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W.A.No.543 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.08.2024

PRONOUNCED ON : 19.08.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.No.543 of 2012

and

M.P.No.1 of 2012

The Competent Authority,
Smugglers and Foreign Exchange Manipulators
(Forfeiture of Property) and NDPS Acts,
T.Nagar, Chennai – 17.

... Appellant

Vs.

Mohammed Thahaumma (Deceased)

1.S.S.A.Hayarunisha
2.S.S.A.Sheik Kamal
3.S.S.A.Aminath Fathima
4.S.S.A.Ayshath Zulaiha
5.S.S.A.Seyed Anifa
6.S.S.A.Husain Jalal
7.S.S.A.Kathija Rilwana
8.S.S.A.Basheer
9.Appellate Tribunal for Forfeited Property
Loknaya Bhavan, 4th Floor,
Khan Market, New Delhi – 3.

... Respondents



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Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to allow the writ appeal, to set aside the order in W.P.No.7609 of 2001 dated 08.04.2011 and consequentially dismiss the same together with costs.

For Appellant	: Mr.N.Ramesh
For R1 to R8	: Mr.B.Kumar Senior Counsel For Mr.S.Ramachandran
For R9	: Tribunal

J U D G M E N T

S.M.SUBRAMANIAM, J.

FACTUAL MATRIX:

The Competent Authority, Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 [hereinafter referred as “SAFEMA”] preferred this writ appeal challenging the common order dated 08.04.2011 passed in W.P.No.7609 of 2001.

2. Notice under Section 6(1) of SAFEMA was issued to Smt.Mohammed Thahaumma (Deceased) on 09.02.1976. Persons affected were S.S.A.Shahul Hameed, his wife and three sons. Reply statement was



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given by Mr.S.S.A.Shahul Hameed / detenu on 09.05.1977 and 16.07.1977.

Court granted stay for forfeiture of property under SAFEMA on 08.08.1977 and the stay was vacated on 18.07.1994. Thereafter, personal hearing was fixed. The detenu / Mr.S.S.A.Shahul Hameed died on 17.10.1994. The wife of detenu and his three sons were brought on record. Personal hearing was held on 04.04.1995 and on 31.03.1995. The wife and sons of the detenu Mr.S.S.A.Shahul Hameed made a statement before the authorities that the properties were purchased by their father in their names. The sons of the detenu / Mr.S.S.A.Shahul Hameed clearly stated that they are not aware of the other details. However, they made a statement that the properties sought to be forfeited were purchased by their father in their names. It was made clear by the sons of the detenu that they have not invested for the purchase of the subject properties. The affected persons have not produced any document or evidence to establish that the subject properties are ancestral properties. Considering the materials available on record and based on the statement of affected persons, the Competent Authority passed an order of forfeiture under Section 7(1) of the Act in proceedings dated 28.04.1995.

3. Pursuant to issuance of Section 6(1) Notice, proceedings are



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commenced by the Competent Authority on 02.02.2000. After conducting an inquiry, the Competent Authority passed an order on 26.02.2001. The affected persons filed an appeal before the Appellate Tribunal for forfeited property in New Delhi in F.P.A.No.66/MDS/95. After adjudication, the Appellate Tribunal ordered forfeiture of property on 31.01.2001. Thereafter, W.P.No.7609 of 2001 was filed challenging the order dated 31.01.2001. The Writ Court set aside the show cause notice dated 09.02.1977 issued under Section 6(1) of SAFEMA. Challenging the Writ Court order dated 08.04.2011, the present writ appeal came to be instituted.

SUBMISSIONS ON BEHALF OF THE APPELLANTS:

4. Mr.N.Ramesh, learned counsel appearing on behalf of the appellant would mainly contend that the Writ Court has not considered the spirit and the intent of SAFEMA and quashed the very 6(1) Notice itself. The procedures as contemplated under the Act had been followed scrupulously by the authorities competent. The Writ Court has not considered principles laid down by the Apex Court of India with reference to the scope of SAFEMA.

5. In the present case, it is not in dispute that Late Mr.S.S.A.Shahul Hameed was detained. Smt.Mohammed Thahaumma is the wife of the



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detenu. Hussain Jalal and Sheik Kamal are the sons of the detenu. Smt.Ameenath Fathima, Smt.Katheejathul Rilwana and Smt.Aysasth Zulaika are daughters of the detenu. Common order dated 28.04.1995 was passed by the Competent Authority, Madras under Section 7(1) of SAFEMA, whereby, the properties were forfeited.

6. The order of the Competent Authority dated 28.04.1995 was also under challenge. Therefore, the contention of the respondents that it has not been served on them is incorrect. The common order dated 28.04.1995 passed by the Competent Authority, Madras under Section 7(1) of SAFEMA was referred by the Appellate Tribunal for forfeited property in New Delhi, in its final order dated 31.01.2001. Therefore, the contention of the respondents that the order dated 24.08.1995 had not served to the respondents are false and incorrect.

7. Section 6(1) Notice under SAFEMA issued properly in compliance with the provisions of the Act. Section 6(1) Notice was not challenged by the noticees during the relevant point of time. The common order under Section 7(1) dated 28.04.1995 was challenged before the Appellate Tribunal by the



affected persons. The Appellate Tribunal confirmed the common order.

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8. Mr.Ramesh, would rely on the judgment of the Hon'ble Supreme Court of India in the case of **Kesar Devi vs. Union of India and Others** ¹, held as follows;

“10. Section 2(1) of SAFEMA lays down that the provisions of the said Act shall apply only to the persons specified in sub-section (2) of that section. Sub-section (2) of Section 2 gives a long list of different categories of persons to whom the Act shall apply and they include those who have been convicted under the Customs Act, 1962, Sea Customs Act, 1878, Foreign Exchange Regulation Act, 1947 or 1973, where the value of goods or the amount involved exceeds Rs 1 lakh or have been convicted subsequently under the aforesaid Acts. Clause (b) of this sub-section includes a person against whom an order of detention has been made under the COFEPOSA Act and is not covered by the proviso to this clause. Clause (c) to sub-section (2) includes every person who is a relative of the person referred to in clause (a) or clause (b). Explanation (2) gives a long list of

¹ [(2003) 7 SCC 427]



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relatives for the purpose of clause (c) and in view of clause (i) thereof, Kesar Devi being the spouse of Jagannath Sharma is clearly covered by the provisions of the Act. Section 6 of the Act lays down that if, having regard to the value of the properties held by any person to whom the Act applies, either by himself or through any other person on his behalf, his known source of income, earnings or assets, and any other information or material available to it as a result of action taken under Section 18 or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person calling upon him to indicate the sources of his income, earnings or assets, out of which or by means of which, he has acquired such property and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government. The condition precedent for issuing a notice by the competent authority under Section 6(1) is that he should have reason to believe that all or any of



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such properties are illegally acquired properties and the reasons for such belief have to be recorded in writing. The language of the section does not show that there is any requirement of mentioning any link or nexus between the convict or detenu and the property ostensibly standing in the name of the person to whom the notice has been issued. 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



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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. If a further requirement regarding establishing any link or nexus is imposed upon the competent authority, the provisions of Section 8 regarding burden of proof will become otiose and the very purpose of enacting such a section would be defeated.

11. The requirement of establishing a “link or nexus” between the illegally acquired money of the convict or detenu as described in sub-section (2) of Section 2 of the Act and the properties sought to be forfeited is sought to be derived from certain observations made by this Court in Attorney General for India v. Amratlal Prajivandas [(1994) 5 SCC 54 : 1994 SCC (Cri) 1325] in para 44 of the Report. If para 44 is read as a whole, it will be clear that no such requirement of establishing any link or nexus on the part of the competent authority has been laid down therein. In the said paragraph, the Bench dealt with the contention of the counsel for the



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petitioners that extending the provisions of SAFEMA to the relatives, associates and other “holders” is again a case of overreaching or of overbreadth, as it may be called, a case of excessive regulation. The relevant part of para 44 (p. 92 of the Report) is being reproduced below:

“The language of this section is indicative of the ambit of the Act. Clauses (c) and (d) in Section 2(2) and 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). ... 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, maybe 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."

12. The judgment of a court is not to be interpreted like a statute where every word, as far as possible, has to be given a literal meaning and no word is to be ignored. The observations made have to be understood in the context of the facts and contentions raised. As mentioned earlier, Explanation (2) appended to clause (c) of sub-section (2) of Section 2 gives a very long list of



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relations. The combined effect of clauses (iii) and (vii) of the Explanation is that a convict or detenu's wife's sister's lineal descendant whether male or female and howsoever low is also included even though the relationship is quite remote. In those cases where the relationship is a very remote one, the competent authority may have to indicate some link or nexus while recording reasons for belief that the property is an illegally acquired property. But cases where relationship is close and direct like spouse, son or daughter or parents stand on an altogether different footing. Here no link or nexus has to be indicated in the reasons for belief between the convict or detenu and the property, as such an inference can easily be drawn.

13. We are, therefore, clearly of the opinion that under the scheme of the Act, there is no requirement on the part of the competent authority to mention or establish any nexus or link between the money of the convict or detenu and the property sought to be forfeited. In fact, if such a condition is imposed, the very purpose of enacting SAFEMA would be frustrated, as in many cases it would be almost impossible to show that the



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property was purchased or acquired from the money provided by the convict or detenu. In the present case, the appellant is the wife of the detenu and she has failed to establish that she had any income of her own to acquire the three properties. In such circumstances, no other inference was possible except that it was done so with the money provided by her husband.

*16. The judgment in **Fatima Mohd. Amin** [CAs Nos. 7400-01 of 1996, decided on 16-1-2003 : (2003) 7 SCC at p. 436 (below)] relied upon by the learned counsel for the appellant can be of no assistance to him. On facts, the Court found that the notice issued by the competent authority did not disclose any reasons and thus the same did not meet the requirement of sub-section (1) of Section 6 of the Act. As shown above, this is not the case here as the reasons for belief have been clearly recorded by the competent authority.”*

9. In the case of **Union of India vs. Champabai Devichand Saha (Dead) By LRs and Others**², held as follows;

*“6. In **Rajnikant R. Belekar** [WP (Cri) No.*

² [(2011) 4 SCC 451]



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837 of 2007, decided on 22-7-2008 (Bom)], the High Court held that unless the direct nexus between the property which was sought to be forfeited under SAFEMA and the income derived by way of contravention of the provisions of SAFEMA, or the acquisition of the property by the person concerned by illegal activities, was established, the property could not be made the subject-matter of the proceedings under SAFEMA. For this purpose, in *Rajnikant R. Belekar* [WP (Cri) No. 837 of 2007, decided on 22-7-2008 (Bom)] it relied upon the decision of this Court in *Aslam Mohammad Merchant v. Competent Authority* [(2008) 14 SCC 186 : (2009) 2 SCC (Cri) 793] .

7. The appellant submitted that *Rajnikant R. Belekar*[WP (Cri) No. 837 of 2007, decided on 22-7-2008 (Bom)] had not considered Section 6(1) of SAFEMA. It was also submitted that the decision in *Aslam Mohammad Merchant* [(2008) 14 SCC 186 : (2009) 2 SCC (Cri) 793], relied upon in *Rajnikant R. Belekar* [WP (Cri) No. 837 of 2007, decided on 22-7-2008 (Bom)] , dealt with the words “illegally acquired property” defined in Section 68-B(g) of the Narcotic Drugs and



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Psychotropic Substances Act, 1985 (“the NDPS Act”, for short), which was materially different from the definition of “illegally acquired property” under Section 3(1)(c) of SAFEMA; and that therefore the decision in Aslam Mohammad Merchant [(2008) 14 SCC 186 : (2009) 2 SCC (Cri) 793] , was not of much assistance and this aspect was ignored by Rajnikant R. Belekar [WP (Cri) No. 837 of 2007, decided on 22-7-2008 (Bom)] . It was submitted that Rajnikant R. Belekar [WP (Cri) No. 837 of 2007, decided on 22-7-2008 (Bom)] was wrongly decided. It was submitted that the principles relating to SAFEMA have been laid by this Court in Attorney General for India v. Amratlal Prajivandas [(1994) 5 SCC 54 : 1994 SCC (Cri) 1325], Fatima Mohd. Amin v. Union of India [(2003) 7 SCC 436 : 2003 SCC (Cri) 1661], Kesar Devi v. Union of India [(2003) 7 SCC 427 : 2003 SCC (Cri) 1652] and other cases and the High Court had not considered any of those decisions.

8. We find considerable merit in the submission of the appellant. The High Court has not referred to the facts, nor considered the validity of the notices issued under Section 6 of



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the Act and the orders of forfeiture under Section 7 of the Act with reference to the facts and provisions of SAFEMA and the decisions of this Court. The impugned order cannot therefore be sustained. On this limited ground the matters deserve to be remitted to the High Court for fresh consideration in accordance with law.”

10. In the case of **Competent Authority, 'UTSAV', No.64/1, G.N.Chetty Road, T.Nagar, Chennai – 600 017 vs. Hameed Abdul Kader and Another**³, the Madras High Court held as follows;

“36. The legality of notice issued under Section 6 of SAFEMA was considered by the Supreme Court in Kesar Devi v. Unon of India, 2003 (7) SCC 427. The Supreme Court held that notice issued under Section 6 need not show any link or nexus between the illegally acquired money of the detenu and the property sought to be forfeited for passing order of forfeiture under Section 7. The relevant observation is as under:

“10. ... The condition precedent for issuing a notice by the Competent Authority under Section 6(1) is that he should have reason to believe that all or any of such properties are illegally acquired

3 [2011 SCC Online Mad 549]



properties and the reasons for such belief have to be recorded in writing. The language of the Section does not show that there is any requirement of mentioning any link or nexus between the convict or detenu and the property ostensibly standing in the name of the person to whom the notice has been issued. Section 8 of the Act which deals with 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 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. If a further requirement regarding establishing any link or nexus is imposed upon the Competent Authority, the provision of Section 8 regarding burden of proof will become otiose and the very purpose of enacting such a Section would be defeated.

13. We are, therefore, clearly of the opinion that under the Scheme of the Act, there is no requirement on the part of the Competent Authority to mention or establish any nexus or



link between the money of the convict or detenu and the property sought to be forfeited. In fact, if such a condition is imposed, the very purpose of enacting SAFEMA would be frustrated, as in many case it would be almost impossible to show that the property was purchased or acquired from the money provided by the convict or detenu.”

37. The learned Counsel for the First Respondent by placing reliance on the judgment of the Supreme Court in P.P. Abdulla v. The Competent Authority, 2007 Crl. L.J. 1449, contended that the order of confiscation is a very stringent order and as such, it has to be construed strictly.

38. The issue before the Supreme Court in P.P. Abdulla (supra) was regarding the failure on the part of the Competent Authority to indicate the actual reasons which made them to believe that the property was purchased with tainted money. The Supreme Court found that Section 6(1) contains a mandatory requirement to indicate reasons and as such, the failure on the part of the Competent Authority to record reasons would vitiate the subsequent proceedings. However, in the instant case, reasons recorded by the Competent Authority clearly gives an indication



about the actual reasons which weighed with the authority to arrive at a prima facie conclusion that the immovable property was purchased only out of the income provided by the detenu.

39. The learned Senior Counsel placed reliance on the judgment of Supreme Court in Aslam Mohammed Merchant v. The Competent Authority, 2008 (14) SCC 186. In the said case, the Supreme Court was considering Sections 68-I, 68-C, 68-H, 68-E and 68-F under Chapter V-A of Narcotic Drugs and Psychotropic Substances Act. The Supreme Court found that the show cause notice does not contain the statutory requirements which are condition precedent for initiating the proceeding. Therefore, the Supreme Court observed that when stringent laws become applicable as a result whereof some persons are to be deprived of his/her right in property, scrupulous compliance of the statutory requirements is imperative.

43. The Competent Authority in its show cause notice, very clearly stated that the property was purchased with the unexplained money. The relationship of the second Respondent with the detenu was also indicated in the show cause



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notice. Therefore, the word “unaccounted money”, as indicated in the show cause notice, was used only with reference to the money contributed by the detenu under COFEPOSA. Since the Competent Authority clearly indicated the reasons for taking action under SAFEMA, naturally burden of proof shifted on the First Respondent to prove that the property was not illegally acquired property.

44. Section 8 of SAFEMA deals with burden of proof. The said provision reads thus:

“In any proceedings under this 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.”

45. The learned Counsel for the First Respondent challenged the order under Section 6(1) on the ground that sufficient reasons were not indicated and in the absence of the same, question of burden of proof loses significance. The First Respondent has no case before the Statutory Authorities that the Show Cause Notice was defective. The First Respondent in his explanation attempted to justify the purchase by showing the persons from whom he received money. The



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explanation gives a clear indication that his contribution was nil. He raised the money through gift and loans. Though he has stated that a sum of Rs. 8,500/- was received from a relative in Singapore, very strangely, he was not in a position even to name the relative. Therefore, the Competent Authority was fully justified in rejecting the said source. A sum of Rs. 10,000/- was received from Mr. S.A.K. Shahul Hameed. There were no documents produced by the First Respondent either to show that the amount was given by him or that he was having the necessary resources to give the amount. Similar was the case of loan received from his brother T.S.A. Abdul Hameed. Therefore, the Competent Authority was right in its observation that it was only with the tainted money, he has purchased the property.

52. *The satisfaction recorded by the Competent Authority was on the basis of materials. The explanation submitted by the First Respondent was considered threadbare and detailed reasons were given. The Tribunal in its well considered and reasoned order, concurred with the findings recorded by the Competent Authority.*



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53. The question is whether it is open to this Court exercising jurisdiction under Article 226 of the Constitution of India to re-appreciate the materials and arrive at a different conclusion. The power of judicial review is concerned only with the decision making process. Under the guise of judicial review, it is not permissible to consider the facts once again. Limited power of judicial review does not enable the Court to scan the materials considered by the Statutory Authorities and to arrive at an independent conclusion. Therefore, we are of the view that the learned Single Judge was not justified in upsetting the orders passed by the Statutory Authorities.

54. The exercise of power of judicial review to interfere with a finding of fact arrived at by the Designated Authority was considered by the Supreme Court in Tulip Star Hotels v. Union of Centaur Tulip Employees, 2007 (15) SCC 255 and it was observed thus:

“9. ... At this juncture, we may now consider as to when the High Court could interfere with a finding of fact arrived at by the Special Court, in the exercise of its jurisdiction under Article 226 of the Constitution. It is now well settled that the High Court, in its Writ jurisdiction under Article 226 of the Constitution, may interfere with the



findings of fact arrived at by the Special Court only if the findings are based on no evidence or based on conjectures or surmises and if no reasonable man would on given facts and circumstances come to the conclusion reached by the Special Court. Therefore, it is pellucid that it is only in these special circumstances that it would be open to the High Court to interfere with the findings of fact arrived at by the Special Court.”

11. In the case of ***Biswanath Bhattacharya vs. Union of India and Others***⁴, the Hon'ble Supreme Court held as follows;

“16. We reject the submission of the appellant for the following reasons. Firstly, there is no express statutory requirement to communicate the reasons which led to the issuance of notice under Section 6 of the Act. Secondly, the reasons, though not initially supplied along with the notice dated 4-3-1977, were subsequently supplied thereby enabling the appellant to effectively meet the case of the respondents. Thirdly, we are of the opinion that the case on hand is squarely covered by the ratio of Narayanappa case [AIR 1967 SC 523] . The appellant could have effectively convinced the respondents by producing the appropriate

4 [(2014) 4 SCC 392]



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material that further steps in furtherance to the notice under Section 6 need not be taken. Apart from that, an order of forfeiture is an appealable order where the correctness of the decision under Section 7 to forfeit the properties could be examined. We do not see anything in the ratio of Ajantha Industries case [Ajantha Industries v. CBDT, (1976) 1 SCC 1001 : 1976 SCC (Tax) 127] which lays down a universal principle that whenever a statute requires some reasons to be recorded before initiating action, the reasons must necessarily be communicated.”

12. In the case of ***M/s.Vuppalamritha Magnetic Components Limited, Secunderabad vs. Director of Revenue Intelligence (Zonal Unit)***⁵, the High Court of Hyderabad held as follows;

“10. At the outset, we are of the considered view that the writ petition is not maintainable. The show cause notice dated 30-07-2009, which is under challenge in the present writ petition, is no longer in force. The show cause notice has already culminated in a Order of adjudication and the order of adjudication has also been

⁵ [2016 SCC Online Hyd 366]



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confirmed by the Tribunal, the High Court and the Supreme Court. The doctrine of merger has come into play and the show cause notice is not available any more for the petitioner to challenge.”

13. In the case ***State of Orissa and Another vs. Mamata Mohanty***⁶, the Hon'ble Supreme Court held as follows;

“Appointment/employment without advertisement

35. At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, it came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications

6 [(2011) 3 SCC 436]



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from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution. (Vide Delhi Development Horticulture Employees' Union v. Delhi Admn. [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386 : AIR 1992 SC 789], State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403 : AIR 1992 SC 2130], Excise Supdt. v. K.B.N. Visweshwara Rao [(1996) 6 SCC 216 : 1996 SCC (L&S) 1420], Arun Tewari v. Zila Mansavi Shikshak Sangh [(1998) 2 SCC 332 : 1998 SCC (L&S) 541 : AIR 1998 SC 331], Binod Kumar Gupta v. Ram Ashray Mahoto [(2005) 4 SCC 209 : 2005 SCC (L&S) 501 : AIR 2005 SC 2103], National Fertilizers Ltd. v. Somvir Singh [(2006) 5 SCC 493 : 2006 SCC (L&S) 1152 : AIR 2006 SC 2319], Telecom District Manager v. Keshab Deb [(2008) 8 SCC 402 : (2008) 2 SCC (L&S) 709], State of Bihar v. Upendra Narayan Singh [(2009) 5 SCC 65 : (2009) 1 SCC (L&S) 1019] and State of M.P. v. Mohd. Abraham



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[(2009) 15 SCC 214 : (2010) 1 SCC (L&S) 508] .)

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.

Order bad in inception

37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent



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action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (Vide Upen Chandra Gogoi v. State of Assam [(1998) 3 SCC 381 : 1998 SCC (L&S) 872 : AIR 1998 SC 1289], Mangal Prasad Tamoli v. Narvadeshwar Mishra [(2005) 3 SCC 422 : AIR 2005 SC 1964] and Ritesh Tewari v. State of U.P. [(2010) 10 SCC 677 : (2010) 4 SCC (Civ) 315 : AIR 2010 SC 3823])”

14. Relying on the above judgments, Mr.Ramesh, learned counsel for the appellant would submit that the procedures as contemplated under SAFEMA were followed by affording opportunity to the affected persons. The affected persons approached the Tribunal and the relief as such sought for by the affected person were declined. The Writ Court has not considered



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the findings made by the Appellate Tribunal and set aside the notice issued under Section 6(1) of SAFEMA on the ground that such notice has been issued not in compliance with the mandatory requirements contemplated under Section 6(1) of SAFEMA.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

15. Mr.B.Kumar, learned Senior Counsel appearing on behalf of the respondents 1 to 8 would oppose by stating that Section 6(1) Notice is infirm. The mandatory requirements as contemplated under Section 6(1) has not been complied with. Therefore, the Writ Court has rightly nullified the Notice issued under Section 6(1). Notice of forfeiture can be issued, if the known sources of the income and the link or nexus between the purchase of property and ill-gotten money are established. In the absence of any materials available on record, Notice under Section 6(1) is void. It is a precondition stipulated under Section 6(1) that sufficient materials must be made available on record, so as to form an opinion to issue Notice under Section 6(1) of the Act. The Writ Court in the present case has rightly arrived at a conclusion that the ingredients as contemplated under Section 6(1) has not been complied with.



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16. That apart, the details and the value of the properties along with the nexus or link with the detenu are to be made available for the purpose of sustaining the notice issued under Section 6(1).

17. In this context, the learned Senior counsel mainly relied on the principles considered by the learned Single Judge of this Court in the case of ***R.Ramakrishnan vs. Appellate Tribunal***⁷, for forfeiture property. It is contended that the entire gamut of law has been considered by the learned Single Judge of this Court and the legal principles are summarised. Applying the said legal principles, Section 6(1) Notice issued against the appellants herein are invalid and not in compliance with the requirements as contemplated under Section 6(1) of SAFEMA.

18. The learned Senior Counsel referred paragraph no.44 of the Judgement in the case of ***Attorney General of India Vs. Amratlal Prajivandas and others***⁸. Nine Judges Bench of the Hon'ble Supreme Court of India has considered the principles which would prevail over all other judgements. Learned Senior Counsel Mr.B.Kumar further referred the

⁷ 2011(2) MWN (CrI) 582

⁸ 1994 (5) SCC 54



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Judgement of the Three Judges Bench of the Supreme Court India in the case of ***Fatima Mohd. Amin vs. Union of India***⁹, wherein, paragraph no.6 the Three Judges Bench relied on the principles laid down in ***Amratlal Prajivandas*** case cited supra . In the said case, it is reiterated that the properties acquired by the detenu or his relatives, must be a benami property or acquired illegally, is to be proved. In the event of no allegation in specific, link or nexus, then such notices are to be declared as non-erst and violative of Section 6 of SAFEMA.

19. In the case of ***Kesar Devi vs. Union of India*** cited supra, the Hon'ble Supreme Court again referred paragraph no.44 of ***Amratlal Prajivandas*** case cited supra. The case of ***Aslam Mohammed Merchant vs. Competent Authority and others***¹⁰, is relied upon by the appellants. However, the said case was relating to the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). The provisions of the NDPS Act and SAFEMA are in-comparable and thus, the ingredients and requirements, required for initiation of action are distinct and different. Thus, the principles in ***Aslam Mohammed Merchant's case*** cited supra, in respect of the

9 2003 (7)SCC 436

10 2008 (14) SCC 186



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provisions under NDPS Act, may not have application in respect of the cases under SAFEMA. Thus, the analogy made on behalf of the appellant deserves no merit consideration.

20. The respondents have further relied on the judgement of the Division Bench of this Court in the case of ***Competent Authority SAFEMA and NDPS Acts UTSAV vs. M.Khader Moideed*** cited supra. The Division Bench has referred ***Aslam Mohammed Merchant's case*** cited supra and the nine Judges Bench judgement in the case of ***Amratlal Prajivandas's case***.

21. Mr.B.Kumar, learned Senior Counsel mainly relied on the legal principles culled out by the learned Single Judge of this Court in the case of ***R.Ramakrishnan*** cited supra. It is reiterated that the said principles are carved out from and out of the judgements of the Supreme Court. Therefore, it is to be followed in the present case. The Division Bench judgement of this Court, in the ***case of M.Khader Moideed*** cited supra has been further followed by another Division Bench of this Court in the case of ***Competent Authority vs. Smt.Ayisath Munawara***¹¹.

¹¹ W.P.No.1333 of 2018 dated 13.10.2022



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22. The learned Senior Counsel mainly contended that the common order passed under Section 7(1) of SAFEMA by the Competent Authority in proceedings dated 28.04.1995 had not served on the affected person. The copy of the common order has been handed over by the appellant in the Court and therefore, all further proceedings are to be set aside.

23. In reply, Mr.Ramesh, learned counsel would state that the said common order dated 28.04.1995 passed under Section 7(1) of SAFEMA was challenged by all the affected persons before the Appellate Tribunal for forfeited property and the Appellate Tribunal confirmed the said order on 31.01.2001. That being so, the very submission that the common order dated 28.04.1995 has been served on the affected person is incorrect.

SCOPE OF SECTION 6 OF SAFEMA:

24. Section 6(1) of SAFEMA stipulates “*Notice of forfeiture.—(1) If, having regard to the value of the properties held by any person to whom this act applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other*



information or material available to it as a result of action taken under section 18 or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act”.

25. Careful reading of Section 6(1) is of paramount importance, since Section 6(1) Notice is the basis for all further actions to be continued under the provisions of SAFEMA. The first phrase of Section 6(1) indicates that having regard to the value of the properties held by any person to whom this Act applies, either by himself or through any other person on his behalf. It speaks about the application of the Act under Section 2 of SAFEMA.



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Therefore, the authority competent must first ensure that the provisions of SAFEMA is applicable to a person for issuance of Notice under Section 6(1) of the Act. The second phrase indicates that known sources of income, earnings or assets, any other information or material available to it as a result of action taken under Section 18 or otherwise. Therefore, a report submitted by the Inspector under Section 18 of the Act can be taken into consideration or the materials available on record or the information thereon may also be considered by the authority competent. Known sources of income, earnings, assets and any other information or materials are the *prima facie* materials/informations required for the purpose of forming an opinion that the competent authority has “**reason to believe**”, that all or any such properties are illegally acquired properties.

26. The very purpose of description regarding the known sources of income or earnings or assets or information or a report under Section 18 is to ensure that the competent authority apply his mind for forming an opinion that he has reason to believe that such properties are acquired illegally.

27. The phrase “reason to believe” has live link between the materials /



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informations or reports available and the application of mind on the part of the competent authority. Therefore the requirements contemplated under Section 6(1) are to be taken into consideration by the Competent Authority for forming an opinion that he has “reason to believe” that all or any of such properties are illegally acquired properties.

28. It is amply clear that the competent authority has to form an opinion and that he has reason to believe to form such an opinion to issue Notice under Section 6(1) of the Act. It is absolutely unnecessary for the competent authority to arrive at a final decision in respect of the legality of the details of the properties, materials which all are necessary for the purpose of issuing Notice under Section 6(1) of SAFEMA.

29. To reiterate, Section 6(1) of SAFEMA require some materials on record and such materials shall *prima facie* establish that all or any of such properties are illegally acquired properties. If the competent authority has reason to believe that such properties are illegally acquired properties, such reasons would be sufficient for issuing a Notice under Section 6(1) of SAFEMA.



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30. The argument on behalf of the appellant that “*there must be a conclusive material for the purpose of forming an opinion*” is incorrect since it is only a Notice issued calling upon the persons to show cause, why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under the provisions of SAFEMA. Since Section 6(1) Notice is a Show Cause Notice, to provide opportunity to the persons to whom the Act applies, it becomes unnecessary for the authorities to arrive at a final opinion or collect all the materials necessary for the purpose of exercising the powers under 6(1) of SAFEMA.

31. A fine distinction can be drawn between Notice under Section 6(1) and the order of forfeiture to be passed under Section 7(1) of SAFEMA. However, considering the Right to Property under Article 300-A of the Constitution of India, the Parliament thought fit and imposed certain pre-requisite conditions for forming *prima facie* opinion and to arrive at a conclusion that the authority has reason to believe that all or any of such properties are illegally acquired properties.



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32. Strict availability of documents and evidences required to invoke Section 7(1) may not be required for issuing Notice under Section 6(1) of SAFEMA. Even after issuance of Section 6(1) Notice, the competent authority is empowered to conduct inquiry and drop all further proceedings. Therefore, the requirements of Section 6(1) need not be conclusive. It would be sufficient, if *prima facie* materials are available on record to form an opinion that the authority has reason to believe that the properties are illegally acquired property.

33. The phrase “reason to believe” is the subjective satisfaction of the competent authority. Therefore, it is not necessary that all the informations and materials, for the purpose of invoking Section 7(1), is to be considered at the time of issuance of Section 6(1) Notice. Further enquiry after Notice under Section 6(1) may throw more light on the issues for the purpose of invoking the provisions of SAFEMA. Since such probabilities are inbuilt under the scheme of the Act, the scope of ingredients for issuing Notice under Section 6(1) of SAFEMA need not be expanded so as to defeat the very purpose and object of SAFEMA.



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34. The very object of SAFEMA is for the effective prevention of smuggling activities, and foreign exchange manipulations, which are having a deleterious effect on the national economy. It is necessary to deprive persons engaged in such activities and manipulations of their ill-gotten gains. Therefore, mere issuance of Notice, based on certain *prima facie* material, would not cause prejudice to the persons since enquiry will be conducted for the purpose of arriving at a decision to invoke Section 7 of the Act. Thus, the arguments advanced on behalf of the appellants that Section 6(1) Notice is invalid, is unacceptable and stands rejected.

35. The requirements of material contemplated under Section 6(1) of SAFEMA is only to establish a *prima facie* case for forming an opinion that the authority has reason to believe that all or any of such properties are illegally acquired properties. Once Section 6(1) Notice is issued, burden of proof lies on affected person. The noticee, on receipt of Notice is at liberty to disprove the *prima facie* opinion formed by the competent authority. Therefore, Section 6(1) Notice can be issued if the competent authority has reason to believe, based on the materials available on record. Such materials



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may be insufficient for forfeiture of property under Section 7.

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(I) Validity of Notice issued under 6(1) of SAFEMA;

36. Validity of Section 6(1) Notice was never challenged either before the competent authority or before the appellate authority. It is not the case of the appellants that no reasons were recorded but the reasons recorded were not sufficient.

37. Value of the properties, 'known sources of income' of the relative/holder of properties and other information were considered and stated in the notice. The said notice was issued based on the statement of wealth return filed by the respondents. Thus the Competent Authority has complied with the requirements, while issuing Notice under Section 6(1) of the Act.

38. It has been clarified by the Hon'ble Supreme Court in ***Attorney General for India & Ors, vs. Amratial Prajivanda & Ors.*** cited supra, as follows in paragraph- 44:

“It is equally necessary to reiterate that the burden of establishing that the properties mentioned in the show-cause notice issued under



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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.”

As clarified above in the judgement, the “connecting link” is required only in case if the properties stood in the name of wife and acquired from their individual income. In the present case all the properties are in the names of



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detenu's wife and relatives. It is further seen from the wealth return and as admitted, money has been drawn from detenu's account. Therefore, the requirement of connecting link loses its-significance.

39. ***Kesar Devi vs. Union of India*** cited supra is in conformation with the ***Attorney General's*** case. In ***Kesar Devi's*** case supra, the petitioner was wife of the detenu. She was never assessed to tax and had no known sources of income. In the notice under Section 6(1) it was simply stated that Kesar Devi was the wife of detenu and therefore a person under the Act. The Court accepted the reasons recorded as sufficient.

(II) Respondents Replying on Precedents, which are Distinguishable and Inapplicable:

40. By the decision in ***Attorney General of India & Ors. vs. Amratlal Prajivanda & Others*** cited supra, the SAFEMA Provisions and Act were held to be constitutionally valid by the 9 Judges Bench of Hon'ble Supreme Court. The next judgment in ***Kesar Devi vs Union of India*** cited supra confirms and in consonance with the attorney general case.



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41. The other three subsequent decisions which are cited, namely,

(i) ***Fatima Mohd. Amin (Dead) through Lrs vs. Union of India***

cited supra;

(ii) ***P.P.Abdulla & Anr. vs. Competent Authority & Ors.***¹²; and

(iii) ***Aslam Md. Merchant vs. Competent Authority*** cited supra.

have to be read in the light of the Constitution Bench decision since they are decisions by Benches comprised of lesser number of Judges. It is obvious that none of these subsequent decisions could have intended taking a view contrary to that of the Constitution Bench in ***Attorney General vs. Amratlal Prajivandas's*** case cited supra. The law laid down in paragraph 44 by the Constitution Bench that there ought to be the connecting link between those properties in the name relative/associate and the convict/detenu, the burden of disproving which as mentioned above is upon the relative/associate.

42. In ***Fatima Mohd. Amin (Dead) Through LRs vs. Union of India & Another*** case cited supra, the Hon'ble Supreme Court held that the contents of the 6(1) notice therein even if taken on their face value did not disclose any reason warranting action against the appellant. It was observed that no allegation whatsoever has been made to the effect that there exists any

¹² (2007) 2 SCC 510



link or nexus between the property sought to be forfeited and the illegally acquired money of the detenu. It may be noted that, the property that was sought to be forfeited belong to the mother, whereas the detenus were her two sons and it was the case of the respondent that the illegal activity was carried out by two sons, and the property was acquired in the name of the mother from the ill gotten monies.

43. In the present case, admittedly, the said properties are purchased by the detenu in the names of the respondent. The link or nexus is not required in view admitted flow of fund from the detenu. Therefore on facts, the above citation in ***Fatima Mohd. Amin*** is not applicable to the present case. In ***Kesar Devi's*** case cited supra, the Court had distinguished the ***Fatima Md. Amin*** case.

44. In ***P.P.Abdulla & Anr. v. Competent Authority & Ors.***, case cited supra, the Hon'ble Supreme Court applied the decision in ***Fatima Mohd. Amin*** cited supra. The Hon'ble Supreme Court observed as follows:

“9. In our opinion, the facts of the case are covered by the decision of this Court in Fatima Mohd. Amina v. Union of India (supra). In the



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present case the contents of the notice, even if taken on face value, do not disclose any sufficient reason warranting the impugned action against the appellant as, in our opinion, the condition precedent for exercising the power under the Act did not exist. Hence, the impugned orders cannot be sustained.”

45. In the case on hand, sufficient reasons have been duly recorded. On facts, the above judgement is not applicable to the facts of the case of respondents. According to the clarification given by Constitutional Bench in Attorney General's case supra, the link or nexus is required to be mentioned only in case of relative/associate. The subsequent judgement in **Kesar Devi vs. union of India** cited supra was also of the same view.

46. Unfortunately **Attorney General's** case supra and **Kesar Devi's** case supra were not brought to notice of the Court, while deciding **P.P.Abdulla's** case supra. In **P.P.Abdulla's** case has incorrectly held that link or nexus has to be mentioned in the notice even for detenu, which is contrary to the Constitutional Bench case. In the above cited case, P.P.Abdulla was detenu. Thus the above judgement in P.P.Abdulla has been rendered per



incuriam.

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47. In *Aslam Mohd.* case supra, the Court has observed in para-36 that the Competent Authority himself was not satisfied as to the reasons. The Hon'ble Court was of NDPS Act. Under the NDPS Act, the authorities had power of “freezing”, “tracing”, “identifying” the properties and were therefore bound to establish the proof that the property was derived from illicit traffic. Further, the definition of “Property” and “Illegally Acquired Property” under the Narcotics Drugs and Psychotropic Substances (NDPS) Act, 1985 is different from the definition of SAFEMA. Therefore on facts, the Court in *Aslam Mohammed Merchant's* case supra held that, under the scheme of the NDPS Act, the necessity of establishing link or nexus is writ large on the face of the statutory provision as would appear from the definition of “Illegally Acquired Property” (under NDPS) as also that of “Property” (NDPS). On the other hand, under the provisions of SAFEMA there is no requirement of establishing the link. Thus on facts, *Aslam Mohammed Merchant's* case supra is not applicable to the case on hand.

48. That is, nexus between the income derived from illegal activity and



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the acquisition of the property need not be established where the property concerned is that of the detenu himself. The said nexus is required to be established only when the detenu's property is held benami in the name of any other person or relative, It is only in such cases that the nexus between the income derived from illegal activity, and the property is required to be established.

49. A perusal of the said subsequent judgments indicates that none of these Judgments have considered paragraph 44 of *Attorney General's* case supra in proper perspective. The observations made in the above judgments that even in the cases where the property is held by the detenu himself, there should be connecting link or nexus, should be held as made in ignorance of and without considering the law laid down in paragraph 44, which is binding.

50. Therefore, not only the decision in *Attorney General's* case supra must be followed on account of the larger strength of the Bench that delivered it but all the subsequent decisions, which taken contrary view to the *Attorney General's* case supra and *Kesar Devi's* case supra must be held to be *per-incuriam* and hence not binding, since they have not taken into account the



ratio of the judgment of the Constitution Bench. **As per the doctrine of 'per incuriam', any judgment, which has been passed in ignorance of or without considering a statutory provision or a binding precedent is not good law and the same ought to be ignored.**

51. Therefore, the notice issued by Competent Authority is valid and in accordance with the provisions and the properties mentioned therein are liable to be forfeited to the Government.

52. In the case of *Biswanath Bhattacharya vs. Union of India and others* case cited supra, the Apex Court held as follows:

“39. If a subject acquires property by means which are not legally approved, the sovereign would be perfectly justified to deprive such persons of the enjoyment of such ill-gotten wealth. There is a public interest in ensuring that persons who cannot establish that they have legitimate sources to acquire the assets held by them do not enjoy such wealth. Such a deprivation, in our opinion, would certainly be consistent with the requirement of Articles 300-A and 14 of the



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Constitution which prevent the State from arbitrarily depriving a subject of his property.

53. The question of principles of natural justice has been dealt with in the case of ***Smt.Rukhiya vs. The Registrar the Appellate Tribunal for Forfeited Property***¹³, as under:

“42. I have carefully gone through the order passed by the competent authority dated 20.6.1996. I am unable to accept the contention of the petitioners that there is a violation of principles of natural justice. A perusal of the order would show that the petitioners were given sufficient opportunity by the competent authority before passing the composite order. A common reply was filed by the petitioners on 30.3.1996 followed by personal hearings on several dates. During the course of the proceedings, the petitioners filed written replies on 24.12.88, 18.1.89, 18.3.91, 21.3.91, 19.4.95 and 25.5.95. Through those replies, the petitioners had explained the sources of acquisition of the properties under notice. Thus, after hearing the petitioners and perusing their written objections,

¹³ 2014 SCC OnLine Mad 20



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the competent authority passed the composite order. He has also recorded that during the course of the proceedings, copies of several documents such as purchase deeds, passport of the detenu, SSLC Certificate, NRE Account, details of cheques issued, pass book of share and loan account of the petitioners have been filed. Thus, it is clear that the petitioners have been given full opportunity to furnish the documents which they would like to rely upon. The only grievance set out in these writ petitions on the question of principles of natural justice is that the competent authority relied upon a statement of the petitioner dated 6.2.1984 said to have been given under the COFEPOSA proceedings. According to the petitioners, the copy of the said statement was not furnished to the petitioners and therefore it violates the principles of natural justice. In fact a perusal of the order of the competent authority would show that he has not come to the conclusion based on the said statement alone and on the other hand he has reasoned out for his conclusion at paragraph No. 4 itself based on the passports produced by the detenu/petitioner.”



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54. The documents produced by the respondents and the report submitted by the authorities were taken into consideration. Since some of the cases relied on by the respondents are distinguishable on facts, the same cannot be followed as precedent in the present case. The legal principles in the case of *Attorney General* supra enumerates 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 the relative or an associate of the convict / detenu, are not illegally acquired properties of the convict / detenu, lies upon such relative / associates. He must establish that the said property has not been acquired with the moneys or assets provided by the detenu / convict or that they in fact did not or do not belong to such detenu / convict.

55. The Hon'ble Supreme Court of India reiterated that there ought to be a connective link between those properties and the convict/ detenu, the burden of disproving which, as mentioned above, is upon the relative / associate. In view of the said legal principles settled by the 9 Judges Bench of the Supreme Court of India, the arguments advanced on behalf of the respondents that even before issuance of 6(1) Notice, there must be complete



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materials available on record and link between the properties and the detenu must be established is incorrect proposition and if such an argument is accepted, the very purpose and object of SAFEMA would be defeated. Rule of constructive interpretation of statute became necessary in order to ensure that the object of the enactment is fulfilled.

CONCLUSION:

56. The Writ Court has not considered the scope and the spirit of Section 6(1) of SAFEMA. The requirements under Section 6(1) to form an opinion and to arrive a conclusion that there is a reason to believe to issue notice had not been taken into consideration with reference to the legal position settled by the Apex Court of India. 6(1) Notice was responded, inquiry conducted, common order of forfeiture under Section 7(1) was passed. The affected persons filed an appeal before the Appellate Tribunal and the Tribunal confirmed the common order passed by the Competent Authority. In the writ petition filed thereafter, the Writ Court has set aside the notice issued under Section 6(1) on the ground the requirements are not complied with.



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63. Therefore, the decision of the Writ Court is not in consonance with the scope and spirit of SAFEMA. Consequently, the writ order impugned dated 08.04.2011 passed in W.P.No.7609 of 2001 is set aside and the Writ Appeal stands allowed. No costs. Connected MP is closed.

[S.M.S., J.] [C.K., J.]
19.08.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes



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To

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The Appellate Tribunal for Forfeited Property
Loknayak Bhavan, 4th Floor,
Khan Market, New Delhi – 3.



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S.M.SUBRAMANIAM, J.
and
C.KUMARAPPAN, J.

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