

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 14.12.2016

DELIVERED ON: 12.01.2017

CORAM:

The Hon'ble Mr. Justice P.N. Prakash

Writ Petition No.5975 of 2001

1. Smt. T. Seshammal (died)
 2. T. Krishnaveni
No.38, Lakshmipuram 5th Street,
Madurai - 625 009.
 3. T. Ganeswaran
No. 31-A, Khanpalayam, 3rd Street,
Madurai - 625 009.
 4. P. Balachandran
No.191, East Perumal Maistry Street,
Madurai - 625 001.
 5. T. Murugadoss
No.9, South Ratha Street,
Villiyannur,
Pondicherry.
 6. T. Sasikala
No.7, Lakshminarayana Agraharam,
Madurai - 625 001.
 7. T. Jaishankar
No.31-A, Khanpalayam, 3rd Street,
Madurai - 625 009. ... Petitioners
- (petitioners 2 to 7 substituted as per
order of court dated 22.10.03 in
W.P.M.P.No.11950 of 2002)
in view of the demise of the original petitioner)

Vs.

1.The Competent Authority
Smugglers and Foreign Exchange,
Manipulators (Forfeiture of Property)
Act, 1976, 'UTSAV' No. 64/1,
G.N.Chetty Road, T.Nagar,
Chennai - 600 017.

2. The Appellate Tribunal for
Forfeited Property, 4th Floor,
Lok Nayak Bhavan, Khan Market,
New Delhi - 110 003.

... Respondents

Writ Petition has been filed under Article 226 of the Constitution seeking for a writ of Certiorarified Mandamus, calling for the records in F.P.A.No.101/MDS/95/8020, dated 9.1.2001, received by the petitioner on 9.3.2001 on the file of the 2nd respondent herein and quash the same and direct the 2nd respondent Appellate Authority to reconsider the entire matter with regard to the legality of section person and to its interpretation and for the documents referred to above with reference to Evidence Act.

For Petitioners Mr.B.R.Ramesh Babu

For Respondents Mr.S.Mahesh, ACGSC

ORDER

Heard the learned counsel for the parties.

2 The matter arises under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (for short "SAFEMA"). The original petitioner, who was the mother of the petitioners 2 to 7, died on 4.9.2001 and her husband, who was the father of the petitioners 2 to 7, died on 4.1.2002. Hence, the writ petitioners vide W.P.M.P.11950 of 2002 sought to substitute themselves in the place of the petitioner and the same was ordered.

3 The original writ petition challenges the order dated 9.1.2001 passed by the Appellate Tribunal for Forfeited Property (Respondent 2) at New Delhi at his camp at Hyderabad. The Appeal was filed by the original petitioner against the order of the competent authority i.e. the 1st Respondent dated 28.7.1995, by which an house property at No.31A, Khanpalayam 3rd Street, Madurai and the deposit of Rs.10,000/- standing to her credit in the books of M/s.Tirumalai Adagu Kadai, Madurai - 1, were forfeited under Section 7(1) of the SAFEMA.

4 After the dismissal of the appeal, a Miscellaneous Petition was filed for restoring the main appeal and also allow the petitioner to file documents as well as to receive additional evidence. The application to restore the main appeal was dismissed by order dated 16.2.2000 and the Miscellaneous Petitions to receive documents were also dismissed on 3.5.2000. Before the dismissal, notice was given to the 1st Respondent on the applications and comments were received from them. As against the order of dismissal passed by the first respondent Tribunal, the writ petition came to be filed. The writ petition was admitted on 29.3.2001. Pending the writ petition, in W.M.P.No. 84/50 of 2001, an order of interim stay for a period of 8 weeks was granted. Subsequently, on 12.6.2001 it was extended by two weeks. On 6.8.2001, the interim stay granted was extended until further orders. When the matter came up for hearing on 8.3.2002, as it was informed that the original petitioner had died on 4.9.2001, the writ petition stood abated. Thereafter, applications were filed in W.P.M.P.No. 11950 to 11953 of 2002 for impleading the legal heirs and also to set aside the abatement and to condone the delay in filing the said application. Those petitions were allowed on 22.10.2003.

5 Once again, when the writ petition came up for hearing on 19.9.2008, the matter was dismissed for want of prosecution. Again, the petitioners 2 to 7 filed an application to condone the delay for setting aside the dismissal in W.P.M.P.No.458 of 2011 which was ordered and thereafter, on 19.8.2011, the application in W.P.M.P. No. 511/2011 to set aside the dismissal of the writ petition was also allowed.

6 On notice from this Court, on behalf of the 1st respondent, a counter affidavit dated 19.7.2001 was filed. The case of the original petitioner was that the property which was sought to be forfeited (Block no.41, T.S.No.835 of an extent of 970 sq.ft) was owned by her w.e.f. 29.10.1981. It was purchased for a sale consideration of Rs.47,000/- and registered as document no. 5975 / 1981 before the Joint Sub-Registrar, Madurai Town.

7 A notice under section 7(1) of the SAFEMA arising out of notice under section 6(1) dated 20.5.1992 was issued. It was stated that the original petitioner's son T.Murugadoss (presently 5th petitioner) had suffered detention under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974 (for short "COFEPOSA") vide orders of the Government of Tamil Nadu dated 11.10.1988. As such, she being the mother, she will be a person affected in terms of Section 2(2)(c) of the SAFEMA.

8 The original petitioner stated that she got married to

one Thiagarajan Chettiar about 50 years ago and her father Pandian Chettiar was having both movable and immovable properties. He had bequeathed to her properties worth about Rs.7,000 as early as 1954 and had registered the said will dated 8.2.1954 as document no.12/1954. The properties were lands to the extent of 3 acres and 11 cents as well as the house at Madurai Town. The said will was revoked in the year 1957. Subsequent to the death of her father, the properties were divided by a deed of partition dated 20.10.1957 and the same was also registered as document no.6400 of 1957 in the office of Joint Registrar - II, Madurai South. The properties which came to the share of the petitioner was 3 acres and 11 cents. At the time of her marriage, she was also given jewellery as marriage gift in the year 1957. Therefore, it cannot be said that the petitioner was having illegal properties acquired through illegal means obtained by her son. She had also stated that her son was a major and Section 2(2) (c) of the SAFEMA will not attract her. She had already purchased the property in the year 1981. Her son was not even remotely connected to any illegal activities. Her two sons had left her for good and were not traceable at that time. The only property that was left to her is the house property which absolutely belongs to her.

9 It is seen from the records that the 5th petitioner (T.Murugadoss), S/o. Late Seshammal, the original petitioner, was detained under the COFEPOSA on 11.10.1988. According to the Department of Revenue, Govt. of India, their investigation revealed that she was in possession of certain properties which were believed and reasons were recorded in writing that they were obtained by illegal sources. A forfeiture notice was issued under section 6(1) of the SAFEMA to the original petitioner proposing to forfeit the two properties. Initially, the notice sent came back undelivered and it was served through an Income Tax Inspector on 18.6.1992. As there was no response, a reminder was sent on 18.9.1992 asking her to submit her explanation. That notice also came back as not claimed. A hearing was fixed on 25.11.1994. The original petitioner was represented by a counsel who objected to the proposed forfeiture.

10 It was contended before the authorities that a similar forfeiture notice under section 7(1) made against T.Ganeswaran, another son of the original petitioner (presently the 3rd petitioner) dated 30.1.1992, was set aside by the 2nd Respondent Tribunal on 6.5.1992. This was on the ground that the detention order made against the said Ganeswaran (presently 3rd petitioner) was set aside by this Court and therefore, no proceeding can be initiated in respect of the said properties. It was also stated that the original petitioner had financial capacity to purchase the property in question and also took time to submit documentary proof. Therefore, the further hearing was

held on 4.1.1995. An adjournment letter was sent and the hearing was posted on 16.2.1995. In view of the non-cooperation of the original petitioner, the authority rejected their stand and held that the original petitioner was a person covered by section 2(2) (c) being the mother and the proceedings initiated against her were valid. The original petitioners never gave their source of investment and no documents have been produced to justify the source. Therefore, it was held that the house property had been purchased out of illegal sources and liable for forfeiture under the SAFEMA. Even for the deposit made with the pawn shop, the sources have not been explained and the original petitioner did not have any independent source for possessing the said deposit. It was further stated that T.Ganeswaran (3rd petitioner) and T.Murugadoss (5th petitioner), both sons of the original petitioner, were indulging in smuggling activities. Even though T.Ganeswaran's detention was set aside by this Court, both sons were indulging in smuggling activities and therefore, the property in possession of the original petitioner is liable for confiscation.

11 Aggrieved by the same, the original petitioner filed an Appeal under section 12(4) of the SAFEMA before the 2nd Respondent Tribunal. Before the Tribunal, the counsel for the original petitioner sought time to produce the original documents with reference to the sale of jewellery for the purpose of purchasing the property. The Tribunal refused to grant any adjournment and also held that sufficient opportunity has been granted by the competent authority and therefore, they dismissed the appeal. A Miscellaneous Application being M.P. No.58/2000 for receiving documents was also consequently dismissed.

12 As against the dismissal, the petitioner preferred a writ petition before this Court in W.P.No. 11540 of 2000. This Court, by order dated 11.7.2000, allowed the writ petition and directed the Tribunal to pass a fresh order after granting opportunity. In para 4 of the order, it was held as follows:-

"A perusal of the earlier order of the second respondent dated 16.2.2000 makes it clear that the 2nd respondent dismissed the appeal only on the ground that the petitioner did not furnish the original documents before the competent authority, on the other hand, the petitioner was able to furnish only photocopies of the same. But, in the eye of law, I am of the considered opinion that photocopies have got secondary value of evidence. Even though the second respondent could have insisted for production of the original documents, nothing prevented the second respondent to consider the photocopies of the documents and to dispose of the case on merits in the light of the photocopies. On the other hand, if the photocopies of the

documents are objected to by the first respondent, still the respondent could pass appropriate orders in the light of such objection. Without doing so, the second respondent dismissed the appeal merely on the ground that the petitioner did not produce the original documents before the competent authority or at the appeal stage."

13 On remand from this Court, the Tribunal received comments from the 1st Respondent both on the appeal as well as the Miscellaneous Petition for receiving documents. Thereafter, the 2nd Respondent Tribunal by a fresh order dated 9.1.2001, once again dismissed the appeal. It disbelieved the explanation offered by the original petitioner regarding the sale of the jewellery on the ground that it was not acceptable as the same was not produced before the competent authority and they were in full agreement with the competent authority who found that she could not have sold any jewellery or silver article after the issuance of notice under section 6(1) of the SAFEMA dated 8.9.79. The alleged sale of jewellery was disbelieved and as she had not any independent source, she could not have had kept any deposit in the pawn shop. The declaration of stock of gold as on 20.6.1969 given to the Central Excise Department cannot have any effect as the property was acquired only in the year 1981. The sale receipt for gold and silver as well as account extract from the books of Selva Maligai was disbelieved.

14 As against the dismissal of the appeal dated 9.1.2001, the present writ petition came to be filed as stated already. In the counter affidavit filed on behalf of the 1st Respondent, it was stated that before passing the order, principles of natural justice were observed and the order of forfeiture was legal. The Tribunal had elaborately discussed the defence taken by the original petitioner. The proceedings against Gnanewsaran was set aside not on merits of the case. Proceedings can be initiated against the mother of the detenu.

15 In the present case, the 2nd Respondent Tribunal was specifically directed to go into the issue of the source explained by the original petitioner. It was clearly observed as follows:-

"I am of the considered opinion that photocopies have got secondary value of evidence..... if the photocopies of the documents are objected to by the first respondent, still the respondent could pass appropriate orders in the light of such objection. "

16 In the present case, the original petitioner had produced the original receipts to substantiate her claim and the Tribunal itself, in paragraph nos. 11 and 12, had observed as follows:-

"In support of the said contention, the applicant produced the original receipts evidencing the sale of gold jewellery and silver items.

We have perused the original receipts along with the English translation of the receipts."

17 Since the Tribunal draws its power from the SAFEMA, its constitution and the scope of the appellate power as well as the procedures under sections 12(5), 12(7) and 15 may be usefully reproduced:

"Section 12 (5) : On receipt of an appeal under sub-section (4), the Appellate Tribunal may, after giving an opportunity to the appellant to be heard if he so desires, and after making such further enquiry as it deems fit, confirm, modify or set aside the order appealed against.

Section 12(7): the Appellate Tribunal may regulate its own procedure.

Section 15 : Competent authority and Appellate Tribunal to have powers of civil court. Competent authority and Appellate Tribunal to have powers of civil court. The competent authority- and the Appellate Tribunal shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for examination of witnesses or documents;
- (f) any other matter which may be prescribed.

18 In P.P.Abdulla and another v. Competent Authority and others [(2007) 2 SCC 510], the Supreme Court went into the issue relating to confiscation of the properties of smuggler under the SAFEMA. It was held that Section 6(1) of the SAFEMA will have to be strictly followed and the authority's satisfaction must be recorded in writing, failing which, the notice is liable to be quashed. It is necessary to extract paragraph 8, which is as follows:-

"8. It must be stated that an order of confiscation is a very stringent order and hence a provision for confiscation has to be construed strictly, and the statute must be strictly complied with, otherwise the order becomes illegal."

19 The contention of the original petitioner that she cannot be brought in for forfeiture of the property has to be rejected in the light of the specific provisions found under Section 2(2) (c) of the SAFEMA. The only close relative excluded from the said presumption is the wife and not anyone else. The validity of the Act was upheld by a larger bench of nine Judges in Attorney General for India Vs. Amratlal Prajivandas [1994(5) SCC 54]. While explaining the scope of section 2(2) (c) r/w section 6, the Supreme Court had observed in para 44 which is as follows:-

"The language of this section is indicative of the ambit of the Act. Clauses (c) and (d) in Section 2(2) and the Explanations (2) and (3) occurring therein shall have to be construed and understood in the light of the overall scheme and purpose of the enactment. The idea is to forfeit the illegally acquired properties of the convict/detenu irrespective of the fact that such properties are held by or kept in the name of or screened in the name of any relative or associate as defined in the said two Explanations. The idea is not to forfeit the independent properties of such relatives or associates which they may have acquired illegally but only to reach the properties of the convict/detenu or properties traceable to him, wherever they are, ignoring all the transactions with respect to those properties. By way of illustration, take a case where a convict/detenu purchases a property in the name of his relative or associate it does not matter whether he intends such a person to be a mere name lender or whether he really intends that such person shall be the real owner and/or possessor thereof or gifts away or otherwise transfers his properties in favour of any of his relatives or associates, or purports to sell them to any of his relatives or associates in all such cases, all the said transactions will be ignored and the properties forfeited unless the convict/detenu or his relative/associate, as the case may be, establishes that such property or properties are not "illegally acquired properties" within the meaning of Section 3(c). In this view of the matter, there is no basis for the apprehension that the independently acquired properties of such relatives and associates will also be forfeited even if they are in no way connected with the convict/detenu. So far as the holders (not being relatives and associates) mentioned in Section 2(2)(e) are concerned, they are dealt with on a separate footing. If such person proves that he is a transferee in good faith for consideration, his property even though purchased from a convict/detenu is not liable to be forfeited. It is equally necessary to reiterate that the burden of establishing that the properties mentioned in the show-cause notice issued under Section 6, and which are held on that date by a relative or an associate of the convict/detenu, are not the illegally acquired properties of the convict/detenu, lies upon such relative/associate. He must establish that the said property has not been acquired with the monies or assets provided by the detenu/convict or that they in fact did not or do not belong to such detenu/convict. We do not

think that Parliament ever intended to say that the properties of all the relatives and associates, may be illegally acquired, will be forfeited just because they happen to be the relatives or associates of the convict/detenu. There ought to be the connecting link between those properties and the convict/detenu, the burden of disproving which, as mentioned above, is upon the relative/associate."

(emphasis added)

20 The same view was reiterated in a subsequent judgment in Kesar Devi Vs. Union Of India [(2003) 7 SCC 427] and it was observed as follows:-

"Section 8 of the Act which deals with the burden of proof is very important. It lays down that in any proceedings under the Act, the burden of proving that any property specified in the notice served under Section 6 is not illegally acquired property, shall be on the person affected. The combined effect of Section 6(1) and Section 8 is that the competent authority should have reason to believe (which reasons have to be recorded in writing) that properties ostensibly standing in the name of a person to whom the Act applies are illegally acquired properties, he can issue a notice to such a person. Thereafter, the burden of proving that such property is not illegally acquired property will be upon the person to whom notice has been issued. The statutory provisions do not show that the competent authority, in addition to recording reasons for his belief, has to further mention any nexus or link between the convict or detenu [as described in sub-section (2) of Section 2] and the property which is sought to be forfeited in the sense that money or consideration for the same was provided by such convict or detenu."

21 It has also been held that the pre-requisite for forfeiture of a property is that the detention order passed under the COFEPOSA must be valid in law. In other words, if a detention of a detenu is quashed by any court for any reason, then, the proceedings initiated under section 6 and order passed under section 7 must fail. It was held in Union of India & Ors Vs Manoharlal Narang [(1987) 2 SCC 241] as follows:-

"It cannot be disputed that provisions of SAFEMA cannot be invoked in cases where there is no valid order of detention. We agree with the High Court that the order of detention is bad on the ground discussed above. Consequently we hold that the High Court was justified in quashing the notice issued under Section 6 and the proceeding initiated under Section 7 of the SAFEMA."

22 The original petitioner's son (the 3rd Petitioner T.Ganeswaran) was detained under the COFEPOSA and under section

7(1) of SAFEMA dated 30.1.1992, the same properties were forfeited. The detention of the said Gnaneswaran was set aside by this Court and thereafter, the said order was set aside by the Appellate Tribunal for forfeited property (2nd Respondent) in appeal on 6.5.1992. But, in this case, when the same properties were once again brought in for forfeiture on the ground of detention of T.Murugadoss (5th petitioner), the Tribunal, in its earlier order dated 28.7.1995, held that the said order will have no bearing on the present proceedings. In the present impugned order, the Tribunal also curiously held as follows:-

"The earlier order of the Competent Authority dated 31.1.92 was set aside by the Tribunal by order dtd. 6.5.92 in FPA No.12/MDS/92 on the ground that the earlier order of detention of the other son of the appellant, namely T.Gnaneswaran was set aside by the High Court. The order did not touch upon the merits of the case. The present proceedings were based on the detention of the appellant's son T.Murugadoss as mentioned above and hence the earlier order of the Tribunal dated 6.5.92 did not come in the way of the Competent Authority in passing the present order."

23 Unfortunately, the Tribunal did not keep the law in its letter and spirit. The Competent Authority i.e. the 1st Respondent also fell into the same error by recording in para 7 which is as follows:-

"Although Sri. T.Gnaneswaran's detention was set aside by the Court, nevertheless, there is nothing in doubt infer that the husband of the person affected as well as her two sons were indulging in smuggling activities and had been during different period, detained under COFEPOSA Act, 1974. In a capable conclusion therefore is that the investments in the property under consideration were made by the person affected though the illegal sources of the aforesaid persons."

24 In effect, the Tribunal did not give any credence to the fact that the very same properties, which, in pursuance of the detention of Gnaneswaran, was sought to be forfeited and as his detention was set aside by this Court, the Tribunal consequently also quashed the forfeiture notice. Therefore, this is a case where a second forfeiture is made on the very same property on the ground that another son was detained under the COFEPOSA and the properties came to be owned by the original petitioner through illegal means.

25 Though by virtue of the provisions of the Act, the burden of proof was on the person owning the property to establish the source, the original order passed for forfeiture by the 1st Respondent merely proceeded that despite opportunity, no

materials are forthcoming. In para 5, it was held as under:

"It would be relevant to mention here that the person affected's husband was a gold and silver merchant and the jewellery, claimed to have been sold, was declared under the gold control Act 1968 to the Superintendent of Central Excise, Madurai. It was therefore, incumbent on them under the said Act to have declared the sale of the declared jewellery articles. Not only that the person affected has not furnished any documentary evidence with regard to the sale of the said jewellery, she has also not produced any evidence to indicate any declaration made to the gold control authorities in this regard. No credence therefore, can be given to the plea that the investment for the purchase of the house property was made out of the sale proceeds of the jewellery items. Accordingly, it is held that the house property under consideration had been purchased out of the illegal sources and hence liable for forfeiture under the Act."

26 When the matter went before the Tribunal for the first time, the Tribunal refused to allow production of documents as it was not produced before the 1st Respondent. This led to the intervention by this Court which also held that photocopies of the documents can be accepted subject to objection by the department. In their written remarks, the 1st Respondent with reference to the declaration of the jewellery by the father, offered the following remarks:

"The particulars of gold owned as on 30-6-1969 by the husband of the appellant indicating the details of jewellery owned by him. The appellant and their children totaling 997.25 grams are available in the declaration filed before the Excise Department. The details of the jewellery received as stridhana by the appellant totaling 993.85 grams has also been produced.

The above declaration is dated 30-6-1969 whereas the forfeited property was acquired only in the year 1981. Absolutely no evidence whatsoever has been tendered to substantiate the availability of the above said gold jewellery as far as back in the year 1981. Further, no documentary evidence in the form of sale receipts, etc have been furnished for perusal. No details of date of sale, to whom sold, consideration etc., has been produced to give any credence to the claim that the sale proceeds of the gold jewellery were utilized to purchase the forfeited house property."

27 Before the Tribunal, however, the original petitioner produced original receipts which are almost 20 years old by the time the records were perused by the Tribunal. Further, there was a direction to consider those materials. The consideration made by the Tribunal on those records were perfunct and only showed that in any event, they are willing to reject the offer of

explanation available to a person under section 8 of the Act. In para 12 of the impugned order, the Tribunal held as follows:-

"It is very strange that the appellant is said to have sold gold ornaments and silver items to nearly 20 different persons in small bits. No explanation is forthcoming as to why the appellant sold these items to so many shops within a period of one month. The notice under Section 6(1) was issued on 25.9.92 but the appellant did not choose to produce the receipts before the Competent Authority in spite of obtaining several adjournments. Later, only photocopies of the receipts were filed before the Tribunal. After the orders of the High Court, the appellant filed the original receipts at the appellate stage. The Competent Authority observed that the appellant could not have sold any jewellery or silver articles after the issuance of the earlier notice under Sec.6(1) dated 8.9.79, pursuant to which the previous proceedings were initiated in her capacity as the wife of Thiagarajan Chettiar who was obtained, in view of Section 11 of the Act, and hence, the alleged sale of jewellery and silver was disbelieved. We are not prepared to place any reliance on the receipts for the sale of jewellery and silver for the reasons mentioned above, as well as the reason given by the Competent Authority. That apart, the appellant has not adduced any evidence to show that the amount realised by the alleged sale of jewellery and silver was invested in the purchase of the house property. We, therefore, hold that the house property was made through the illegal sources of the detenu."

28 When these records were not available before the Competent Authority and when a specific direction was given to the Tribunal to look into the documents produced before the Tribunal, it was unfortunate that the tribunal should agree with the conclusions of the Competent Authority and also hold that the original petitioner had not adduced any evidence. It must be understood that the Act is very draconian and it has to be interpreted strictly. When the burden of proof had shifted to the person owing to the property and that person has shown some acceptable evidence, it would not be open to the authorities to forfeit the properties on some ipse dixit. There is no rule that a person cannot sell her jewellery on small bits and that she cannot sell those jewellery to different shops within one month. Such a finding based on a suspicion cannot replace the documentary evidence produced by the petitioner.

29 In the present case, the original petitioner is not a person of no means. Her father owned properties and wrote a will. Later, it was cancelled and the family members had a registered deed of partition among themselves. Further, her father was a gold and silver merchant and has declared jewellery under the Gold Control Act to the Superintendent of Central Excise. All these documents have been accepted by the authorities but only

doubts have been thrown without any legal basis. The original petitioner had submitted proper records to shift the burden of proof on the department. The mere fact that the Act does not require the competent authority to record a finding that the forfeited property was purchased by monies received from smuggling activities does not end the matter. The burden no doubt is on the person who is in possession of the property to explain their sources. But, once an explanation is forthcoming, then, naturally it is for the competent authority to prove the contrary.

30 This Court is not satisfied with the order of the Appellate Authority. As can be seen from Section 15, the Appellate Authority has ample power to call for any records from anyone and if they were not satisfied with the receipts produced by the petitioner, they could have summoned such of those documents from necessary quarters or examined witnesses in that behalf. This is especially when a property of a person is sought to be confiscated. This Court is satisfied that the original petitioner had discharged her obligation of proving her source of wealth in purchasing the property and in these two decades of litigation, she had also passed away. This is not a matter where a further remand is necessary. Further, the very same properties were under orders of forfeiture in connection with the detention of the original petitioner's another son and that was released by the very same Tribunal. Again, the Tribunal, instead of relying upon the full order of that Tribunal chose to rely upon a portion of the order without any reason. The Tribunal also did not keep in mind the order of this Court made earlier remanding the matter.

31 Under the above circumstances, this Court has no hesitation to set aside the order of the 2nd Respondent Tribunal made in F.P.A.No.101/MDS/95 dated 9.1.2001 confirming the forfeiture order of the 1st Respondent in CCA/MDS/2112/92 dated 28.7.1995.

In the result, the writ petition stand allowed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1.The Competent Authority
Smugglers and Foreign Exchange,
Manipulators (Forfeiture of Property)
Act, 1976, 'UTSAV' No. 64/1,
G.N.Chetty Road, T.Nagar,
Chennai - 600 017.

2. The Appellate Tribunal for
Forfeited Property, 4th Floor,
Lok Nayak Bhavan, Khan Market,
New Delhi - 110 003.

+2cc To Mr.B.R.Ramesh Balu, Advocate SR.No.3170

+1cc to Mr.S.Makesh, Advocate SR.No.3001

Pre-delivery order in
Writ Petition No.5975 of 2001

VG1 (CO)
GN(02/02/2017)



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