd.

(iv) Shares, debentures or deposits in M/s Bharat Rasayan Ltd.

During the pendency of the said proceedings before the competent authority arising out of the aforesaid notices issued under Section 6(1) of the Act to Mr. Henry H. Le. Febvre and his wife Mrs. Laluhumi H. Le. Febvre, it appears that the petitioners sought to acquire rights from BRPL and/or others in smaller parcels carved out of the plot, details whereof are contained in Annexure P-2 to the writ petition. These transactions pertain to the period 1991 to 18.5.1998. The competent authority under the Act passed an order forfeiting the property under Sections 7(1) and (3) of the Act on 30.6.1998. The petitioners sought to assail the order before the Tribunal. However, the Tribunal has held that the appeals were not maintainable since the transfers had taken place after the issuance of notice under Section 6(1) of the Act which were issued in the years 1980-81, and the said notices had culminated in an order of forfeiture. By placing reliance of Section 11 of the Act, the Tribunal concluded that the transfers made in favour of the petitioners are deemed to be null and void. Section 11 of the Act reads as follows:-

“11. Certain transfers to be null and void - Where after the issue of a notice under Section 6 or under Section 10, any property referred to in the said notice is transferred by any mode whatsoever such transfer shall, for the purpose of the proceedings under this Act, be ignored and if such property is subsequently forfeited to the Central Government under Section 7, then, the transfer of such property shall be deemed to be null and void.”

4. Primarily, the submission of learned counsel for the petitioners is that the impugned order has proceeded on a wrong premise that a notice under Section 6 of the Act had been issued to the owner of the plot. It is argued that the registered owner/perpetual lessee of the plot was BRPL, whereas the notices under Section 6(1) of the Act had been issued to Mr. Mr. Henry H. Le. Febvre on 4.7.1980 and to Mrs. Laluhumi H. Le. Febvre on 3.2.1981 under Section 6(1) of the Act. According to the petitioner, the notices under the Act ought to have been issued to BRPL and/or to Lone Star under Section 6(2) and not only to Mr. Henry H. Le. Febvre and his wife Mrs. Laluhumi H. Le. Febvre. It is also argued that the notices issued to Lone Star, BRPL on 15.7.1980 are not a notice under Section 6(1), or under Section 6(2) of the Act. Moreover, the notices/communications issued to Lone Star and BRPL do not specify the plot as one of the properties in respect whereof they were issued. It is, therefore, argued that Section 11 did not come into play at all.

5. Sections 6 of the Act read as under:-

“6. Notice of forfeiture - (1) If, having regard to the value of the properties held by any person to whom this Act applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, any other information or material available to it as a result of action taken under Section 18 or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.”

6. The respondents are represented by Mr. Jatan Singh, learned Standing Counsel who argue that neither the notices under Section 6(1) issued to Mr. Henry H. Le. Febvre and his wife Mrs. Laluhumi H. Le. Febvre, nor the communications/notices (claimed by him to have been issued under Section 6(2) of the Act) to Lone Star or BRPL have been assailed by any of them and, therefore, it is not open to the petitioners to do so, as they derive their title from them. Similarly, the order of the competent authority has not been assailed by the noticees and, therefore, the petitioners have no locus standi to do so. Since the petitioners claim their rights through the noticees who had been issued notices under Section 6(1) of the Act, and notices have culminated in forfeiture of the plot, the transfers made in favour of the petitioners of different parcels carved out from the plot are null and void. He submits that the plot squarely forms part of the notices issued under Section 6(1) of the Act to Mr. Henry H. Le. Febvre and his wife Mrs. Laluhumi H. Le. Febvre. He submits that Lone Star was the wholly owned company of Mr. Henry H. Le. Febvre and his wife Mrs. Laluhumi H. Le. Febvre incorporated in the year 1973. The funds in the said Lone Star had been infused by the two noticees and Lone Star had acquired practically the entire shareholding of BRPL which was the registered lessee of the plot. Consequently, by adoption of the modus operandi of incorporating different companies and acquiring their shareholding, Mr. Henry H. Le. Febvre and his wife Mrs. Laluhumi H. Le. Febvre had virtually acquired the plot in the year 1975. Mr. Henry H. Le. Febvre was detained under the COFEPOSA Act on 14.11.1976 and was released on 23.3.1977. He submits that the notices were rightly issued to Mr. Henry H. Le. Febvre and his wife Mrs. Laluhumi H. Le. Febvre, and need not have been issued either to Lone Star or to BRPL under Section 6(1) of the Act.

7. It is also argued that the communication dated 15.7.1980 issued to Lone Star and BRPL satisfies the conditions of Section 6(2) and are, in fact, issued under Section 6(2) of the Act. A perusal of the impugned order shows that the submission of the petitioner was specifically noticed in para 16 thereof, however, the Tribunal has not answered the said issue in the context of the facts of the case. He submits that the transfers made in favour of the petitioners during the pendency of the show cause notice under Section 6(1) of the Act to Mr. Henry H. Le. Febvre and his wife Mrs. Laluhumi H. Le. Febvre are null and void by force of

Section 11 of the Act.

8. Having considered the rival submissions and having perused the impugned order, I am of the view that the Tribunal has not specifically dealt with the aforesaid submissions of the parties with regard to the effect and scope of the notices /communications stated to have been issued under Sections 6(1) or 6(2) of the Act either to Lone Star or to BRPL. The Tribunal has proceeded on the premise that a notice under Section 6 was issued on 4.7.1980 without examining whether service of the said notice on Mr. Henry H. Le. Febvre would suffice in respect of the plot in question which was leased to BRPL. There can be no doubt that the Act was applicable in respect of Mr. Henry H. Le. Febvre since he was a detenu under the COFEPOSA. It is not the petitioners' case that either of the four conditions mentioned in the proviso to Section 2(2)(b) of the Act were satisfied in the present case. However, it was required to be examined whether service on Mr. Henry was sufficient qua attachment of the plot in question.

9. In the light of the aforesaid, I am inclined to set aside the impugned order and to remit the case back to the Tribunal for reconsideration of all the submissions of the respective parties afresh. Ordered accordingly. It is made clear that the court has not determined any of the issues raised by the parties on merits and, accordingly, they are left open.

10. Accordingly, the parties may appear before the Tribunal on 8.11.2012 at 10.00 a.m. for further directions.

11. The petition stands disposed of. The parties are directed to bear their own costs.

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