IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.Nos.11228 & 16262 of 1997

W.P.No.11228 of 1997:

A.M.Abdul Latheef
S/o Mohamed Noordeen,
Jawahar Street,
Athikkadai, Thanjavur District.
Represented by Power of Attorney
Holder A.A.Noor Mohamed,
237, Angappa Naicken Street,
Chennai – 1. ... Petitioner

Vs.

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

2.The Competent Authority,
Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, UTSAV,
No.64/1, G.N.Chetty Road,
T.Nagar, Chennai – 600 017. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records relating to the order of the 1st respondent order No.F.P.A.No.8/MAD/89 dated 23.05.1997 confirming the order dated 25.01.1989 of the 2nd respondent made in OCA/MDS/547/77 and quash the same.

For Petitioner : Mr.B.Kumar
Senior Counsel
Assisted by Mr.S.Rama Chaudray
For Mr.M.Abdul Nazeer

For Respondents : Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by Mr.Rabu Manohar
Senior Panel Counsel

W.P.No.16262 of 1997:

1.Smt.Zubaida Begum

2.S.Mohamed Jailani

3.S.M.Jamal

4.Smt.S.Nageeni Begum

5.Smt.S.Jabeen ... Petitioners

Vs.

1.The Appellate Tribunal for Forfeited Property,
No.123, 'C' Wing,
4th Floor, Lok Nayak Bhavan,
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New Delhi – 110 003.

2.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.

3.The Government of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.

4.The District Collector,
Trichy District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records and to quash the common order dated 31.07.1997 passed by the 1st respondent in Appeal Nos.FPA.No.59/MDS/95 and F.P.A.No.60/MDS/95, confirming the order of the 2nd respondent made in F.No.OCA/MDS/161/76 dated 31.03.1995.

For Petitioners	: Mr.B.Kumar Senior Counsel Assisted by Mr.S.Rama Chaudray For Mr.M.Abdul Nazeer
For R1 to R3	: Mr.AR.L.Sundaresan Additional Solicitor General of India Assisted by Mr.Rabu Manohar Senior Panel Counsel
For R4	: Mr.R.Kumaravel Additional Government Pleader

COMMON ORDER

[Order of the Court is made by **S.M.SUBRAMANIAM, J.**]

The writ petition in W.P.No.11228 of 1997 has been instituted challenging the order dated 23.05.1997 passed by the Appellate Tribunal for Forfeiture of Property confirming the order of the competent authority dated 25.01.1989.

2. The writ petition in W.P.No.16262 of 1997 has been instituted challenging the common order dated 31.07.1997 passed by the Appellate Tribunal for forfeiture of property confirming the order of the competent authority dated 31.09.1995 under the provisions of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 [hereinafter referred to as SAFEMA].

3. The facts in brief required for consideration in W.P.No.16262 of 1997 are that;

(a) The Late Mr.A.G.Shajudeen was detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 [hereinafter referred to as 'COFEPOSA']. He had purchased a house property bearing No. 2, Workattamalai, Tanjore Road, Trichy, in his name on 21.02.1973;

(b) Another House property, bearing No.28, Alimal Street, Trichy was purchased on 11.06.1973 in the name of Mrs.Zubaida Begum, the wife of Mr.A.G.Shajudeen.

(c) Mr. A.G. Shajudeen also held bank balances and cash amounting to Rs. 4,000/-. On 10.04.1973, a search was conducted at the business premises of Jamal Textiles, which was run by Mr. A.G. Shajudeen, and incriminating documents related to immovable and movable assets were seized.

4. On 03.04.1974, a show cause notice was issued to Mr.A.G.Shajudeen for violating the Foreign Exchange Regulation Act, 1973 [hereinafter referred to as 'FERA']. He submitted his explanations on 24.04.1974. The Special Director of the Enforcement Directorate passed an adjudication order on 20.01.1978, imposing a penalty of Rs.1,00,000/- for the violations of FERA. An appeal was filed in Appeal No.126 of 1978, but the FERA Appellate Board dismissed it on 31.10.1981. However, the Board

reduced the penalty from Rs.1,00,000/- to Rs.70,000/-.

5. In the above backdrop, a notice under Section 6(1) of SAFEMA was issued to the detenu, Mr.A.G.Shajudeen on 13.07.1976. The said notice was communicated to his wife, Mrs.Zubaida Begum, and the Agent, Canara Bank. On 19.07.1976, affected person Mr.A.G.Shajudeen submitted his explanations in detail and appeared before the authorities, whose statements were recorded. He filed writ petition in W.P.No.3415 of 1977 and an interim stay was granted. However, affected person Mr.A.G.Shajudeen died on 21.05.1985. The interim stay granted in W.P.No.3415 of 1977 was vacated on 18.07.1994. Subsequently, a personal hearing was conducted on 15.02.1995 and the competent authority heard the parties, affording them an opportunity to present their case. Consequently, the competent authority passed a final order under Section 7(1) of SAFEMA in proceedings dated 31.03.1995, forfeiting the immovable properties referred in S.Nos.1 and 2 of the notice. The amount of Rs.4000/- was seized by the Enforcement Directorate. Two appeals were filed against the order passed by the competent authority, one by the legal representative of the affected person Mr.A.G.Shajudeen including his wife Mrs.Zubaida Begum and another by Mrs.Zubaida Begum

in her individual capacity, as one of the properties was purchased in her name. The Appellate Tribunal adjudicated the issues and passed final orders on 31.07.1997 confirming the order passed by the competent authority. This led to the institution of the writ petition in W.P.No.16262 of 1997.

6. As far as the writ petition in W.P.No.11228 of 1997 is concerned, Mr.A.M.Abdul Lateef was detained under COFEPOSA Act, 1974. Following an inquiry, the competent authority issued a notice on 25.02.1978, under Section 6(1) of SAFEMA, directing Mr.Lateef to show cause, as to why the properties should not be forfeited under the provisions of SAFEMA.

7. The properties in question were:

(a) The Right, title and interest in the Betel Nut Shop Provision Stores at No.46, Dr.Besant Road, Chennai;

(b) The State Housing Board Flat MIG 55-B, Anna Nagar, Chennai.

8. Later on another property namely Right, title and interest in Balussery Chit Fund was also added in the list of the properties proposed to be forfeited. The proposed action was confirmed by the competent authority in proceedings dated 11.02.1980. Subsequently, on an appeal the matter was

remanded back to the competent authority to reconsider the issue by affording opportunity to the affected person. Consequently, the case was re-decided by the competent authority by order dated 18.09.1997. An appeal was filed before the Tribunal, which remanded the matter back to the competent authority for the second time, observing that due hearing to the affected person must be granted. A re-adjudication was conducted and considering the merits in entirety, the competent authority passed an order in proceedings dated 25.01.1989. The order became the subject matter of an appeal filed in F.P.A.No.8/MAD/89. The Appellate Tribunal adjudicated the issues on merits and rejected the appeal vide order dated 23.05.1997. Thus, the writ petition in W.P.No.11228 of 1997 came to be instituted.

9. The aforementioned facts are not seriously disputed between the parties. Mr.B.Kumar, learned Senior Counsel appearing on behalf of the writ petitioners raised three primary contentions. Firstly, he contended that Section 6(1) notice had not been given to the owner of the property in whose name the property was purchased from inception in 1973. Thus, the entire proceedings in respect of the writ petitioner Mrs.Zubaida Begum are vitiated. In this context, he relied on the judgment of the Hon'ble Supreme Court of

India in the case of ***Income Tax Officer, Circle I(2), Kumbakonam and Another vs. V.Mohan and Another***[1].

10. Secondly, he contended that the amount in the bank, initially frozen by the Reserve Bank of India (RBI), was released after detailed consideration in the adjudicating proceedings under FERA. Therefore, the amount is to be excluded from the preview of the provisions of the SAFEMA.

11. Thirdly, Jamal Textiles cannot be said to be an illegal business. Therefore, holding that the entire business as illegal has not been accepted by the Tribunal and thus, the impugned proceedings become invalid.

12. In this context, the learned Senior Counsel relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India and Others vs. Kamlakshi Finance Corporation Limited***[2].

13. Finally, Mr.B.Kumar, learned Senior Counsel drew the attention of this Court with reference to the guidelines issued by the Government of

1. 2021 SCC Online SC 1240
2.1992 Supp (1) SCC 443.

India, Ministry of Finance, Department of Revenue dated 23rd June, 1994. As per the said guidelines, proceedings under Section 6(1) of SAFEMA need not be initiated and if already initiated, may be dropped if the value of the property sought to be forfeited below one lakh. However, before deciding not to initiate or drop the proceedings, the competent authority should conduct a thorough investigation to determine, whether the property's value is indeed less than Rs.1,00,000/-.

14. Relying on the said guidelines, the learned Senior Counsel reiterated that the case of the writ petitioners would squarely fall within the ambit of the guidelines issued by the Government of India. Therefore, the competent authority ought to have dropped the proceedings initiated under SAFEMA. Though the guidelines were subsequently withdrawn by the Government of India, during the relevant point of time when the competent authority passed an order in the case of the petitioner, the guidelines dated 23rd June, 1994 was in force. Consequently, the petitioner is entitled to the benefit of the said guidelines. The said principle has been considered by the Appellate Tribunal for Forfeited Property in case No.FPA-17/BOM/2012 dated 19.05.2017.

15. Mr.AR.L.Sundaresan, learned Additional Solicitor General of India appearing on behalf of the respondents would oppose by stating that the notice under Section 6(1) was served along with the reasons recorded for satisfaction, as required under Section 6 of the Act. Thus, the notice does not suffer from any infirmity. Full opportunity was afforded to the affected person, his legal heirs and the writ petitioners. They availed of the opportunities provided by the competent authorities and effectively participated in the proceedings before the Appellate Tribunal, and defended their case. Both the Competent Authority and the Appellate Tribunal concurrently held, based on the documents and evidence, that the subject properties were acquired from illegally earned funds. It was found that the notice issued under Section 6(1) and the subsequent proceedings under Section 7(1) by the competent authority were well within the scope and ambit of the provisions of SAFEMA.

16. Incriminating records were available and foreign exchange transactions in violation of FERA were identified, and penalty was imposed. Mere reduction of penalty from Rs.1,00,000/- to Rs.70,000/- by the Appellate

Authority would not be a ground to seek exoneration from the provisions of SAFEMA.

17. As per the judgment in the case of the ***Attorney General For India and Others vs. Amratlal Prajivandas and Others*[3]*,*** the Nine Judges Bench of the Hon'ble Supreme Court of India asserted that the burden shifts to the noticee to establish that the property was acquired through lawful sources.

18. Considering the arguments as advanced by the respective learned Senior Counsels appearing on behalf of the parties to the *lis,* Section 6 of SAFEMA pertains to Notice of forfeiture. To ascertain the validity of the notice issued under Section 6(1) in the present case, in proceedings dated 30.06.1976, reasons are recorded for issuance of notice under Section 6(1). The reasons recorded was communicated to the affected person. After recording the reasons as contemplated under Section 6 for initiation of further action under SAFEMA, 6(1) notice was issued to Mr.A.G.Shajudeen on 13.07.1976. The said notice was forwarded to the writ petitioner, Mrs.Zubaida Begum, wife of Mr.A.G.Shajudeen and the Agent Canara Bank Malapudhur, Tiruchy.

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3. (1994) 5 SCC 54

19. One of the grounds raised by the petitioners are that notice issued to the petitioner Mrs.Zubaida Begum under Section 6(2) is improper. Section 6(2) of SAFEMA enumerates that "Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person".

20. The learned Senior Counsel for the petitioners would submit that Sub Section (2) would be applicable to a third person, and therefore, the notice forwarded under Section 6(2) of SAFEMA to the writ petitioner Mrs.Zubaida Begum, wife of the affected person, is invalid.

21. However, it is hard and impractical to accept such a proposition in view of the fact that misquoting or wrong quoting *per se* does not vitiate the entire proceedings unless such misquoting causes serious prejudice to the affected person or noticee.

22. In the present case, Section 6(1) notice was admittedly issued to the affected person Mr.A.G.Shajudeen, who is the husband of the writ

petitioner Mrs.Zubaida Begum. The notice contained details, reasons recorded for issuance of notice were also communicated to Mr.A.G.Shajudeen along with the particulars. The said notice was forwarded to the writ petitioner Mrs.Zubaida Begum and the Agent Canara Bank. In response, the writ petitioner Mrs.Zubaida Begum submitted her detailed return statements to the competent authorities under SAFEMA. Perusal of the explanation/reply reveals that the petitioner had completely understood the contents of the notice and the purpose for which such notice was issued under the provisions of SAFEMA.

23. That being so, merely quoting Section 6(2) of SAFEMA while forwarding Section 6(1) notice to the writ petitioner cannot be a ground to invalidate the said proceedings, as it did not cause any prejudice to the interest of the writ petitioner. Further, she participated in the proceedings by submitting her detailed return submissions. Thus, the said ground is of no avail to the writ petitioners.

24. Secondly, regarding the guidelines issued by the Government of India dated 23rd June 1994, plain reading of the circular would amplify that it is only guidelines issued to the competent authorities to take decisions,

whether further actions to be initiated in respect of the cases, wherein the value of property falls below one lakh. Paragraph 4 of the guidelines clarifies that "These instructions are in the nature of guidelines only and are being issued with a view to enable the competent authorities and all the officers working with them to concentrate more on bringing to book economic offenders with substantial proportion instead of spending their time and energy in handling small cases".

25. Such circulars are unenforceable in respect of all cases, as the guidelines are issued to the officials to take decisions. In the absence of statutory backing, mere guidelines issued by the department for the officials cannot be a ground to seek exoneration from the provisions of the Act. The Act will prevail over. When there is no specific or express exemption under any of the provisions of the Act, the guidelines will not confer any right or to be construed as enforceable for the purpose of dropping further actions initiated under the SAFEMA.

26. Regarding the facts, the learned Additional Solicitor General of India referred several paragraphs in the orders impugned passed by the competent authority and the Appellate Tribunal. The competent authority

elaborately considered the facts with reference to the documents and evidences available on record.

27. In the order impugned dated 31st March, 1995 passed by the competent authority made a finding that "she had stated that she has no evidence to produce in regard to Rs.27,000/- left by her husband or any account to show that it was given by her to Shri. K.Sabjan Saheb, her uncle. She also could not indicate when and in how many instalments this money was received back from Shri.Sabjan Saheb. According to her affidavit, Shri Sabjan Saheb was doing a flourishing beedi business called, 'Anil & Swan Beedi'. She had given to him Rs.27,000/- left by her husband for keeping the said amount. It is beyond comprehension that a flourishing businessman would keep with him or inject such huge amount into his business without accounting it in his books of accounts". The competent authority elaborately made a finding with reference to the allegations and counter allegations between the parties.

28. In paragraph 14, the competent authorities observed that the "person affected was dealing in Foreign Exchange unauthorisedly by making compensatory payments. In fact, in the year 1973, his premises were

searched by the officers of the Enforcement Directorate which revealed that he had dealt with unauthorised payment to the extent of Rs.12,19,472.14/-. This was also admitted by the person affected in his statement tendered before the Enforcement Officers. It was only during this period that both the immovable properties, discussed herein above, were acquired by the person affected in his as well as in the name of his wife. The obvious conclusion is that the illegally earned money from FERA violations was utilised for acquiring the properties and that the firm, Jamal Textiles, was being utilised to launder the illegally earned money".

29. With reference to the above finding, the Appellate Tribunal independently considered facts adjudicated by the competent authority. In para 7 the factual details are elaborately considered by the competent authority. The contradictory statements made by the affected person and the writ petitioner were considered by the Appellate Tribunal in paragraph 11 of the impugned order dated 31.07.1997, which reads as under:

> "11. The appellants made statements contrary to the statements of their Counsel in respect of the manufacture of bidis. Their Counsel stated that income was generated from the manufacture of 2,000 bidies daily, whereas, the appellants claim to have made a

> saving of Rs. 1, 100/- out of the manufacture of 30,000/- to 35,000 bidies daily. These contradictions by the appellants and by their Counsel only show that the version of the appellants is not true. It is also improbable that huge amounts to an extent of Rs.40,000/-, Rs.19,520/-, Rs.11,000/- etc., would have been accumulated and kept in cash by the persons affected or his wife for several years before purchasing the house property. It is also not possible to believe that such huge amounts were kept in cash. The Competent Authority was, therefore, justified in holding that the source of investment made in the property under consideration is totally unexplained and was correct in holding that the investment is made of illegal sources."

30. In respect of the writ petition in W.P.No.11228 of 1997 is concerned, the competent authority passed an order of forfeiture in proceedings dated 25.01.1989. The findings of the competent authority in the said order reveals that the affected person, as well as the authorised representative, attempted to prolong the proceedings as long as possible. Despite repeated opportunities provided to the affected person as directed by the Tribunal in its order dated 15.07.1988, the affected person or their authorised representative have not made use of such opportunities. Instead

they contemplated moving the Hon'ble Supreme Court to question the constitutional validity of the SAFEMA and the detention of the affected person, which could have been agitated before a Court of Law at any point of time from the issue of the first notice under Section 6(1) in the year 1978.

31. The findings state that the affected person was not inclined to finalise the proceedings as directed by the Tribunal in its order dated 15.07.1988. Due to complete non-cooperation on the part of the affected person and his authorised representative, the competent authority was forced to pass the final order under Section 7(1) of SAFEMA based on the records available.

32. In the concluding paragraph, the competent authority has stated that the affected person has no evidence to support their claims made before the Appellate Tribunal regarding forfeited property. Despite the fact that the proceedings of the Tribunal were made available to the affected person and his representative to complete the adjudication they have not cooperated for completion of proceedings.

33. The said order was taken by way of an appeal before the Appellate

Tribunal. The Tribunal while confirming the orders of the competent authority, adjudicated the facts independently with reference to the documents available on record. The Tribunal found that the property forfeited was a flat and it was necessary to determine the character of the betel nut business, whether it was illegally acquired or not. The facts relating to the case was elaborately adjudicated by the Tribunal along with the assessment order passed by the competent authority. The findings of the Tribunal are as follows:

> "**8.** From the above, it would be observed that in the Assessment Year 1974-75 (previous year beginning on 01.04.1973) Rs.12,216/- used for investment in the said house property has been held as through unexplained sources. It would also be seen that Rs.9.900/- were from the business income of the appellant in the said A.Y. 1974-75 and Rs.4,000/- were his savings in the beginning of the said previous year. We have already held that the appellant's betelnut business was an illegally acquired property and considering provisions of Section 3(1) (c) (1v) of the SAFEMA which stipulates that any property acquired for a consideration or by any means, wholly or partly traceable to any illegally acquired property or the income or earnings from such property will also be deemed as illegally acquired property. We have no

hesitation in holding that the forfeited flat is an illegally acquired property. In the previous year 1973-74, the appellant had paid Rs.24,250/- (Rs.12,250/- on 26.06.1973 and Rs.12,000/- on 14.02.1974) towards the acquisition of the said flat of this. Rs.12,260/- has been held by the ITO as through unexplained sources. The remaining amount of Rs.11/0900/- paid in the said A.Y. 1974-75 towards acquisition of the flat can be traced out of the betelnut business income of Rs.9,990/- in that year and the opening balance of Rs.6,295/- at the beginning of the said A.Y. of the business. We have already held that the betelnut business as illegally acquired property and hence any income generated out of such business will also be a tainted incomer; in the assessment order genuineness of the sale of the gold jewellery has already been discounted. Thus, on the basis of these payments alone and ignoring for the moment the character of the two sums of Rs.750/- and Rs.7,500/- paid in the preceding financial year 1972-73, though such an assumption may not be wholly justified. It can safely be concluded that more than 50% of the investment made in the said property through the unexplained/tainted sources and since the amount through such sources is more than 50% of the total investment made in the property forfeited by the Competent Authority, provisions Section 9 of the SAFEMA are not applicable. In view of this, we do not see any reasons to interfere with the impugned order."

34. The Tribunal concluded by stating that the nexus between the forfeited properties and the detenus are clearly established and consequently confirmed the orders passed by the competent authority.

35. We are of the considered opinion that the procedures as contemplated under Sections 6(1) and 7(1) were complied with by the authorities. Under Section 8 of SAFEMA, the burden of proof lies on the affected person. In the present cases, neither the affected person nor their legal heirs, including the petitioners failed to discharge the burden which resulted in forfeiting the properties under the provisions of SAFEMA.

36. A complete analysis of the facts recorded by the Competent Authority and the Appellate Tribunal would be sufficient to form an irresistible conclusion that there is no further reason to interfere with the orders impugned.

37. The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure the processes through which a

decision has been taken by the competent authority in consonance with the Statutes and Rules in force, but not the decision itself. However, in the present cases, we have considered the factual findings of the Competent Authority and Appellate Authority, as well as the grounds raised between the parties.

38. In conclusion, the execution order under Section 19(1) of the SAFEMA issued by the Government of India, Ministry of Finance is valid, and there is no impediment to proceed with the said order in the manner known to law.

39. We do not find any infirmity in respect of the actions taken, and consequently, the impugned orders are confirmed. The writ petitions are dismissed. There shall be no order as to costs.

[S.M.S., J.] [M.J.R., J.]
05.12.2024

Index : Yes
Speaking order
Neutral Citation : Yes
Jeni

To

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