

Competent Authority Vs. Kumar Processors

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Court : Chennai

Decided On : Jan-11-2013

Judge : D.Hariparanthaman

Appellant : Competent Authority

Respondent : Kumar Processors

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED 11 01.2013
CORAM THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN Rev.
Application No.194 of 2012 in W.P.No.18185 of 2012 and M.P.No.1 of 2013 The
Competent Authority, SAFEMA (FOP) and NDPS Acts, "UTSAV' not Chetty Road,
T.Nagar, Chenna

017. .. Petitioner Vs. M/s.Kumar Processors, Represented by its Partner
V.K.Somakumar S/o. Late M.N.Padmanabhan Nair, not B-27, Garden of Hearts,
Manapakkam, Chenna

125. .. Respondent Review Application filed under Order XLVII Rule 1 and Section
114 of the Civil Procedure Code to review the order dated 20.9.2012 passed in
W.P.No.18185 of 2012. For Petitioner ... Mr.M.L.Ramesh For Respondent ...
Mr.B.Kumaresan and Mr.S.Prabhu ORDER This review application has been filed
to review the order dated 20.9.2012 passed in W.P.No.18185 of 2012. 2.The
review petitioner has sought to clarify that the Survey No.494 part TP/TDP/171/65
(Plot No.119) at Rayavaram Extension, Thottipalayam, Tirupur belongs to Sri

Swaminatha Gounder, which was auctioned by them. 3.The respondent purchased the property in plot Nos.119 and 120 in T.S.No.494 part situated at Rayavaram Extension, Thottipalayam, Tiruppur by way of a sale deed dated 30.1.1992 executed by the vendors viz., Tmt. Thulasimani and Prema in the Office of the Sub Registrar, Tiruppur. 4.The vendors viz., Tmt. Thulasimani and Prema, purchased the said property under the sale deed dated 8.4.1982 from Sri Swaminatha Gounder and his wife Mrs.Saraswathi in the Office of the Sub Registrar, Tiruppur. 5.Sri Swaminatha Gounder was detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Therefore, the review petitioner took action on the properties of Sri Swaminatha Gounder under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to Act 1976). 6.The review petitioner issued notice dated 22.06.1978 under Section 6(1) of the Act, 1976 to Sri Swaminatha Gounder as well as his wife Mrs.Saraswathi asking them as to why the properties mentioned in the notice shall not be forfeited to the Central Government under the Act 1976. In the said notice, the properties are mentioned in serial Nos.2 and 3 namely, House site at T.S.484, Rayavaram Exntension, Thottipalayam, Tirupur, which was purchased on 25.2.1974 for Rs.6,651/- by Sri Swaminatha Gounder and House site at T.S.No.494, Rayavaram Extension, Thottipalayam, Tirupur, which was purchased on 25.2.1974 for Rs.6,106/- by Tmt.Saraswathi, wife of Sri Swaminatha Gounder and no further details are given i.e., plot numbers, etc. 7.It is stated in the notice that the House site at T.S.No.484 was purchased on 25.2.1974 for Rs.6,651/- by Sri Swaminatha Gounder and the House site at T.S.No.494, Rayavaram Extension, Thottipalayam, Tirupur was purchased on 25.2.1974 for Rs.6,106/- by Tmt.Saraswathi, wife of Sri Swaminatha Gounder. 8.In fact, the property that was purchased by Sri Swaminatha Gounder was not a House site at T.S.No.484 and it was T.S.No.494, i.e., the T.S.Number was wrongly mentioned as T.S.No.484. 9.In response to the notice dated 22.06.1978 issued under Section 6(1) of the Act, Sri Swaminatha Gounder sent a reply dated 24.7.1978 stating that he did not acquire the property illegally and the notice issued under Section 6(1) of the Act is illegal. Sri Swaminatha Gounder did not bring to the notice about the wrong mentioning of the Survey number to the revision petitioner/competent authority . 10.Once, action taken by issuing notice

under Section 6 of the Act 1976, the transfer of any property covered under the notice issued under Section 6 is null and void as per Section 11 of the Act 1976. Sri Swaminatha Gounder sold away the property after the action was initiated under Section 6 against the property, namely, House site at T.S.No. 494, Rayavaram Extension, Thottipalayam, Tiruppur that was purchased on 25.2.1974 for Rs.6,651/-. Hence, the sale is null and void, as per Section 11 of the Act as stated above. 11.While so, the review petitioner (competent authority) passed final order dated 31.7.1996 under Section 7(1) of the Act, forfeiting both the properties that were mentioned in 6(1) notice dated 22.06.1978. 12.Before passing the final order dated 31.7.1996 by the review petitioner (competent authority), Sri Swaminatha Gounder and his wife Mrs.Saraswathi sold both the properties, namely, plot Nos.119 and 120 in T.S.No.494 part to the vendors of the respondent viz., Tmt. Thulasimani and Prema on 8.4.1982. 13.In view of Section 11 of the Act 1976, the sale of the properties became null and void. Sri Swaminatha Gounder and his wife Mrs.Saraswathi filed an appeal against the order dated 31.07.1996 passed by the review petitioner (competent authority) under Section 7(1) of the Act forfeiting the properties. It is relevant to state that Sri Swaminatha Gounder gave an undertaking dated 7.3.1997 before the review petitioner(competent authority) that he would not dispose of or encumber or part with possession thereof or create any type of third party rights of the subject matter of the property namely, the House site T.S.No.484, Rayavaram Extention, Thottipalayam, Tirupur valued at Rs.6,651/- till the disposal of the appeal. But, Sri Swaminatha Gounder, contrary to his undertaking, disposed of the above mentioned property and the same was not brought to the notice of the appellate authority. 14.The appellate authority allowed the appeal by order dated 6.7.2000 in so far as the property bearing plot No.120 in T.S.No.494 part with Rayavaram Extension, Thottipalayam, Tirupur that was purchased by Mrs.Saraswathi, wife of Sri Swaminatha Gounder for Rs.6,106/- by way of executing a sale deed dated 25.2.1974 and further, in so far as Sri Swaminatha Gounder is concerned, the appeal preferred by him was dismissed and the order dated 31.7.1996 passed by the review petitioner(competent authority) was confirmed. 15.In such circumstances, the review petitioner (competent authority) took over the property of Swaminatha Gounder and issued a paper publication dated 8.7.2012 in Tamil daily, Dinamalar, i.e., Auction Cum

Tender Sale Notice No.5/2012, to conduct a tender-cum-auction sale of the House site at New T.S.No.128/Block No.53/Ward K, (Old T.S.No.494/DTP/171/65, Site No.119), Rayavaram Extension, Thottipalayam, Tiruppur fixing the auction on 13.07.2012 at 12.30 p.m. and it is also mentioned that the inspection of the property would be held on 12.7.2012 between 11.30 a.m. and 3.00 p.m. In the said notice, it is also stated that M/s.Alwin & Company, 260, Thambu Chetty Street, Chenna

001. is an auctioneer. 16.The auctioneer issued a notice stating that the auction would be held on 13.7.2012 by them. The notice of the auctioneer was challenged by the respondent herein in W.P.No.18185 of 2012 describing the same as auction notice dated 12.7.2012. But, it is not the notice dated 12.7.2012, and there is no date in the notice. The notice is to the effect that Messers Alwin and Company will sell the House site at Old T.S.No.494/DTP/171/65, Site No.119, Rayavaram Extension, Thottipalayam, Tirupur with buildings thereon on 13.7.2012 at 12.30 p.m at Subham Hall, Ground Floor, Brindavan Hotel, 51, Harvey Road, Tirupur. 17.When the matter was listed for hearing, the learned counsel for the review petitioner, who is the respondent in the writ petition, has fairly submitted that the property of Sri Swaminatha Gounder in T.S.No.494 cannot be put on auction and their intention is to bring only the house site at T.S.No.484 belonging to Swaminithan. Further, he has stated that as if, there was an error in the impugned notice dated 12.07.2012 in mentioning the House site number as T.S.No.494 and the House site number shall be T.S.No.484 as per the order dated 06.07.2000 passed by the appellate authority and also the order dated 31.7.1996 passed by the revision petitioner (competent authority) under Section 7 (1) of the Act, 1976. 18.Recording the submission made by the review petitioner (competent authority)/ respondent in W.P.No.18185 of 2012, the said writ petition has been disposed of on 20.9.2012. 19.Later, the aforesaid mistake was noticed and the review petition has been filed by the review petitioner challenging the order dated 20.9.2012 passed in W.P.No.18185 of 2012 and also sought for clarification with regard to the survey number and plot number of the property of Sri Swaminatha Gounder, which was auctioned by the review petitioner (competent authority). 20.Notice was ordered. No counter affidavit has been filed. 21.Heard both sides. 22.The learned counsel for the review petitioner has submitted that there was a typographical

error in the show cause notice dated 22.06.1978 issued under Section 6(1) of the Act, 1976 and also in the order dated 31.7.1996 passed under Section 7 (1) of the Act, 1976 and the same error was also continued by the appellate authority in its order dated 6.7.2000 in describing the property of Sri Swaminatha Gounder as House site in T.S.No.484 and therefore, the description of the property has to be corrected. In these circumstances, the statement of the learned counsel for the review petitioner that was made during the hearing of the writ petition requires correction and the disposal of the writ petition based on such statement has to be reviewed. 23.It is further submitted that Sri Swaminatha Gounder, while giving reply notice dated 24.07.1978 to the notice dated 22.06.1978 issued under Section 6(1), has not stated that there was a mistake in the description of the property relating to T.S.Number and he was aware of the property against which the proceeding was initiated. As stated above, the proceeding under Section 6 of the Act was taken against the property that was purchased by Sri Swaminatha Gounder on 25.2.1974 for Rs.6,651/-. That property is nothing but the property at old not T.S.No.494/DTP/171/65, Site No.119 at Rayavaram Extension, Thottipalayam, Tirupur. 24.Furthermore, the learned counsel for the review petitioner has submitted that Sri Swaminatha Gounder filed an appeal against the order dated 31.7.1996 passed by the review petitioner (competent authority) under Section 7(1) of the Act 1976 before the appellate authority. On the appeal, the survey number was mentioned only as T.S.No.484. He also gave an undertaking dated 7.3.1997 before the review petitioner (competent authority) and the same was enclosed at page No.23 in the typed set of papers. In the said undertaking dated 7.3.1997, he has mentioned the number of the House site property as T.S.No.484. 25.Under such circumstances, according to the learned counsel for the review petitioner, the appellate authority has also stated that the property of the House site is T.S.No.484. 26.The learned counsel for the review petitioner has heavily relied on Section 13 of the Act and submitted that any error in the description of the property in the notice or order passed under Section 6 of the Act, shall not become invalid. The respondent cannot take advantage of the mistake as explained above. 27.The learned counsel has also relied on the decision of the Division Bench of this Court in (METTUR TEXTILES MILL QUARTERS RESIDENTS WELFARE SOCIETY VS. OFFICIAL LIQUIDATOR, (AS THE

LIQUIDATOR OF METTUR TEXTILES INDUSTRIES LTD., IN LIQUIDATION) HIGH COURT, MADRAS AND OTHERS) 2013 (1) MLJ 27. and has submitted that this Court could review the order if any one of the three grounds namely (1) discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or order was made; (ii) mistake or error apparent on the face of the record; or (iii) for any other sufficient reason, is available. 28. On the other hand, the learned senior counsel appearing for the respondent has strenuously contended that the respondent is a bona fide purchaser of the property in the year 1992 and the respondent has been in enjoyment of the property for the past 20 years and therefore, the impugned auction notice interfering with the possession of the property with the respondent, is bad. 29. Secondly, it is contended that the notice dated 22.06.1978 issued under Section 6 (1) of the Act 1976, the order of forfeiture dated 31.7.1996 passed under Section 7(1) of the Act, 1976 and the order dated 6.7.2000 passed by the appellate authority describe the property of Sri Swaminatha Gounder as House site T.S.No.484 and therefore, there cannot be an auction of the property in the House site in T.S.No.494. 30. I have considered the submissions made on either side and also considered the decision of the Division Bench of this Court reported in 2013 (1) MLJ 272. 31. Paragraph 19 of the decision of the Division Bench of this Court (cited supra) is extracted hereunder: "The Court may allow a review on three specified grounds, namely, (i) discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or order was made; (ii) mistake or error apparent on the face of the record; or (iii) for any other sufficient reason. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error." 32. Therefore, the review application can be allowed if any one of the aforesaid three grounds are available. 33. From the aforesaid narration of facts, it is clear that there was an error in the description of the property in the notice dated 22.6.1978 issued under Section 6(1) of the Act, 1976, the Order of forfeiture dated 31.7.1996 passed under Section 7(1) of the Act and also the order dated 6.7.2000 passed by the appellate authority and the property that was sought to be forfeited

under the Act 1976 was well known to Sri Swaminatha Gounder. But, Sri Swaminatha Gounder had committed fraud both on the department as well as on the purchasers by executing a joint sale deed dated 8.4.1982 along with his wife Mrs.Saraswathi in favour of vendors of the respondent viz., Tmt.Thulasimani and Prema and also giving an undertaking dated 7.3.1997 as stated above. 34.Section 13 of the Act 1976 is very clear that no notice issued or served and no order passed under this Act shall be invalid by the reason of any error in the description of the property. Section 13 of the Act is extracted hereunder: "Notice or order not to be invalid for error in description:- No notice issued or served, no declaration made, and no order passed, under this Act shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein if such property or person is identifiable from the description so mentioned." 35.In view of Section 13 of the Act, the notice dated 22.6.1978 issued under Section 6(1) of the Act 1976, the order dated 31.07.1997 passed under Section 7(1) of the Act 1976 and the order dated 6.7.2000 passed by the appellate authority are to be corrected as the property that was sought to be vested only as House site plot No.119 in T.S.No.494 part at Rayavaram Extension, Thottipalayam, Tirupur. 36.Furthermore, Section 11 makes it clear that once a proceeding is initiated under Section 6 or under Section 10 of the Act, any transfer of the property i.e. covered under the proceedings shall be null and void, if the order under Section 7(1) is passed by the Central Government for forfeiting the property. Sections 7 and 11 of the Act read as follows: Section 7:- "Forfeiture of Property in certain cases: (1) The competent authority may, after considering the explanation, if any, to the show-cause notice issued under section 6, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties. (2)Where the competent authority is satisfied that some of the properties referred to in the show-cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under sub section (1).

(3)Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Act, stand forfeited to the Central Government free from all encumbrances. (4)Where any shares in a company stand forfeited to the Central Government under this Act, then the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government as the transferee of such shares." Section 11:- Certain transfers to be null and void: Whereafter 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." 37.In view of Sections 11 and 13 of the Act 1976, I am of the view that the Review petitioner is perfectly right in bringing auction of the House site Plot No.119 in T.S.No.494 part Rayavaram Extension, Thottipalayam, Tiruppur by way of Auction cum Tender Sale Notice No.5/2012 dated 8.7.2012. 38.It is also stated that the auction took place on 13.7.2012 and one Mr.R.S.Shanmugam became the successful bidder and the same was also confirmed. In view of pendency of the writ petition, no sale deed was executed. 39.In the aforesaid circumstances, it is clarified that the property mentioned in the auction notice dated 13.07.2012 is covered by the order dated 31.07.1996 under Section 7(1) of the Act, 1976 passed by the review petitioner (competent authority). Hence, the review petitioner is competent to bring the property for sale by issuing auction cum tender sale notice No.5/2012. Therefore, now, it is clarified that the property mentioned in the order dated 31.7.1996 passed under Section 7(1) of the Act, 1976 and also in the impugned notice are one and the same, namely, the House site plot No.119 in T.S.No.494 part at Rayavaram Extension, Thottipalayam, Tirupur. Thus, there is no infirmity in publishing the impugned auction-cum-tender sale notice No.5/2012, dated 8.7.2012. I do not find any infirmity in the notice put up by the auctioneer with regard to the auction cum tender sale of the property namely, House site at New T.S.No.128/Block No.53/Ward K, (Old T.S.No.494/DTP/171/65, Site No.119), Rayavaram Extension, Thottipalayam, Tirupur on 13.7.2012, that was challenged

in the writ petition. 40.Hence, this Court is inclined to allow the review application and in the result the W.P.No.18185 of 2012 is dismissed. 41.M.P.No.1 of 2013 filed to grant leave to a third party to file Review application against the order dated 20.09.2012 passed in W.P.No.18185 of 2012 is closed, as per the endorsement made by the learned counsel. 42.Accordingly, the review application is allowed and writ petition No.18185 of 2012 is dismissed. No costs. cla To The Competent Authority, SAFEMA (FOP) and NDPS Acts, "UTSAV' not Chetty Road, T.Nagar, Chenna

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