



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

WRIT PETITION NO. 35469 OF 2015 (GM-RES)

C/W

WRIT PETITION NO. 28864 OF 2015 (GM-RES)

IN WP No. 35469/2015

BETWEEN:

1. MOHD. SHABANDRI
S/O FAQUI AHMED SHABANDRI
AGED 59 YEARS
R/O 9, GROUND FLOOR
KEMP ROAD, OPP: COLES PARK
BANGALORE-5
2. SMT FATIMA KOUSAR ISMAIL
W/O MOHD SHABANDRI
AGED 41 YEARS
R/O 9, GROUND FLOOR
KEMP ROAD, OPP: COLES PARK
BANGALORE-5

...PETITIONERS

(BY SRI. ADHITYA SONDHI, SENIOR COUNSEL FOR
SRI. PARASHURAM.A.L., ADVOCATE)

AND:

1. UNION OF INDIA
REP BY ITS PRL. SECRETARY



MINISTRY OF LAW AND
PARLIAMENTARY AFFAIRS
4TH FLOOR, SHASTRI BHAVAN
NEW DELHI-1

2. THE COMPETENT AUTHORITY
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
SMUGGLERS AND FOREIGN EXCHANGE
MANIPULATORS
(FORFEITURE OF PROPERTY) ACT, 1976,
64/1, G N CHETTY ROAD,
T NAGAR, CHENNAI-500017
3. MR WINSTON TAN
S/O KAITOON TAN
AGED ABOUT 71 YEARS
OCC: BUSINESS
FLAT NO.004-GROUND FLOOR
"PROMENADE PLACE" NO. 45/2
PROMENADE ROAD
BANGALORE-42
4. MR GIBRAN TAN
S/O WINSTON TAN
AGED ABOUT 36 YEARS
OCC: BUSINESS
FLAT NO.004-GROUND FLOOR
"PROMENADE PLACE" NO. 45/2
PROMENADE ROAD
BANGALORE-42

...RESPONDENTS

(BY SRI. K.ARVIND KAMATH, ASGI, FOR
SRI.KUMAR M.N, CGSPC FOR R1 & R2;
SRI. V.R.DATAR, ADVOCATE FOR R3 & R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
QUASH THE IMPUGNED ORDER DTD.21.4.2015, PASSED BY
THE LEARNED APPELLATE TRIBUNAL IN FPA.NO.1/2013,



FPA.NO.1/2014 AND FPA.NO.2/2014 VIDE ANNEX-AU AND TO
SET ASIDE THE REJECTION OF THE APPLICATION FOR DELAY.

IN WP NO. 28864/2015

BETWEEN:

1. MR WINSTON TAN
S/O KAITOON TAN
AGED ABOUT 71 YEARS
OCC: BUSINESS,
FLAT NO.004, GROUND FLOOR,
PROMENADE PLACE, NO.45/2,
PROMENADE ROAD,
BANGALORE-42
2. MR. GIBRAN TAN
S/O WINSTON TAN
AGED ABOUT 36 YEARS
OCC: BUSINESS,
FLAT NO.4, GROUND FLOOR,
PROMENADE PLACE, NO.45/2,
PROMENADE ROAD,
BANGALORE-42

...PETITIONERS

(BY SRI. V.R.DATAR, ADVOCATE)

AND:

1. UNION OF INDIA
REP BY ITS PRL. SECRETARY
MINISTRY OF LAW AND
PARLIAMENTARY AFFAIRS,
4TH FLOOR, SHASTRI BHAVAN,
NEW DELHI-1
2. THE COMPETENT AUTHORITY
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE,
SMUGGLERS AND FOREIGN EXCHANGE,
MANIPURATORS, (FORFIETURE OF PROPERTY)ACT,1976,



NC: 2026:KHC:33556-DB
WP No. 35469 of 2015
C/W WP No. 28864 of 2015

64/1, G.N. CHETTY ROAD,
T.NAGAR, CHENNAI-500017

3. VIJAYA BANK
REP BY ITS MANAGER
BRIGADE ROAD,
BANGALORE-560001
4. SMT. FATIMA KOUSAR ISMAIL
W/O MOHD. SHABANDRI
AGE 41 YEARS
R/O 9, GROUND FLOOR,
KEMP ROAD, OPP: COLES PARK,
BANGALORE-5
5. MOHD. SHABANDRI
S/O FAQUI AHMED SHABANDRI
AGE: 59 YEARS
R/O 9, GROUND FLOOR,
KEMP ROAD, OPP: COLES PARK,
BANGALORE-5

...RESPONDENTS

(BY SRI. K.ARVIND KAMATH, ASGI FOR
SRI. M.N.KUMAR, CGSPC FOR R1 & R2;
SRI. VIGNESH SHETTY, ADVOCATE FOR R3;
SRI. ADITYA SONDHI, SENIOR COUNSEL FOR
SRI. PARASHURAM.A.L ADVOCATE FOR R4 & R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 226 OF THE CONSTITUTION OF INDIA, PRAYING TO
QUASH THE IMPUGNED ORDER VIDE ANNEXURE-A
DATED:21.04.2015, PASSED BY THE LEARNED APPELLATE
TRIBUNAL IN FPA.No.1/2013 BE SET ASIDE BY QUASHING
THE SAME BY THE ISSUE OF WRIT OF CERTIORARI BY THIS
HON'BLE COURT AS PERVERSE, ERRONEOUS, BAD IN LAW,
ETC.



THESE PETITIONS, COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL ORDER

(PER: HON'BLE MR. JUSTICE D K SINGH)

I. PREFACE:

1. These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to quash the common order dated 21.04.2015 passed by the learned Appellate Tribunal for Forfeited Property, New Delhi (hereinafter referred to as 'the Appellate Tribunal') in FPA.No.1/2013, FPA.No.1/2014 and FPA.No.2/2014 and to set aside the rejection of the application for condonation of delay and further to direct the Appellate Tribunal to consider the appeals on merits, or in the alternative, to adjudicate the appeals on merits and set aside the Order dated 23.06.2005 passed by the respondent No.2 – Competent Authority.



II. FACTUAL BACKGROUND:

2. The genesis of the present dispute lies in the detention of Petitioner No.1, Shri Mohd. Ismail Shabandri, under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) on 02.05.2003, pursuant to an order dated 02.05.2003 issued by the Government of India. This detention stemmed from his alleged involvement in illegal transfer of money from abroad, specifically making compensatory payments under instructions from Dubai, UAE, in violation of the Foreign Exchange Management Act, 1999 (FEMA) read with the Income Tax Act, 1961.

3. A search of the residential premises of the Petitioners, Flat No. 4, Kamala Mansion, Promenade Place, 45/2, Promenade Road, Bangalore – 42 (hereinafter referred to as 'the Schedule Property'), was conducted on 31.07.2002, leading to the seizure of Indian currency of Rs. 13,50,000/- and incriminating materials. The Competent Authority found that Petitioner No.1 was extensively engaged in illegal transfer of funds, having received Rs. 92,09,480/- and paid Rs.



78,59,480/- in India, with the seized amount being the balance.

4. Consequently, proceedings were initiated under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as 'SAFEMA'). A notice under Section 6(1) of SAFEMA was issued to Petitioner No.1 on 08.12.2003, treating him as a 'person' within the meaning of Section 2(2)(b) of SAFEMA. Subsequently, a notice under Section 6(1) was also issued to Petitioner No.2, Smt. Fathima Kausar Ismail, on 23.11.2004, for her 50% share in the Schedule Property, treating her as a 'relative' within the meaning of Section 2(2)(c) of SAFEMA. Both notices were duly served.

5. The Petitioners responded to the notices, seeking time and submitting some documents, including Income Tax returns and claims regarding the sale of ancestral property and remittances from Petitioner No.2's brother. However, the Competent Authority found these explanations insufficient and unsubstantiated, noting a lack of evidence regarding the source of funds, the sale of ancestral property, or the legality of the



brother-in-law's earnings abroad. The Competent Authority also noted that acceptance of Income Tax returns by the Income Tax Department does not bind forfeiture proceedings under SAFEMA, as per Section 21 of the Act.

6. During the pendency of these proceedings, the Petitioners sold the Schedule Property to Respondent Nos. 3 and 4 (the Purchasers) for a consideration of Rs. 26,00,000/- by a registered Sale Deed dated 10.02.2005. The sale consideration was paid through drafts deposited into a bank account opened by the Petitioners specifically for this purpose, and the entire amount was withdrawn in cash within a week. The Competent Authority noted that after selling the property, the Petitioners became untraceable.

7. On 23.06.2005, the Competent Authority passed an order under Section 7(1) and (3) of SAFEMA, declaring the Schedule Property as illegally acquired and forfeited to the Central Government, free from all encumbrances. The Competent Authority further held that the transfer of the property to the Purchasers on 10.02.2005 was null and void by virtue of



Section 11 of SAFEMA, as it occurred after the issuance of notices under Section 6(1) of the Act.

8. Aggrieved by the forfeiture order, the Purchasers filed W.P. No. 764 of 2006 before this Court, which was allowed by a learned Single Judge on 12.09.2007, quashing the forfeiture order and remitting the matter for fresh consideration after hearing the Purchasers.

9. The Union of India and the Competent Authority challenged the Single Judge's order in W.A. No. 2181 of 2007, which was allowed by a Division Bench of this Court on 16.05.2009. The Division Bench held that the sale transaction to the Purchasers was subsequent to the Section 6 notice and was null and void under Section 11 of SAFEMA, and that the Purchasers were not entitled to any notice.

10. The Purchasers then preferred Special Leave Petition (Civil) No. 20420 of 2009 (converted to Civil Appeal No. 7207 of 2012) before the Supreme Court of India. The Supreme Court, vide judgment dated 04.10.2012, dismissed the appeal, affirming the view of the Division Bench. The Supreme Court



unequivocally held that after the issuance of Section 6(1) notices, the sale to the Purchasers must be ignored under Section 11 and the sale became null and void upon the forfeiture order under Section 7, relating back to the first Section 6(1) notice. The Supreme Court rejected the Purchasers' plea of being bona fide purchasers for adequate consideration, stating that no title vested in them by virtue of the sale deed dated 10.02.2005, as the Vendors could not transfer property after the Section 6(1) notice.

11. Subsequently, the Petitioners (original owners/vendors) filed appeals, FPA.No.1/2014 and FPA.No.2/2014, before the Appellate Tribunal, challenging the forfeiture order dated 23.06.2005, along with applications for condonation of delay of approximately nine years. The Purchasers also had an appeal, FPA.No.1/2013, before the Appellate Tribunal.

12. The Appellate Tribunal, by a common Judgment dated 21.04.2015, dismissed all three appeals, primarily on the ground of inordinate and unexplained delay in filing the appeals by the Petitioners. The Appellate Tribunal found no sufficient cause for condoning the nine-year delay, rejecting the



Petitioners' claims of non-service of the forfeiture order and lack of knowledge of the previous legal proceedings. It is this common order dated 21.04.2015 of the Appellate Tribunal, that is impugned in the present Writ Petitions.

III. SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS:

13. Dr. Aditya Sondhi, Learned Senior Counsel for the Petitioners has submitted that the impugned order dated 21.04.2015 is erroneous as the appellate tribunal failed to appreciate the crucial fact of non-service of the forfeiture order dated 23.06.2005. It was submitted that the Petitioners had vacated the Schedule Property on 10.02.2005, and the Competent Authority was aware of this fact, yet the order was dispatched to the old address.

14. It is also submitted that that the mandate of Section 22(b) of SAFEMA, regarding substituted service by affixture, was not complied with for the forfeiture order, rendering the service invalid. Therefore, the order was never "served" in the eyes of law, and the question of delay in filing an appeal under



Section 12(4) of SAFEMA, which stipulates limitation from the date of service, does not arise.

15. The Petitioners have asserted that they gained knowledge of the forfeiture order only on 13.02.2014 through a relative who informed them about a newspaper publication. They immediately took steps to procure certified copies and filed appeals within the prescribed period from the date of knowledge, thus there was no delay.

16. It is further contended that the Petitioners had no personal knowledge of the proceedings before this Court (W.P. No. 764 of 2006 and W.A. No. 2181 of 2007) or the Supreme Court (SLP/Civil Appeal No. 7207 of 2012), as the service of summons was not in strict compliance with the Karnataka High Court Rules, and in the Supreme Court, they were deleted as parties. Therefore, the findings of the Appellate Tribunal regarding their awareness of previous proceedings is incorrect .

17. Learned Counsel submitted that the issue of forfeiture against the Petitioners has never been decided on substantive merits by any higher court. The Supreme Court's decision was



primarily concerned with the locus standi of the Purchasers and the applicability of Section 11, not the veracity of the findings of the forfeiture order against the Vendors. Thus, the matter remains res integra for the Petitioners.

18. The Petitioners also highlighted their legitimate sources of income for acquiring the Schedule Property, including sale proceeds from ancestral properties and remittances from Petitioner No.2's brother, which they claim were not adequately considered by the Competent Authority.

19. A significant argument has been raised regarding the Competent Authority's failure to consider the mandatory provisions of Section 9 of SAFEMA, which provides for an option to pay a fine in lieu of forfeiture. It was submitted that this aspect was not agitated or considered in previous proceedings and should be allowed to be addressed now. The Petitioners allege that they were threatened by the Competent Authority and its inspectors, and that Petitioner No.1 paid Rs. 1,00,000/- in cash as a "fine" on 31.01.2005, based on an oral assurance that the case would be closed and they could sell the property.



This payment, they argued, further supports their claim of lack of knowledge of subsequent forfeiture proceedings.

20. Finally, the Petitioners challenged the constitutional validity of Sections 11 and 22 of SAFEMA, arguing that they deprive the general public of knowledge of forfeiture proceedings due to the absence of a public notice mechanism. They also contended that the Section 6(1) notices were bald and lacked the requisite "reasons to believe". However, this argument has not been pressed.

IV. SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENTS:

21. Mr. K. Aravind Kamath, learned ASGI for the Union of India and the Competent Authority has opposed the petitions, contending that the Appellate Tribunal's order is well-reasoned and warrants no interference. It was submitted that the Petitioners were actively involved in the proceedings before the Competent Authority, filed replies, and sought multiple opportunities to explain the source of funds. Their claim of ignorance of the forfeiture order for nine years is a blatant falsehood and an attempt to reopen a concluded matter.



22. It has been emphasized that the Petitioners deliberately absconded after selling the Schedule Property and withdrawing the entire sale consideration in cash. The Competent Authority made diligent efforts to serve notices, including through affixture as permitted by Section 22(b) of SAFEMA. The Petitioners cannot take advantage of their own evasive conduct.

23. Learned Counsel for the Respondents would submit that the issue of forfeiture has attained finality. The Supreme Court, in Civil Appeal No. 7207 of 2012, has already upheld the applicability of Section 11 of SAFEMA, declaring the sale to the Purchasers null and void. This implicitly affirms the validity of the forfeiture proceedings against the Vendors. The argument that the merits of forfeiture against the Vendors were not decided is a misinterpretation of the Supreme Court's judgment.

24. It is submitted that the plea regarding Section 9 of SAFEMA (fine in lieu of forfeiture) was raised by the Purchasers in their previous writ petition and was not granted. Therefore,



the Petitioners are barred by the principles of res judicata or constructive res judicata from re-agitating this issue. The Appellate Tribunal correctly held that the matter had attained finality with the Supreme Court's decision.

25. The allegation of paying Rs. 1,00,000/- in cash to the Competent Authority was categorically denied and dismissed as a baseless and false claim, designed to create a false narrative and circumvent the legal process. It was pointed out that such a significant transaction would invariably be documented, especially in the context of a property sale.

26. Learned Counsel for the Purchasers (Respondents Nos. 3 and 4) has supported the order passed by the Competent Authority, reiterating that they were bona fide purchasers but their title was rendered null and void by Section 11, as affirmed by the Supreme Court. They highlighted that the Petitioners had a legal and moral obligation to convey a valid title, which they failed to do.



V. POINTS FOR DETERMINATION:

27. Based on the pleadings and arguments advanced, the following points arise for our consideration:

- 1. Whether the Appellate Tribunal was justified in dismissing the Petitioners' applications for condonation of delay in filing appeals against the forfeiture order dated 23.06.2005?*
- 2. Whether the forfeiture order dated 23.06.2005 was invalid due to alleged non-service on the Petitioners or non-compliance with Section 22(b) of SAFEMA?*
- 3. Whether the Petitioners are entitled to re-agitate the merits of the forfeiture order or seek relief under Section 9 of SAFEMA, considering the previous proceedings up to the Supreme Court?*

VI. ANALYSIS AND FINDINGS:

Re. Point No.1:

28. The Petitioners' primary contention is that they were unaware of the forfeiture order dated 23.06.2005 for nearly nine years, learning about it only on 13.02.2014. This claim,



upon careful scrutiny of the records, appears to be a deliberate attempt to circumvent the consequences of their own actions and inactions. The factual matrix clearly demonstrates that Petitioner No.1 was detained under COFEPOSA in 2003. Notices under Section 6(1) of SAFEMA were issued to both Petitioners in 2003 and 2004, respectively, and were duly served.

The Petitioners actively participated in the proceedings before the Competent Authority, filing replies, seeking time, and offering explanations, albeit found to be unsubstantiated.

29. Crucially, the Petitioners sold the Schedule Property to the Purchasers on 10.02.2005, after the initiation of SAFEMA proceedings and service of Section 6(1) notices. The Competent Authority's order dated 23.06.2005 explicitly notes that the Petitioners became untraceable after selling the property and withdrawing the sale proceeds in cash. This conduct strongly suggests a deliberate attempt to evade the legal consequences of the forfeiture proceedings.

30. Furthermore, the Petitioners were impleaded as Respondent Nos. 3 and 4 in the Writ Petition (W.P. No. 764 of 2006) and the Writ Appeal (W.A. No. 2181 of 2007) before this



Court. While they claim non-service as per High Court Rules, the records indicate efforts were made, including newspaper publications. Even if procedural service was not perfect, their continued absence from their known address and subsequent absconding cannot be overlooked. In **STATE OF RAJASTHAN V. NAV BHARAT CONSTRUCTION CO., ([2005] 11 SCC 197)**, it has been held that vague pleas for condonation of long delays are not acceptable. Paragraph 21 of the said judgment is extracted hereunder:-

"21. We have perused the impugned order whereby application seeking condonation of delay was rejected and the revision petition was dismissed as barred. The cause for the delay stated was long strike of government employees. In the application seeking condonation of delay there was no mention as to when the strike commenced and terminated. The application was completely vague and the High Court committed no error in rejecting it. We find no ground to interfere with the said order. Civil Appeal No. 8053 of 2001 is, therefore, dismissed."

31. Similarly, in **G. RAMEGOWDA V. SPL. LAND ACQUISITION OFFICER, ([1988] 2 SCC 142)**, the Supreme Court outlined that discretion in condonation should not be



exercised where there is gross negligence or lack of bona fides.

Paragraph 14 of the said judgment is extracted hereunder:-

"14. The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See: Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.; Shakuntala Devi Jain v. Kuntal Kumari; Concord of India Insurance Co. Ltd. v. Nirmala Devi; Lala Mata Din v. A. Narayanan; Collector, Land Acquisition v. Katiji etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression "sufficient cause" in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. In Katiji case this Court said: (SCC p. 108, para 3)

"When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. . . .



It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

32. The Appellate Tribunal's finding that the Petitioners' allegations of non-awareness are false and an attempt to reopen proceedings is well-founded. It is inconceivable that individuals who were actively engaged in proceedings, sold the property under dispute, and then absconded, would remain genuinely ignorant of the final order for nine years. The argument that they learned of the order from a newspaper publication in 2014, after such a long period of silence and evasion, lacks credibility.

33. In ***D. GOPINATHAN PILLAI V. STATE OF KERALA ([2007] 2 SCC 322)***, it is emphasized that if a mandatory provision is not complied with and delay is not properly explained, condonation is not permissible on sympathetic grounds. The Petitioners' explanation for the nine-year delay falls far short of establishing "sufficient cause" as required by law. Paragraph 5 of the said judgment is extracted hereunder:-



"5. We are unable to countenance the finding rendered by the Sub-Judge and also the view taken by the High Court. There is no dispute in regard to the delay of 3320 days in filing the petition for setting aside the award. When a mandatory provision is not complied with and when the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay, only on the sympathetic ground. The orders passed by the learned Sub-Judge and also by the High Court are far from satisfactory. No reason whatsoever has been given to condone the inordinate delay of 3320 days. It is well-considered principle of law that the delay cannot be condoned without assigning any reasonable, satisfactory, sufficient and proper reason. Both the courts have miserably failed to comply and follow the principle laid down by this Court in a catena of cases. We, therefore, have no other option except to set aside the order passed by the Sub-Judge and as affirmed by the High Court. We accordingly set aside both the orders and allow this appeal."

Accordingly, we answer Point No.1 in affirmative and against the petitioner.

Re. Point No.2:

34. The Petitioners contend that the forfeiture order dated 23.06.2005 was not validly served due to non-compliance with Section 22(b) of SAFEMA, which deals with substituted service.



Section 22(b) permits service by affixing the notice/order on a conspicuous place on the property or premises where the person is known to have last resided or carried on business, if personal service is not possible.

35. The records indicate that the Competent Authority made efforts to serve the Petitioners. When they vacated the Schedule Property and became untraceable, the Competent Authority directed the Assistant Director, Enforcement Directorate, Bangalore, to effect valid service, including through affixture. The Mahazar dated 24.07.2009 confirms that service was effected under Section 22(b) of SAFEMA for subsequent orders. While the Petitioners dispute the specific compliance for the 23.06.2005 order, their own conduct of absconding after the sale significantly complicates the matter of service.

36. The law does not permit a party to take benefit from their own evasive actions. If a person deliberately makes themselves untraceable, they cannot later claim non-service to invalidate proceedings. The Competent Authority, having knowledge that the Petitioners had sold the property and moved, took steps to effect service at the last known address and through other



means. The Appellate Tribunal, having considered these facts, rightly concluded that the Petitioners' claim of non-service was a pretext.

Accordingly, the Point No.2 is answered against the petitioner.

Re. Point No.3:

37. The Petitioners' argument that the merits of the forfeiture order were never decided against them, and that the issue remains *res integra*, is untenable. The Supreme Court, in Civil Appeal No. 7207 of 2012, unequivocally held that the sale of the Schedule Property to the Purchasers was null and void under Section 11 of SAFEMA, as it occurred after the issuance of Section 6(1) notices. This finding is a direct affirmation of the validity of the forfeiture proceedings against the Vendors (Petitioners herein). The Supreme Court's decision that the Vendors ceased to have any title on the date of transfer effectively means that the forfeiture proceedings were valid and binding on them.

38. The principle of *res judicata* and the binding nature of precedents, as enshrined in Article 141 of the Constitution of India, are paramount. The Supreme Court, in **SOUTH**



**CENTRAL RAILWAY EMPLOYEES COOP. CREDIT SOCIETY
EMPLOYEES UNION V. B. YASHODABAI, ([2015] 2 SCC
727)**, cautioned against re-examining matters concluded by
higher courts, stating that it would lead to "total chaos" and
necessitate rewriting the entire law of precedents. The
Petitioners cannot be permitted to re-agitate issues that have
been directly or indirectly decided by the Supreme Court.
Paragraph 15 of the said judgment is extracted hereunder:-

"15. If the view taken by the High Court is accepted, in our opinion, there would be total chaos in this country because in that case there would be no finality to any order passed by this Court. When a higher court has rendered a particular decision, the said decision must be followed by a subordinate or lower court unless it is distinguished or overruled or set aside. The High Court had considered several provisions which, in its opinion, had not been considered or argued before this Court when CA No. 4343 of 1988 was decided (1998) 2 SCC 580. If the litigants or lawyers are permitted to argue that something was correct, but was not argued earlier before the higher court and on that ground if the courts below are permitted to take a different view in a matter, possibly the entire law in relation to the precedents and ratio decidendi will have to be rewritten and, in our opinion, that cannot be done. Moreover, by not following the law laid down by this Court,



*the High Court or the subordinate courts
would also be violating the provisions of
Article 141 of the Constitution of India."*

39. In the present case, the Tribunal has merely applied the law already declared by the Supreme Court in the earlier proceedings concerning the very same forfeiture. Once the issue had attained finality before the Supreme Court, it was not open to the Petitioners to reopen the same, either directly or indirectly, by raising contentions which either stood concluded or ought to have been urged in the earlier proceedings. Any such exercise would be contrary to the doctrine of finality of litigation and the binding mandate of Article 141 of the Constitution of India.

40. Judicial discipline requires every Court and Tribunal to follow the law declared by the Supreme Court. In **UNION OF INDIA V. KAMLAKSHI FINANCE CORPORATION LTD. (1992 SUPP (1) SCC 443)**, it has been held that orders of superior Courts are binding on subordinate authorities and that judicial discipline demands strict adherence to such decisions. Paragraphs 6 and 8 of the said judgment are extracted hereunder:-



"6. Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual mala fides but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact



that the order of the appellate authority is not "acceptable" to the department — in itself an objectionable phrase — and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.

8. *We have dealt with this aspect at some length, because it has been suggested by the learned Additional Solicitor General that the observations made by the High Court, have been harsh on the officers. It is clear that the observations of the High Court, seemingly vehement, and apparently unpalatable to the Revenue, are only intended to curb a tendency in revenue matters which, if allowed to become widespread, could result in considerable harassment to the assessee-public without any benefit to the Revenue. We would like to say that the department should take these observations in the proper spirit. The observations of the High Court should be kept in mind in future and the utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them."*



41. The same principle was reiterated in ***EAST INDIA COMMERCIAL CO. LTD. V. COLLECTOR OF CUSTOMS (1962 SCC OnLine SC 142)***. Paragraph 31 of the said judgment is extracted hereunder:-

'31. *As we have already noticed in the earlier stage of the judgment, the notice issued by the respondent charges the appellants thus:*

"One of the conditions of the special licence was that the goods would be utilised for consumption as raw material or accessories in the factory of the licence-holder and no part thereof would be sold to other parties, but in contravention of that condition the appellants sold a part of the goods imported to a third party; and as the goods had been caused to be issued by fraudulent misrepresentation, they were liable to be confiscated under Section 167(8) of the Sea Customs Act."

Section 167(8) of the Sea Customs Act can be invoked only if an order issued under Section 3 of the Act was infringed during the course of the import or export. The Division Bench of the High Court held that a contravention of a condition imposed by a licence issued under the Act is not an offence under Section 5 of the Act. This raises the question whether an Administrative Tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under Article 215, every High Court shall be a court of record and shall have all the



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powers of such a court including the power to punish for contempt of itself. Under Article 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Article 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working : otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be



invalid and the proceedings themselves would be without jurisdiction."

42. The doctrine of *res judicata* is intended to give finality to judicial decisions. In **DARYAO V. STATE OF UTTAR PRADESH (1961 SCC OnLine SC 21)**, the Constitution Bench held that the principle of *res judicata* applies equally to proceedings under Article 226 of the Constitution. Paragraph 18 of the said judgment is extracted hereunder:-

"18. The same question can be considered from another point of view. If a judgment has been pronounced by a court of competent jurisdiction it is binding between the parties unless it is reversed or modified by appeal, revision or other procedure prescribed by law. Therefore, if a judgment has been pronounced by the High Court in a writ petition filed by a party rejecting his prayer for the issue of an appropriate writ on the ground either that he had no fundamental right as pleaded by him or there has been no contravention of the right proved or that the contravention is justified by the Constitution itself, it must remain binding between the parties unless it is attacked by adopting the procedure prescribed by the Constitution itself. The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the



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administration of justice on which the Constitution lays so much emphasis. As Halsbury has observed: "subject to appeal and to being amended or set aside a judgment is conclusive as between the parties and their privies, and is conclusive evidence against all the world of its existence, date and legal consequences". Similar is the statement of the law in Corpus Juris: "the doctrine of estoppel by judgment does not rest on any superior authority of the court rendering the judgment, and a judgment of one court is a bar to an action between the same parties for the same cause in the same court or in another court, whether the latter has concurrent or other jurisdiction". This rule is subject to the limitation that the judgment in the former action must have been rendered by a court or tribunal of competent jurisdiction. "It is, however, essential that there should have been a judicial determination of rights in controversy with a final decision thereon". In other words, an original petition for a writ under Article 32 cannot take the place of an appeal against the order passed by the High Court in the petition filed before it under Article 226. There can be little doubt that the jurisdiction of this Court to entertain applications under Article 32 which are original cannot be confused or mistaken or used for the appellate jurisdiction of this Court which alone can be invoked for correcting errors in the decisions of High Courts pronounced in writ petitions under Article 226. Thus, on general considerations of public policy there seems to be no reason why the rule of res judicata should be treated as



inadmissible or irrelevant in dealing with petitions filed under Article 32 of the Constitution. It is true that the general rule can be invoked only in cases where a dispute between the parties has been referred to a court of competent jurisdiction, there has been a contest between the parties before the court, a fair opportunity has been given to both of them to prove their case, and at the end the court has pronounced its judgment or decision. Such a decision pronounced by a court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by the Constitution. In our opinion, therefore, the plea that the general rule of res judicata should not be allowed to be invoked cannot be sustained."

43. **IN FORWARD CONSTRUCTION CO. V. PRABHAT MANDAL ([1986] 1 SCC 100)**, it has been held that not only matters actually decided but also matters which ought to have been raised in the earlier proceedings are barred by the principle of constructive *res judicata*. Paragraph 20 of the said judgment is extracted hereunder:-

"20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV



to Section 11 CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force."

44. In ***M. NAGABHUSHANA V. STATE OF KARNATAKA*** (**[2011] 3 SCC 408**), it has been reiterated that finality of litigation is a matter of public policy and that repeated challenges to the same issue cannot be permitted. Paragraphs 12 and 13 of the said judgment are extracted hereunder:-

"12. The principles of res judicata are of universal application as they are based on two age-old principles, namely, interest reipublicae ut sit finis litium which means that it is in the interest of the State that



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there should be an end to litigation and the other principle is nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa meaning thereby that no one ought to be vexed twice in a litigation if it appears to the court that it is for one and the same cause. This doctrine of res judicata is common to all civilised system of jurisprudence to the extent that a judgment after a proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of res judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of res judicata is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties."



45. Regarding the plea under Section 9 of SAFEMA (fine in lieu of forfeiture), it is noted that this plea was raised by the Purchasers in their earlier writ petition before this Court. No relief was granted on this count. The Appellate Tribunal correctly observed that the matter had attained finality with the Supreme Court's dismissal of the Purchasers' appeal. The Petitioners cannot now seek to invoke Section 9 as a fresh ground, especially after the forfeiture order has been upheld and their appeals dismissed on grounds of delay. Section 9 is a power exercisable by the Competent Authority, not a right that can be claimed by a party to reopen concluded proceedings, particularly when the entire property has been found to be illegally acquired and forfeited.

ADDITIONAL ARGUMENTS OF THE RESPONDENTS FOR DISMISSAL OF THE WRIT PETITION :

46. (i) Undischarged Onus of Proof: Section 8 of SAFEMA places the onus on the affected person to prove that the property was not illegally acquired. Despite multiple opportunities, the Petitioners failed to discharge this burden. Their claims regarding ancestral property sales, remittances



from abroad, and income from tailoring/commission were found to be unsubstantiated by the Competent Authority, a finding that was not successfully challenged on merits in any forum. The acceptance of Income Tax returns, as per Section 21 of SAFEMA, does not bind the forfeiture proceedings.

(ii) Deliberate Evasion: The Petitioners' conduct of selling the property after receiving Section 6(1) notices, withdrawing the entire sale consideration in cash, and then becoming untraceable, strongly indicates a deliberate attempt to evade the forfeiture proceedings and frustrate the objectives of SAFEMA. This conduct disentitles them from seeking equitable relief in a writ jurisdiction.

(iii) No Denial of Natural Justice: The Petitioners were afforded ample opportunities to present their case before the Competent Authority. Their failure to provide satisfactory explanations or to pursue their remedies diligently cannot be termed a denial of natural justice. Natural justice does not imply endless opportunities, especially when a party is evasive.



(iv) Finality of Proceedings: The entire chain of events, from the initial detention, forfeiture order, High Court proceedings, to the Supreme Court's definitive pronouncement on Section 11, points towards the finality of the forfeiture proceedings. Allowing these petitions would amount to unsettling settled legal positions and undermining the efficacy of SAFEMA.

VII CONCLUSION:

47. Having meticulously considered the entire material on record, the arguments advanced by the learned counsel for the respective parties, and the relevant legal provisions and precedents, we find no merit in the contentions raised by the Petitioners. The Appellate Tribunal's decision to dismiss the applications for condonation of delay and consequently the appeals, is sound and based on a correct appreciation of facts and law. The Petitioners' claims of non-service, lack of knowledge, and the alleged payment of fine are unsubstantiated and appear to be an afterthought to reopen concluded matters. The forfeiture proceedings have attained finality, and the Petitioners have failed to demonstrate any



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jurisdictional error or perversity in the impugned order of the Appellate Tribunal.

48. In view of the aforesaid discussion, the Writ Petitions are hereby dismissed, however, there will be no order as to costs.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

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