IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 02.09.2022

PRONOUNCING ORDERS ON : 12.09.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.Nos.23663 of 2003 and 24589, 25538 of 2011
and WVMP No.2106 of 2013 and
WMP Nos.33719, 33297, 33299, 33602, 33606, 33717 of 2019

W.P.No.23663 of 2003

1. V.G.Sekar

2. Mrs. Usha Sekar ..Petitioners

.Vs.

1. Government of India
   Ministry of Finance
   Department of Revenue
   Rep.by Joint Commissioner/Competent Authority
   Office of the Competent Authority
   SAFEM (FOP) and NDPS Acts
   Utsav No.64/1,
   G.N.Chetty Road, T.Nagar
   Chennai 600 017.

2. Y.Vijayalakshmi ..Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the First respondent in F.No.OCA/MDS/1/91(NDPS) dated 30.07.2003, quash the same and consequently forbear the first respondent from interfering with the petitioner's possession and enjoyment of the flat bearing No.3, Rajarajeswari Apartments, 25 and 26, Warren Road, Mylapore, Chennai-600 004 admeasuring 1148 Sq.Ft., along with the proportionate subdivided share of 4.10%, of the total extent of 12904 sq.ft., i.e., 529 sq.ft., or thereabouts.

For Petitioners	:	Mr.P.S.Raman for M/s.C.Seethapathy
For Respondents	:	Mr.R.Shankara Narayanan Additional Solicitor General Asst.by: M/s.Venkataswamy Babu Senior Panel Counsel for R1 M/s.A.S.Vijayaraghavan for R2

W.P.No.24589 of 2011

1. Hari kKumar Bhagavat

2. Smt.Lalitha Hari ..Petitioners

.Vs.

1. The Government of India
Ministry of Finance
Rep.by the Competent Authority
Office of the Competent Authority
Utsav No.64/1,
G.N.Chetty Road, T.Nagar
Chennai 600 017.

2. M/s.Nikita Aquaculture Private Limited
Rep.by its Director-Mahesh B.Gor.
Having its regional office at
No.111, DBS House
31-A, Cathedral Garden Road
Nungambakkam,Chennai 600 034.

..Respondents

(R-2 impleaded as per order dt.9.6.2014 by MMSJ in MP.1/14 in WP.No.24589/2011)

Prayer: Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the Proceedings under Narcotics Drugs and Psychotropic Substances 1985 in F.No.1-N/NDPS/ 94-95 dated 22.09.2011 of the Respondent herein and quash the same and direct the Respondent to remove the Board fixed by the Respondent on 30.9.2011 mentioned in the schedule property as referred in the impugned order.

For Petitioners : Mr.Vijayashankar
for M/s.P.Subba Reddy

For Respondents : Mr.R.Shankara Narayanan
Additional Solicitor General
Asst.by:
Mr.B.Rabu Manohar
SCGPC for R1

M/s.Prakash Goklaney
for R2

W.P.No.25538 of 2011

S.Radhakrishnan ..Petitioner

.Vs.

1. The Competent Authority
SAFEM (FOB) and NDPS Acts
Government of India
Ministry of Finance-Department of Revenue
Utsav No.64/1, G.N.Chetty Road, T.Nagar
Chennai 600 017.

2. The Collector
Thiruvallur District.

3. The Sub-Registrar
Sub-Registration District of Arani
Arani, Thiruvallur District 601 101.

4. Y.V.Vijayalakshmi

5. Kishore J.Kumar ..Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned order in F.No.1-N/NDPS/94-95 dated 04.10.2011 passed by the 1st respondent and quash the same.

For Petitioner	:	Mr.Bhagawat Krishna for M/s.G.Ananda Kumar
For Respondents	:	Mr.R.Shankara Narayanan Additional Solicitor General Asst.by: Mr.B.Rabu Manohar SCGPC for R1 Mr.R.Kumaravel Additional Government Pleader for R2 and R3 M/s.R.Rajan for R4 Mrs.P.Bagyalakshmi for R5

COMMON ORDER

1. The issues involved in all these Writ Petitions are common and hence they are taken up together, heard and disposed of through this common order.

2. The petitioners in W.P.No.23663 of 2003 and W.P.No.24589 of 2011 have challenged the forfeiture order passed by the 1st respondent under Section 68-I of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') dated 29.11.1999 and the consequent notice of the 1st respondent dated 22.09.2011.

3. The petitioner in W.P.No.25538 of 2011 has challenged the impugned order of the 1st respondent dated 04.10.2011, wherein a direction was issued to the petitioner to handover the possession of the subject property.

4. The petitioners in W.P.No.23663 of 2003 purchased the subject property viz., a flat measuring 1148 sq.ft., along with the proportionate undivided share in the land from the 2nd respondent through a registered sale deed dated 03.11.1999. Subsequent to the purchase of the subject property, the tenant who was in occupation of the flat was served with an order dated 30.07.2003, whereby, a direction was issued by the 1st respondent directing the possession of the flat to be handed over to the Competent Authority within a period of 30 days. On coming to know of this order served on the tenant, the petitioners enquired and

they found that a forfeiture order was passed on 29.11.1999, by the Competent Authority under the NDPS Act against one Y.V.Nagaraj, forfeiting the subject property which stood in the name of his wife, viz., the 2nd respondent. Thereafter, an order dated 24.03.2000 was passed under Section 68-U of the NDPS Act, directing the 2nd respondent to surrender and deliver possession of the property. The appeal filed by the 2nd respondent against this order was also dismissed by the Tribunal through an order dated 24.4.2002. Pursuant to the same, notice was issued to the tenant to vacate and handover the possession. Aggrieved by the same, this Writ Petition was filed before this Court.

5. Insofar as the petitioners in W.P.No.24589 of 2011 are concerned, they purchased the property measuring an extent of 86 cents through two sale deeds dated 11.09.2007. Similarly, they also purchased another extent of 56 cents through a sale deed executed during June 2010. Both the sale deeds were executed by M/s. Nikita Aqua Culture Pvt., Ltd. The petitioners received the impugned order dated 22.09.2011 passed by the 1st respondent under Section 68-M of the NDPS Act, directing the petitioners to handover possession of the property. On receipt of this order, the petitioners enquired and they found that one Y.V.Nagaraj was arrested and he was detained under The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (hereinafter referred to as 'the PITNDPS Act') during October 1994 and thereafter, a freezing order was passed under Section 68-F of the NDPS Act on 14.11.1994. A notice was also issued to the vendor of the petitioners on the ground that the said Company is an associate of Y.V.Nagaraj. The freezing

order was confirmed subsequently through an order dated 05.12.1994. Thereafter, an order of forfeiture was passed under Section 68-I of the NDPS Act on 29.11.1999. As a consequence, the impugned order dated 22.9.2011 came to be passed by the 1st respondent under Section 68-M of the NDPS Act, directing the handing over of the possession of the property. Aggrieved by the same, this Writ Petition was filed before this Court.

6. The petitioner in W.P.No.25538 of 2011 purchased the subject property viz., Plot Nos. 6 and 7 measuring an extent of 3672 sq.ft., from the 4th respondent though two registered sale deeds dated 18.3.2010. After the purchase of the properties, the petitioner received the impugned order dated 4.10.2011, directing the petitioner to handover possession of the properties. On enquiry, the petitioner came to know that a detention order was passed against the husband of the 4th respondent viz., Y.V.Nagaraj in the year 1994. Subsequently, a freezing order was passed and it was also confirmed in the year 1994. As a consequence, forfeiture order was passed on 29.11.1999 and an order to surrender possession was passed under Section 68-U of the NDPS Act on 24.3.2000 and it was also confirmed by the Appellate Tribunal in appeal. In view of the same, the petitioner was directed to handover possession of the property and aggrieved by the same, this Writ Petition has been filed before this Court.

7. The Competent Authority has filed separate counter affidavits in all the Writ Petitions. The common ground that has been taken is that one, Umarji Musa Patel alias

Gafoor Patel was convicted by the Crown Court, UK for 60 months imprisonment for importing cannabis. Further, he was also detained under the PITNDPS Act, through an order dated 15.12.1994. Hence, this person has been brought within the purview of Section 68-A (2)(a) and (b) of the NDPS Act.

8. One Y.V.Nagaraj was detained under the PITNDPS Act, through an order dated 10.08.1994 and the detention order was also confirmed by the Competent Authority. Accordingly, this person is brought within the ambit of Section 68-A (2)(e) of the NDPS Act on the ground that he was an associate of Umarji Musa Patel alias Gafoor Patel.

9. One Y.Vijayalakshmi, wife of Y.V.Nagaraj is also brought within the meaning of Section 68-A(2)(d) on the ground that she was related to Y.V. Nagaraj.

10. Insofar as M/s. Nikita Aqua Culture Pvt. Ltd., is concerned, the Competent Authority had reason to believe that the properties belonging to this Company were acquired illegally by Y.V.Nagaraj, who was the Managing Director of the Company and hence, this Company is brought within the purview of Section 68-B (b)(iii) on the ground that this Company is an associate of Y.V.Nagaraj.

11. In view of the above stand taken by the Competent Authority, freezing order was passed and confirmed by the Competent Authority on 05.12.1994 under Section 68-F(2) of the NDPS Act. In view of the same, the properties that were covered under the order cannot

be transferred without the permission of the Competent Authority and the transfer made in favour of the petitioners is null and void. That apart, forfeiture order was also passed by the Competent Authority on 29.11.1999. The surrender and delivery of possession was ordered under Section 68-U of the NDPS Act on 24.3.2000 and the Appeal filed against the same was also dismissed on 24.4.2002.

12. In view of the above, the Competent Authority has justified the impugned notice issued to the respective petitioners directing them to handover possession of the properties held by them. Accordingly, the 1st respondent has sought for the dismissal of all the Writ Petitions.

13. Heard Mr.P.S.Raman, learned Senior Counsel for the petitioners in W.P.No.23663 of 2003, Mr.Vijayashankar, learned counsel for the petitioners in W.P.No.24589 of 2011, Mr.Bhagawat Krishna, learned counsel for the petitioner in W.P.No.25538 of 2011 and Mr.R.Shankara Narayanan, learned Additional Solicitor General for R1 in all writ petitions, Mr.A.S.Vijayaraghavan, learned counsel for R2 in W.P.No.23663 of 2003, Mr.Prakash Goklaney, learned counsel for R2 in W.P.No.24589 of 2011 and Mr.R.Kumaravel, learned Additional Government Pleader for R2, R3, Mr.R.Rajan, learned counsel for R4, Mrs.P.Bagyalakshmi, learned counsel for R5 in W.P.No.25538 of 2011.

14. The learned counsel for the petitioners have raised the following grounds for consideration:

- Section 68-A (1) specifically states that Chapter VA of the NDPS Act will apply only to those persons specified under Section 68-A (2) of the Act. The basis on which this Chapter is attempted to be put against the petitioners is that Y.V. Nagaraj was detained under the PITNDPS Act and hence, is brought within the purview of Section 68-A (2)(e) of the NDPS Act. This status of Y.V.Nagaraj ceases to exist since the detention order came to be quashed by this Court and it was subsequently confirmed by the Apex Court also.
- As a consequence of the above, Section 68-Z comes into play and the properties frozen stand automatically relieved.
- For the first time, in the notice proposing forfeiture issued under Section 68-H of the NDPS Act, the name of Umarji Musa Patel is mentioned and Y.V.Nagaraj is attempted to be shown as his associate. On that ground, the wife of Y.V.Nagaraj is also attempted to be roped in as a relative under Section 68-A(2)(d) of the NDPS Act and such a far-fetched assumption to justify the forfeiture is unsustainable.
- There is absolutely no material on record to substantiate that Y.V.Nagaraj held the properties through the 2nd respondent.
- On the date of conviction of Umarji Musa Patel i.e. on 10.8.1978, Y.V.Nagaraj was about 13 years old and his wife was about 11 years old. In view of the

same, they cannot be considered as an associate in the year 1978 or earlier. That apart, Chapter VA of the NDPS Act was not in force in the year 1978.

- The forfeiture order mentioned that Y.V.Nagaraj was a director in Southern LPG Ltd. and Umarji Musa Patel became a director on 15.3.1994. Hence, there cannot be an association between Y.V.Nagaraj and Umarji Musa Patel prior to 15.3.1994. The vendor had purchased the properties even prior to this date. That apart, Southern LPG Ltd., is a public limited company and it is excluded under Section 68-B (b)(iv) of the NDPS Act.
- There is gross negligence on the part of the official respondent in not taking any action under Section 68-G after the freezing order was passed and if that had been done, the innocent purchasers would not have ventured to purchase the properties in question.
- The petitioners in order to substantiate their submissions, relied upon the following judgments:

a) *Fatima Mohd. Amin v. Union of India* reported in (2003) 7 SCC 436.

b) *Krishi Utpadan Mandi Samiti &Ors. v. PilibhitPantnagarBeej Ltd. & another* reported in (2004) 1 SCC 391.

c) *Aslam Mohammed Merchant v. Competent Authority &Ors.* reported in (2008) 14 SCC 186.

d) *R. Ramakrishnan v. The Appellate Tribunal for Forfeited Property* reported in (2011) 6 MLJ 661.

e) *Ethiopian Airlines v. Ganesh NarainSaboo*reported in (2011) 8 SCC 539.

f) *Kamal Kumar v. Union of India and Ors.* reported in 2012 (127) DRJ 21 : MANU/DE/6647/2011.

g) Competent Authority v. M. KhaiderMoideen and Ors. reported in (2016) 6 MLJ 239.

h) Tofan Singh v. State of T.N. reported in (2021) 4 SCC 1.

i) *Attorney General for India and Others v. Amratlal Prajivandas and Others* reported in (1994) 5 SCC 54.

j) *DhanibanMakanbaiTandel v. Union of India*reported in 1997 1 GCD 813.

*k) Smt. Meeta Nitin Bhanushali v. State of Maharashtra*reported in 2008 (0) supreme (Mah) 1423.

l) *Union of India and Anr. v. Gurmayil Singh and Others*reported in 2015 (0) supreme (P&H)1336.

m) *Chellamuthu v. Deputy Director, PMLA* reported in (2016) 2 CTC 90.

n) *Shri Gulshan Ahuja v. Union of India and Others*reported in 2005 (4) crime (HC) 353.

o) *S. Ramesh Kumar and Others v. State of Tamil Nadu*reported in 2006 (2)LW 811.

15. Per contra, the learned Additional Solicitor General appearing on behalf of the Competent Authority made the following submissions:

- Umarji Musa Patel, Y.V.Nagaraj, Y.Vijayalakshmiand M/s. Nikita Aqua Culture Pvt. Ltd., have all been brought within the purview of Chapter VA of the NDPS Act and hence, the subject properties traced through them has to necessarily suffer the consequence since it was acquired illegally.
- Once the freezing order is confirmed under Section 68-F of the NDPS Act on 5.12.1994, the properties cannot be transferred without the prior permission from the Competent Authority and all the transactions therefore are null and void.

- The forfeiture order was passed by the Competent Authority after giving opportunity to the interested persons and it was also confirmed in appeal. In view of the same, the petitioners will have to necessarily handover the possession of the property.
- Section 68-Z of the NDPS Act was inserted in the Act only with effect from 2.10.2001and it has only a prospective effect and hence, the detention order quashed by the High Court on 28.04.1995 cannot be made a ground for the automatic release of the property.
- Even though the detention order was quashed, Y.V.Nagaraj was convicted in the year 2017 by a Competent Court for offences under the NDPS Act and therefore, the quashing of the detention order pales into insignificance.
- The title in the properties has vested in the Central Government immediately after the forfeiture order was passed and thereafter, the vendor does not have any transferable right. Consequently, the subsequent purchasers cannot claim any right in the property. Hence, the ground of transferee in good faith has no application to the petitioners.
- There is no mandate to show the order of forfeiture as an encumbrance and the petitioners will have to necessarily work out their remedy only as against their respective vendors and they cannot question the validity of the freezing order and the forfeiture order.
- The Additional Solicitor General in order to substantiate his submission, relied upon the following judgments:

a) *Thirumalai Chemicals Ltd., v. Union of India and Others* reported in (2011) 6 SCC 739.

b) *Winston Tan and Another v. Union Of India and Another* reported in (2012) 10 SCC 222.

16. This Court has carefully considered the submissions made on either side and the materials placed on record.

17. This is an unfortunate case where the petitioners who all are innocent and *bona fide* purchasers of the respective properties, are caught in a situation where there is a potential likelihood of their properties being taken over by the Competent Authority, in view of certain earlier proceedings about which the petitioners were not aware.

18.Section 68-F of the NDPS Act makes it clear that once a seizure/freezing order is passed, properties cannot be transferred without the permission from the Competent Authority. Thus, once the confirmation order was passed by the Competent Authority on 5.12.1994 under Section 68-F(2) of the Act, this restriction comes into force. Thereafter, once the forfeiture order is passed under Section 68-I of the NDPS Act, the property is deemed to be vested with the Central Government, free from all encumbrances. In the present case, such an order was passed on 29.11.1999. The orders also specifically covered the subject properties involved in these Writ Petitions. The Smugglers and Foreign Exchange

Manipulators (Forfeiture of Property) Act,1976 (hereinafter referred to as 'the SAFEMA') which contained provisions in *pari materia* as that of the NDPS Act, the Apex Court has held in *Winston Tan* case, referred supra, that the properties which are vested with the Central Government cannot be transferred and the subsequent purchasers cannot claim any right in the property. In view of the same, the learned Additional Solicitor General has taken a clear stand that transferee in good faith with adequate consideration does not arise in this case and the petitioners cannot take advantage of the same.

19. In the present case, the order under Section 68-F of the NDPS Act was passed on 14.11.1994 only on the ground that Y.V.Nagaraj has been detained under the provisions of PITNDPS Act and it has also been confirmed by the Competent Authority. Accordingly, Y.V.Nagaraj was brought within the purview of Section 68-A(2)(c)of the NDPS Act. Consequently, since Y.V.Nagaraj was the Managing Director of M/s. Nikita Aqua culture Pvt. Ltd., the said entity was brought within the purview of Section 68-A (2)(e) read with Section 68-B(b)(iii) of the NDPS Act.

20. It is for the very same reason that the wife of Y.V.Nagaraj, viz. Y. Vijayalakshmi was brought within the purview of a relative under Section 68-A (2)(d) of the NDPS Act. The very same reasons were assigned even when the confirmation order was passed under Section 68-F(2) of the Act.

21. There is no dispute with regard to the fact that the detention order passed against Y.V.Nagaraj was quashed by this Court by an order dated 28.4.1995. In view of the same, the proviso to Section 68-A (2)(c) of the NDPS Act will come into play and the provisions of Chapter VA of the NDPS Act will no more apply to Y.V.Nagaraj. As a consequence, it will not apply to his wife Y. Vijayalakshmi and to the entity M/s. Nikita Aqua Culture Pvt. Ltd.

22. While the notice proposing forfeiture under Section 68-H of the NDPS Act was issued on 20.04.1995, for the first time, the name of Umarji Musa Patel was mentioned in the notice and Y.V.Nagaraj is shown to be an associate of Umarji Musa Patel. While passing the forfeiture order under Section 68-I of the NDPS Act, the name of Y. Vijayalakshmi is not even alleged to be an associate of Umarji Musa Patel. That apart, there was no material placed or available before the Competent Authority to demonstrate that the property was held by Y. Vijayalakshmi, for and on behalf of Y.V.Nagaraj. When Umarji Musa Patel was convicted in the year 1978 by the UK Court, Y.V.Nagaraj andY. Vijayalakshmi should have been aged about 13 and 11 years respectively and therefore, they cannot be considered to be the associates of Umarji Musa Patel.

23. The forfeiture order holds Y.V.Nagaraj to be an associate of Umarji Musa Patel, only on the ground that Y.V.Nagaraj was a director in Southern LPG Ltd., and Umarji Musa Patel became a director of this Company on 15.3.1994 and therefore, Y.V.Nagaraj is considered to be an associate of Umarji Musa Patel. This reasoning given in the forfeiture

order travelled much beyond the scope of the preceding notice issued under Section 68-H of the NDPS Act.

24. It is very relevant to note that the vendors had purchased the property much prior to Umarji Musa Patel becoming a director on 15.3.1994 and there was no nexus to the funds of Umarji Musa Patel and the property purchased by the vendors in all the Writ Petitions. In any case, the purchase was not made from Southern LPG Ltd. That apart, Section 68-B (b)(iv) only includes a Private Company and whereas, Southern LPG Ltd., is a Public Limited Company. Once the legislature excludes a Public Limited Company from the scope of the provision, the Competent Authority was not right in assuming that the Company can also be brought within the purview due to the involvement of Umarji Musa Patel. The Apex Court, in the case of *Krishi Utpadan Mandi Samiti*, referred supra has held as follows:

> "***59.*** *The matter may be considered from another angle: "expressiounius personae vel rei est exclusio alterius" is a well-known maxim which means the express intention of one person or thing is the exclusion of another. The said maxim is applicable in the instant case. [See Khemka & Co. (Agencies) (P) Ltd. v. State of Maharashtra [(1975) 2 SCC 22 : 1975 SCC (Tax) 227] , SCC paras 47 and 48.]"*

25. In the considered view of this Court, Umarji Musa Patel does not have any role to play insofar as M/s. Nikita Aqua Culture Pvt. Ltd., Company is concerned. Hence, this company cannot be termed as an associate of Umarji Musa Patel. That apart, a person to be associated to an accused must necessarily be a person associated to the offence committed

or to the accused at that time when the offence in question was committed. Y.V.Nagaraj does not satisfy any of these requirements and it is too far-fetched to connect Y.V.Nagaraj to Umarji Musa Patel and consequently, his wife Y.Viyalakshmi and Nikita Aqua Culture Pvt. Ltd.

26. The Hon'ble Supreme Court in the case of *Attorney General for India and Others,* referred supra was considering the provisions of SAFEMA which is in pari materia to the NDPS Act and while dealing with the same, the Hon'ble Supreme Court has held as follows:

> "***44.*** *It is contended by the counsel for the petitioners that extending the provisions of SAFEMA to the relatives, associates and other 'holders' is again a case of overreaching or of over-breadth, as it may be called — a case of excessive regulation. It is submitted that the relatives or associates of a person falling under clause (a) or clause (b) of Section 2(2) of SAFEMA may have acquired properties of their own, may be by illegal means but there is no reason why those properties be forfeited under SAFEMA just because they are related to or are associates of the detenu or convict, as the case may be. It is pointed out that the definition of 'relative' in Explanation (2) and of 'associates' in Explanation (3) are so wide as to bring in a person even distantly related or associated with the convict/detenu, within the net of SAFEMA, and once he comes within the net, all his illegally acquired properties can be forfeited under the Act. In our opinion, the said contention is based upon a misconception. SAFEMA is directed towards forfeiture of "illegally acquired properties" of a person falling under clause (a) or clause (b) of Section 2(2). The relatives and associates are brought in only for the purpose of ensuring that the illegally acquired properties of the convict or detenu, acquired or kept in their names, do not escape the net of the Act. It is a well-known fact that persons indulging in illegal activities screen the properties acquired from such illegal activity in the names of their relatives and associates. Sometimes they transfer such properties to them, may be, with an intent to transfer the ownership and title. In fact, it is immaterial how such relative or associate holds the properties of*

convict/detenu — whether as a benami or as a mere name-lender or as a bona fide transferee for value or in any other manner. He cannot claim those properties and must surrender them to the State under the Act. Since he is a relative or associate, as defined by the Act, he cannot put forward any defence once it is proved that that property was acquired by the detenu — whether in his own name or in the name of his relatives and associates. It is to counteract the several devices that are or may be adopted by persons mentioned in clauses (a) and (b) of Section 2(2) that their relatives and associates mentioned in clauses (c) and (d) of the said sub-section are also brought within the purview of the Act. The fact of their holding or possessing the properties of convict/detenu furnishes the link between the convict/detenu and his relatives and associates. Only the properties of the convict/detenu are sought to be forfeited, wherever they are. The idea is to reach his properties in whosoever's name they are kept or by whosoever they are held. The independent properties of relatives and friends, which are not traceable to the convict/detenu, are not sought to be forfeited nor are they within the purview of SAFEMA [That this was the object of the Act is evident from para 4 of the preamble which states:"And whereas such persons have in many cases been holding the properties acquired by them through such gains in the names of their relatives, associates and confidants." We are not saying that the preamble can be utilised for restricting the scope of the Act, we are only referring to it to ascertain the object of the enactment and to reassure ourselves that the construction placed by us accords with the said object.] . We may proceed to explain what we say. Clause (c) speaks of a relative of a person referred to in clause (a) or clause (b) (which speak of a convict or a detenu). Similarly, clause (d) speaks of associates of such convict or detenu. If we look to Explanation (3) which specifies who the associates referred to in clause (d) are, the matter becomes clearer. 'Associates' means — (i) any individual who had been or is residing in the residential premises (including outhouses) of such person ['such person' refers to the convict or detenu, as the case may be, referred to in clause (a) or clause (b)]; (ii) any individual who had been or is managing the affairs or keeping the accounts of such convict/detenu; (iii) any association of *persons, body of individuals, partnership firm or private company of which such convict/detenu had been or is a member, partner or director; (iv) any individual who had been or is a member, partner or director of an association of persons, body of individuals, partnership firm or private company referred to in clause (iii) at any time when such person had been or is a member, partner or director of such association of persons, body of individuals, partnership firm or private company; (v) any person who had been or is managing the affairs or keeping the accounts of any association of persons, body of individuals, partnership firm or private company referred to in clause (iii); (vi) the trustee of any trust where (a) the trust has been created by such convict/detenu; or (b) the value of the assets contributed by such convict/detenu to the trust amounts, on the date of contribution not less than 20% of the value of the assets of the trust on that date; and (vii) where the competent authority, for reasons to be recorded in writing, considers that any properties of such convict/detenu are held on his behalf by any other person, such other person. It would thus be clear that the connecting link or the nexus, as it may be called, is the holding of property or assets of the convict/detenu or traceable to such detenu/convict. Section 4 is equally relevant in this context. It declares that "as from the commencement of this Act, it shall not be lawful for any person to whom this Act applies to hold any illegally acquired property either by himself or through any other person on his behalf". All such property is liable to be forfeited. 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. In this view of the matter, the apprehension and contention of the petitioners in this behalf must be held to be based upon a mistaken premise. The bringing in of the relatives and associates or of the persons mentioned in clause (e) of Section 2(2) is thus neither discriminatory nor incompetent apart from the protection of Article 31-B."*

27. It is clear from the above that the object is only to forfeit the property of the convict or the detenu and the associate and relative is always in relation to the convict or the detenu. Only the property that is linked to the convict or detenu can be proceeded against. Even illegally acquired property of relative/associate from other means not linked to the funds of the convict/detenu cannot be forfeited.

28. When the above test is applied, it is seen that the Competent Authority has mostly gone on assumption by assuming Y.V.Nagaraj, his wife Y.Vijayalakshmi and M/s. Nikita Aqua Culture Pvt. Ltd., to be the associates/relatives by roping in Umarji Musa Patel, just because he became a director in Southern LPG Ltd., in the year 1994. The Competent Authority was not right in determining the associate/relative by taking into consideration a development in the year 1994. That is well beyond the scope of Section 68-A of the NDPS Act. If such far-fetched interpretation is permitted, no person can ever associate with Umarji Musa Patel, even though the sentence imposed against Umarji Musa Patel came to an end in the year 1983.

29. The Competent Authority seems to have placed too much of reliance on the alleged statement of Y.V.Nagaraj made under Section 67 of the NDPS Act and it is now settled by the Hon'ble Supreme Court in *Tofan Singh,* referred supra, that such statement cannot be acted upon without corroboration.

30. In the instant case, there was gross negligence on the part of the authorities in not resorting to the powers given to them under Section 68-G and 68-U of NDPS Act immediately after the freezing order and forfeiture order was passed in the year 1994 and 1999 respectively. If the authorities had taken possession of the property and managed the same immediately and had also informed the concerned registration authorities, the petitioners would not have come into the picture and wasted their time before the Court by spending huge amounts of money to protect the property.

31. The Delhi High Court was dealing with a case under SAFEMA under almost similar circumstances in the case of *Shri Gulshan Ahuja v. Union of India and Others*, referred supra. The Court found that a bona fide purchaser had no mechanism or methodology to find if a property had been subjected to proceedings under the SAFEMA. Accordingly, in that case, the Court found that there was an enormous delay in the issuance of notice and passing of the order and that ground was held in favour of the innocent purchasers.

32. In the present case, this Court is not coming to the aid of the petitioners on the ground that they are bona fide purchasers. However, this Court finds that the freezing order and the consequent forfeiture order must fail since the detention order passed against Y.V.Nagaraj was quashed and since the authorities miserably failed in establishing Y.V.Nagaraj to be an associate of Umarji Musa Patel. That apart, there was no material to show that the wife of Y.V.Nagaraj, viz., Y. Vijayalakshmi was holding the property as a benami of Y.V.Nagaraj. In any case, once Nagaraj is held to be not an associate of Umarji Musa Patel,

the role of his wife Y. Vijayalaskhmi and M/s. Nikita Aqua Culture Pvt. Ltd., pales into insignificance. The conviction of Y.V.Nagaraj in the year 2017 will not have any bearing in the present case since this order was not available at the time when the forfeiture order was passed.

33. Apart from the above reason, Section 68-Z of the NDPS Act also has a lot of relevance. This provision clearly states that once a detention order is set aside, the properties seized or frozen, will stand automatically released. Even though this provision came into force in the year 2001, this provision merely reiterates the effect of the proviso to Section 68-A (2)(c) of the Act. This is yet another reason as to why the freezing order became non-est after the detention order passed against Y.V.Nagaraj was set aside and as a consequence, the properties that were freezed automatically got released.

34. The upshot of the above discussion is that the impugned orders that have been put to challenge in all these Writ Petitions stand quashed insofar as the petitioners are concerned and as a result, all the Writ Petitions stand allowed. No costs. Consequently, all the connected miscellaneous petitions are closed.

12.09.2022

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Internet: Yes
Index: Yes
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To

1. Government of India
   Ministry of Finance
   Department of Revenue
   Rep.by Joint Commissioner/Competent Authority
   Office of the Competent Authority
   SAFEM (FOP) and NDPS Acts
   Utsav No.64/1,
   G.N.Chetty Road, T.Nagar
   Chennai 600 017.

2. The Collector
   Thiruvallur District.

3. The Sub-Registrar
   Sub-Registration District of Arani
   Arani, Thiruvallur District 601 101.

N.ANAND VENKATESH. J.,

KP

Pre-Delivery Common Order in
W.P.Nos.23663 of 2003 and 24589, 25538 of 2011

12.09.2022

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