**HIGH COURT OF MADHYA PRADESH BENCH AT INDORE**
**(S.B.: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)**

**Cr.A. No. 7840/2018**

Mahesh & another

**Appellants**

**Versus**

State of MP

**respondent**

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Shri Bhaskar Agrawal learned counsel for appellants.
Shri Vaibhav Jain learned counsel for respondent.

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**Whether approved for reporting :**

**J U D G M E N T**

**(Passed on 21/12/2018 )**

By this appeal under Section 17 of Madhya Pradesh Vishesh Nyayalaya Adhiniyam, 2011 (for short the Act), appellants have challenged the order dated 14/9/2018 passed by Authorised officer allowing the application under Rule 10 of Madhya Pradesh Vishesh Nyayalaya Niyam, 2012 (for short the Rules) filed by respondent and refusing to take statement of defence of appellants on record.

2/ The brief facts are that the proceedings under Section 13 of the Act have been initiated for confiscation of properties of appellants on the basis of application dated 21/4/2016 filed by respondent under section 13(1) of the Act. The notice of the application was served upon the appellants on 9/6/2016 and they had appeared before the Authorised officer on 11/7/2016

but they did not file their reply for a period of two years and filed the same on 17/7/2018. Hence an application was filed by respondent for rejecting the reply on the ground that it was not filed within the prescribed period and therefore, right to file reply was closed.

3/ The Authorised officer while passing the impugned order referring to Rule 10 has noted that he had the power to permit 30 day's time to file statement of defence which can be extended for further period of 15 days, thereafter he had no jurisdiction to extend the time.

4/ Learned counsel for appellants submits that time was granted to appellants by the Authorised officer on earlier dates therefore, he is not right in taking the view that he had no jurisdiction to extend time beyond 45 days. He further submits that since copy of documents were not supplied, therefore, the application was filed and delay had taken place in filing the reply.

5/ Learned counsel for respondent supporting the order has submitted that in terms of applicable Rule, only time up-to 45 days can be granted to file reply. He further submits that the proceedings are interim in nature and that two simultaneous proceedings one the criminal case and second the confiscation proceedings are initiated, therefore, the order passed in the confiscation proceedings is interim in nature subject to outcome in the criminal case.

6/ I have heard the learned counsel for the parties and perused the record.

7/ The sole issue involved in the present case is as to whether Rule 10(1) & (2) of the Rules is directory or mandatory in nature?

8/ The Rule 10 which needs consideration by this Court reads as under:-

> ***"10. Authorised officer to follow summary*** **procedure** –
>
> (1) On receipt of application under Section 13 read with Section 14 of the Act, the authorised officer shall immediately issue notice to the person affected.
>
> (2) If the person affected responds to the notice and appears before the authorised officer either in person or through his legal representative, he shall be furnished with the copy of the application filed under Section 13 alongwith all the enclosures. The authorised officer shall allow 30 days time to file his statement in defence. If for good and valid reasons, to the satisfaction of the authorised officer, the person affected does not file his statement of defence, he may allow a further period of 15 days within which he shall have to file his statement of defence.
>
> (3) If the person affected does not file his statement of defence within the prescribed period of 30 days or within extended period of 15 days, it shall be presumed that he has no defence to put forward and then the authorised officer shall be free to adjudicate the proceeding instituted before him.
>
> (4) If the person affected submits his statement in defence, a copy of the same shall be made available to the Special Public Prosecutor conducting the proceeding before the authorised officer who shall have the opportunity to reply to the same.

9/ Sub-Rule 2 above provides for granting 30 days time to file statement of defence and that period can further be extended for 15 days on showing good and valid reason for delay to the satisfaction of the authorised officer. The above Rule is clear that the affected person within further extended period of 15 days "shall have to file his statement of defence".

10/ Sub rule 3 above provides for consequence of not filing the reply within period of 30 days with extended period of 15

days. In such a case the Authorised officer has no option but to presume that affected person has no defence to put forward and then the Authorised officer is free to adjudicate the proceedings.

11/ The issue if the Rule 10 is directory or mandatory is to be decided having regard to the principles of statutory interpretation relating to directory and mandatory provisions. In the principles of statutory interpretation G.P. Singh 11th Edition 2008 the General Principle of Interpretation in this regard is noted as under:

> **(a) General**. The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oft-quoted passage LORD CAMPBELL said: "No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be considered". As approved by the Supreme Court: "The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other." "For ascertaining the real intention of the Legislature", points out SUBBARAO, J. "the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances,

> namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered". If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory. But all this does not mean that the language used is to be ignored but only that the prima facie inference of the intention of the Legislature arising from the words used may be displaced by considering the nature of the enactment, its design and the consequences flowing from alternative constructions. Thus, the use of the words 'as nearly as may be' in contrast to the words 'at least' will prima facie indicate a directory requirement, negative words a mandatory requirement 'may' a directory requirement and 'shall' a mandatory requirement.

12/ The Constitution Bench of the Supreme court in the matter of **Raza Buland Sugar Co. Ltd. Rampur Vs. The Municipal Board Rampur, reported in AIR 1965 SC 895** has taken note of the relevant factors which need consideration for holding a particular provision as mandatory or directory, as under:-

> (7) The question whether a particular provision of a statute which on the face of it appears mandatory- inasumuch as it uses the word 'shall' as in the present case- or is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from other, the relation of the particular provision to other

> provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.

13/ It is also the settled principle of interpretation that while considering a provision relating to non compliance of the procedural requirement it has to be kept in view that the same is designed to facilitate justice and therefore, if the consequence of non compliance is not provided, the requirement must be held to be directory. **(Sangram Singh Vs. Election Tribunal Kotan and others reported in AIR 1955 SC 425; Kailash Vs. Nanhku and others reported in AIR 2005 SC 2441; & Topline Shoes Ltd. Vs. Corporation Bank reported in AIR 2002 SC 2487).**

14/ Supreme court in the matter of **Prakash H. Jain Vs. Marie Fernandes (Ms) reported in 2003(8) SC 431)** has considered the similar provision of Maharashtra Rent Control Act, 1999 providing that in the eviction proceeding the tenant can apply to the competent authority within 30 days of service of summons for leave to defend and further providing that in default of statement, statement filed by landlord shall be deemed to be admitted and he would be entitled to decree of eviction and has held as under:

> 13.The Competent Authority constituted under and for the purposes of the provisions contained in Chapter VIII of the Act is merely and at best a statutory authority created for a definite purpose and to exercise, no doubt, powers in a quasi-judicial manner but its powers are strictly circumscribed by the very statutory provisions which conferred upon it those powers and the same could be exercised in the manner provided therefor and subject to such conditions and limitations stipulated by

> the very provision of law under which the Competent Authority itself has been created. Clause (a) of sub-section (4) of section 43 mandates that the tenant or licensee on whom the summons is duly served should contest the prayer for eviction by filing, within thirty days of service of summons on him, an affidavit stating the grounds on which he seeks to contest the application for eviction and obtain the leave of the Competent Authority to contest the application for eviction as provided therefor. The legislature further proceeds to also provide statutorily the consequences as well laying down that in default of his appearance pursuant to the summons or obtaining such leave, by filing an application for the purpose within the stipulated period, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground so stated by him in his application for eviction. It is only when leave has been sought for and obtained in the manner stipulated in the statute that an hearing is envisaged to be commenced and completed once again within the stipulated time. The net result of an application/affidavit with grounds of defence and leave to contest, not having been filed within the time as has been stipulated in the statute itself as a condition precedent for the Competent Authority to proceed further to enquire into the merits of the defence, the Competent Authority is obliged, under the constraining influence of the compulsion statutorily cast upon it, to pass orders of eviction in the manner envisaged in clause (a) of sub-section (4) of section 43 of the Act. The order of the learned Single Judge of the High Court under challenge in this appeal is well merited and does not call for any interference in our hands.

15/ Thus similar provision in the above judgment has been held to be mandatory.

16/ While considering the issue as regards directory or mandatory nature of provision, this court is required to look into not only the expressed language of the Rule but also the intention of the legislature, the object, nature and design of the enactment, the consequence of treating the provision directory

or mandatory and the consequence provided therein and its effect.

17/ The intention of legislature is to be gathered from the object and nature of the proceedings. Madhya Pradesh Vishesh Nyayalaya Adhiniyam, 2011( for short Act) has been enacted to provide for constitution of Special court for speedy trial of certain class of offences and for confiscation of the properties involved and for the matters connected therewith and incidental thereto. Sections 13 to 15 of the Act provide for summary procedure for confiscation of the property of person accused of committing offence by the authorized officer and such confiscation is temporary in nature which is subject to order in appeal under Section 17 or outcome of the trial by the special court as provided in Section 19.

18/ Supreme court considering the similar enactment i.e. Orissa Special Courts Act, 2006 and Bihar Special Courts Act, 2009 and the rules framed thereunder in the matter of **Yogendra Kumar Jaiswal and others Vs. State of Bihar and others reported in (2016) 3 SCC 183** has held that confiscation is interim in nature and does not assume the character of finality, since accused is entitled to get return of the property or money in case he succeeds in appeal against the order passed by authorized officer or in the ultimate eventuality when the order of acquittal is recorded. Rejecting the argument that confiscation under the Act is pre-trial punishment, it has been held that confiscation being interim in nature is not a punishment as envisaged in law. It has also been held that an accused has no vested right as regards the interim measure. He is not protected by any constitutional right to advance the plea that he cannot be made liable to face confiscation

proceedings of the property which has been accumulated by illegal means.

19/ The entire scheme of Act and the Rule is time bound because the proceedings are interim in nature. In terms of Section 15(5) the confiscation proceedings are to be disposed off within 6 months from the date of service of notice and even the appeal under Section 17 is to be disposed off within 6 months from the date of its filing in terms of Section 17(3) of the Act.

20/ Not only Rule 10(2) fixes a time limit of 30 days extendable by 15 days, for filing statement of defence, but Rule 5 & 6 also fixes time limit of 15 days extendable by another 15 days for filing reply by the special public prosecutor with consequence thereof. The purpose of providing time bound manner of concluding the proceedings is, to deprive a person, who acquires property by means which are not legally approved, from enjoyment of such ill-gotten wealth. Hence if these confiscation proceedings are allowed to be delayed till conclusion of prosecution for the offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988 which otherwise every affected person would made an attempt for, the very purpose of confiscation provided under the Act would be frustrated and once the order of conviction or acquittal is passed, then, these interim proceedings, if pending, would become infructuous.

21/ While holding a provision mandatory or directory another important factor is the consequence provided therein. Rule 10(3) provides for consequence of not filing the reply within the extended period of 15 days and in such a case consequence is that the presumption arises that the affected person has no

defence and also authorised officer becomes free to proceed with adjudication without waiting for reply.

22/ Having regard to the nature of confiscation order, the time bound scheme of the act and the rule, the fact that consequence is provided for not filing the statement of defence within time and also explicit language of the Rule 10(2) & (3) of the Rules, I am of the opinion that provisions contained in rule 10(2) & (3) are mandatory in nature and in case of non filing of reply within period of 30 days with extended period of 15 days, the authorized officer has no option but to presume that the affected person has no defence to put forward and to proceed with adjudication of the matter.

23/ Examining the present case in the light of the aforesaid position in law, it is noticed that the appellant was served with the notice on 9/6/2016 and he had not filed statement of defence within 45 days and after two years he had filed statement of defence that too without any application for condonation of delay. Hence the authorized officer has committed no error in passing the impugned order dated 14/9/2018 and refusing to take on record the statement of defence. There is no order on record condoning the delay and permitting the appellants to file statement of defence after considering the provision of Rule 10(2) & (3), therefore, appellant's submission that trial court had no power of review is found to be of no substance.

24/ Hence the appeal is found to be devoid of any merit, which is accordingly dismissed.

C.c. as per rules.

**(Prakash Shrivastava)**
**Judge**

BDJ