IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.12.2024

PRONOUNCED ON : 18.12.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.Nos.1149 & 1150 of 2001

V.Mohan ... Petitioner in WP.No.1149/2001

1.V.Padmavathy (Died)

2.Anand Kanna

3.Prem Ananth

4.Dinesh Acharya

5.Swarnalatha ... Petitioners in WP.No.1150/2001

[Petitioners 2 to 5 are impleaded as LRs of the deceased petitioner/Mrs.V.Padmavathy by order dated 10.12.2024 in WMP.No.30276/2022 in WP.No.1150/2001]

Vs.

1.The Income Tax Officer,
Circle I(2),

Kumbakonam.

2.The Competent Authority,
(SAFEMFOPA),
UTSAV,
No.64/1, G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

3.The Appellate Tribunal
For Forfeiture Property,
Represented by its Registrar,
4th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi – 110 003. ... Respondents in 2 WPs

Prayer WP.No.1149/2001: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records on the files of the third respondent herein F.P.A.No.32/MDS/98 dated 15.11.2000, along with the orders of the second respondent herein in F.No.OCA/MDS/2844/94 dated 28.05.1998, and to quash the orders of the third respondent herein in F.P.A.No.32//MDS/98 dated 15.11.2000, confirming the orders of the second respondent herein in F.No.OCA/MDS/2844/94 dated 28.05.1998.

Prayer WP.No.1150/2001: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records on the files of the third respondent herein F.P.A.No.31/MDS/98 dated 15.11.2000, along with the orders of the second respondent herein in F.No.OCA/MDS/2847/94 dated 30.04.1998, and to quash the orders of the third respondent herein in F.P.A.No.31//MDS/98 dated 15.11.2000, confirming the orders of the second respondent herein in F.No.OCA/MDS/2847/94 dated 30.04.1998.

For Petitioners	: Mr.N.Prasad (In 2WPs)
For R1	: Mr.AR.L.Sundaresan Additional Solicitor General of India (In 2WPs)
For R2	: Mr.M.Karthikeyan (In 2WPs)
For R3	: Tribunal (In 2WPs)

COMMON ORDER

S.M.SUBRAMANIAM, J.

The writ petition in W.P.No.1149 of 2001 has been instituted challenging the order passed by the competent authority in proceeding dated 28.05.1998 under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 [hereinafter referred as 'SAFEMA'] and the proceedings of the Appellate Tribunal for forfeiture of property passed in order dated 15.11.2000 in F.P.A.No.32/MDS/98.

2. Similarly, the writ petition in W.P.No.1150 of 2001 also filed challenging the same proceedings by one Mrs.V.Padmavathy. Since both the writ petitions have been filed challenging the same proceedings of the competent authority and the order of the Appellate Tribunal, a common order has been passed.

<u>CONTENTIONS OF THE PETITIONERS:</u>

3. The facts in brief reveals that one Mr.V.P.Selvaraj who is the brother of Mr.V.P.Vadivel, and the husband of the petitioner in W.P.No.1150 of 2001 (Mrs.V.Padmavathy), was convicted on 23.11.1969 for an offence under the Customs Act, 1962. The 2^{nd} respondent / competent authority initiated an inquiry under Section 18 of the SAFEMA and commenced the inquiry. Relevant documents were collected from various sources, including Income Tax Department, and were examined by the competent authority. Verifications were conducted and extracts of the account copies from the petitioner's book of accounts were secured by the competent authority in the year 1979.

4. The petitioner / Mrs.V.Padmavathy submitted her explanation regarding source of acquisition of properties, investments in business and the

books of accounts in February, 1980. On 22.08.1980, the competent authority called upon the petitioner to furnish further details, explanations, evidence, and to produce books of accounts maintained from 1950 to 1980 for verification. On 29.08.1980, the petitioner submitted a reply along with documents and evidences. The petitioners appeared through their authorised representatives and produced books of accounts before the competent authorities during September to December, 1980. The competent authorities asked for certain clarifications, which were also furnished by the petitioners.

5. At the outset, a detailed inquiry was conducted by the competent authority under Section 18 of SAFEMA. Finally, on 29.03.1993, the competent authority issued a communication to notify the petitioner to be person affected under Section 2(2)(c) of SAFEMA. Consequently, a notice under Section 6(1) of SAFEMA was issued vide notice dated 24.02.1994. The petitioners submitted their explanations in response to the notices issued under Section 6(1). On 30.04.1998, the competent authority / 2nd respondent passed an order of forfeiture under Section 7(1) of SAFEMA. The petitioners preferred Statutory Appeal before the 3rd respondent on 16.06.1998 and adjudication was conducted. The Tribunal passed final orders on 15.11.2000,

which is impugned in the present writ proceedings.

6. Challenging the order of the competent authority and the Tribunal, the petitioners filed W.P.Nos.1149 and 1150 of 2001 to set aside the order of the Tribunal dated 15.11.2000. This Court held that a notice under Section 6(1) of the SAFEMA has to be issued to the convict, and in the absence of any such notice, the entire proceedings are vitiated.

7. Challenging the order of the High Court, the respondents preferred Special Leave Petition before the Hon'ble Supreme Court of India. By judgment dated 14.12.2021, the Hon'ble Supreme Court reversed the judgment of the Madras High Court dated 24.03.2008 and held as under:

(1) That it is not necessary that a separate Notice must be issued on the convict. It is enough that a Notice under Section 6(1) is issued to the relative of the convict – vide paragraphs 64 & 65 of the judgment.

(2) It is necessary that the Notice under Section 6(1) itself, establishes a link between the convict and the property ostensibly standing in the name of the person covered under Clause (c, d and e) of Section 2(2) of the "SAFEMA" Act – vide paragraph 63 of its judgment.

(3) That, the matter was being restored to this Hon'ble Court to deal with all other contentions including the argument that there is inordinate undue and unexplained delay in initiating the action against the petitioners – vide paragraphs 67 and 70 of the judgment.

8. Pursuant to the order of remand, the present writ petitions are taken up for final hearing.

9. Mr.N.Prasad, learned counsel for the petitioners mainly contended that there is an enormous delay in initiating action under the provision of SAFEMA. The inquiry under Section 18 commenced in the year 1979 and was completed in the year 1980. However, after a lapse of 10 years, the competent authority again called upon the petitioners seeking further clarifications. Subsequently, a notice under Section 6(1) was issued in the year 1994. The respondents have failed to explain the delay occurred between the year 1980 and 1994. Therefore, on that ground the order impugned are liable to be set aside.

10. Regarding the ground taken by the petitioners that notice was not

initiated to the convict, the Hon'ble Supreme Court reversed the judgment of the High Court and held that notice issued to the relatives, as contemplated under the provisions of SAFEMA, is valid. Therefore, the said ground is not available to the petitioners.

11. Thirdly, the learned counsel for the petitioner would submit that even on merits the petitioners have produced all the books of accounts, documents, and evidences to establish that the properties were purchased from and out of their family and business income. The purchase of properties were unconnected to any criminal activity for which Mr.V.P.Selvaraj was convicted under the Customs Act.

12. In this context, the learned counsel for the petitioners would submit that several documents were produced even during the course of Section 18 inquiry and by way of explanations in response to the notice issued under Section 6(1) of SAFEMA. None of the factual aspects along with the evidences produced by the petitioners were considered by the competent authority as well as the Appellate Tribunal. Therefore, the impugned orders are liable to be set aside.

REPLY BY THE RESPONDENTS:

13. Mr.AR.L.Sundaresan, learned Additional Solicitor General of India appearing on behalf of the 1st respondent would oppose by stating that there is no time limit prescribed under the Act for initiation or completion of proceedings. In the absence of any of time limit under the Act, the authorities are empowered to invoke the provisions of the Act at the time they form an opinion that the properties were purchased with the money derived from criminal activity. This is considered as a continuing offence. Therefore, the issue of limitation is not available to the petitioners.

14. The learned Additional Solicitor General of India would contend that on merits of the case, an elaborate inquiry under Section 18 was conducted by affording complete opportunity to the affected persons and others. They fully participated in the process of inquiry conducted by the competent authority. After forming an opinion and arriving at a conclusion that there was a reason to believe, as required under the provisions, the competent authority issued notice under Section 6(1) of SAFEMA to initiate action for forfeiture of properties. In response to the notice, the writ petitioners have submitted their explanations along with the documents. Therefore, the decision was taken based on elaborate considerations at the

initial stage of inquiry conducted under Section 18 of SAFEMA and thereafter by way of adjudication after issuing notice under Section 6(1) of SAFEMA. The petitioners have availed the opportunities in full, but failed to discharge their burden of proof as contemplated. Thus, the authorities formed an opinion that the properties are liable to be forfeited, and accordingly, a final order under Section 7(1) of SAFEMA was issued. Thereafter, the Appellate Tribunal has considered the facts elaborately in tune with the provisions of the Act as well as the facts established. Therefore, the writ petitions are liable to be rejected.

DISCUSSIONS:

15. Considered the arguments as advanced between the learned counsel for the petitioners and the learned Additional Solicitor General of India.

16. It is not in dispute that Mr.V.P.Selvaraj, brother of V.P.Vadivel Achari (the father of the petitioner /Mr.V.Mohan), was convicted of an offence in November, 1969 under the Customs Act, 1962. The other writ petitioner Mrs.V.Padmavathy is the wife of Mr.V.P.Valivel Achari, who is the brother of the convict, Mr.V.P.Selvaraj. Subsequently, actions were

initiated by the competent authority under the provisions of SAFEMA.

17. Under the scheme of the Act, Section 18 inquiry is in the nature probe to cull out the facts regarding the allegations for the purpose of initiation of further actions and for issuance of notice under Section 6(1) of SAFEMA.

18. Section 18 contemplates Power of competent authority to require certain officers to exercise certain powers. Sub Section (1) to Section 18 states that for the purpose of any proceedings under SAFEMA or initiation of any such proceedings, the competent authority shall have power to cause to be conducted any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of accounts or any other relevant matters. Under Sub Section (2) to Section 18, the competent authority may call upon the Income Tax Department to furnish details, documents, etc.

19. The Income Tax Authorities, for the purpose of inquiry, investigation or survey, may exercise the powers conferred under the Income Tax Act, 1961. Thus, the power conferred on the competent authority under Section 18 of SAFEMA is for the purpose of conducting an inquiry to

ascertain the facts for initiation of further actions under the provisions of the SAFEMA.

20. If no *prima facie* case is made out during the course of inquiry under Section 18 of SAFEMA, the competent authority is empowered to drop further proceedings. In the event of availability of materials, evidences, etc., the proceedings are initiated by issuing notice under Section 6(1) of SAFEMA. Therefore, the inquiry under Section 18 need not be conducted within a time limit, as it is continuing process and such an inquiry under Section 18 does not cause any prejudice to the interest of any person.

21. Section 18 inquiry is merely a fact-finding exercise, and persons called upon are expected to cooperate with the competent authority to ascertain facts. Therefore, the delay in completing the inquiry under Section 18 cannot be held as fatal, so as to vitiate the entire proceedings initiated after issuing a notice under Section 6(1) of the Act.

22. Section 18 inquiry, being preliminary in nature, does not provide a cause to invalidate the entire proceedings, as its object is to decide, whether to initiate further actions under SAFEMA or not. Thus, the grounds taken by

the petitioners regarding the delay in issuing notice under Section 6(1) are unacceptable and unmerited.

23. The competent authority notified the petitioners to be person affected under Section 2(2)(c) of SAFEMA on 29.03.1993. Thereafter issued notice under Section 6(1) of SAFEMA on 24.02.1994. After issuance of notice under Section 6(1) of SAFEMA, there is no delay on the part of the authority in concluding the proceedings and the competent authority / 2nd respondent passed an order of forfeiture under Section 7(1) of SAFEMA vide proceedings dated 30.04.1998. Therefore, ground of delay as raised by the petitioners deserves no merit consideration.

24. During the first round of litigation, this Court held that notice under Section 6(1) of SAFEMA, as it was not issued to the convict, thereby, the entire proceedings issued against the petitioners have become vitiated. However, the said order was reversed by the Hon'ble Supreme Court of India vide order dated 14.12.2021. Thus, the said ground is not available to the petitioners.

25. Regarding the grounds raised by the petitioners that the principles

of natural justice has not been followed, it is very hard to accept the said ground. At every stage, opportunities were given to the petitioners by the competent authority. Although Section 18 inquiry commenced in the year 1979, numerous correspondences were exchanged between the competent authority and the petitioners for collecting materials, evidences, and other relevant documents. After affording several opportunities, the competent authority formed an opinion that there was reason to believe that further actions should be initiated under the provisions of SAFEMA. The petitioners fully participated in the inquiry process, and this Court find no violation of the principles of natural justice. In fact, the rules of natural justice are duly complied with.

26. Regarding the properties pertaining to the writ petitioner in W.P.No.1150 of 2001, the Appellate Tribunal considered the merits and made the following findings:

> "*14. We will now deal with the specific items of properties acquired by the appellant Padmavathy. She submitted that the purchase of the residential house on 28.12.70 for a consideration of Ps 33,000/- was made by investing from her p?????? running account. A*

copy of document No. 2266 of 1970 evidencing acquisition was furnished. It is very interesting to note that the property which originally belonged to the husband of appellant was registered in the name of one K.N. Kamaluddin under a sale deed dated 1.11.64 and the consideration of Rs. 30,000/- was paid by the appellant Padmavathy. Later, the property was transferred to the appellant by virtue of a release deed in document No: 2266 of 1970. It is pertinent to note that the notice under Section 6 (1) was issued to the convinct Selvaraj in November, 1969 and the release deed in favour of the appellant was executed in the year 1970. No explanation is forthcoming with regard this suspicious nature of these transuctions, as to why a stranger became the owner of the property, while the consideration was paid by the appellent and the property was later released in her favour. An inconsistent plea was taken for the appellant by submitting that the property was purchased by the appellant from Kamaluddin for a consideration of Rs 33,000/- which is totally contrary to the contents of the release deed. The Competent Authority was fully justified in coming to the conclusion that the *entries made in the books of account reflecting payment of Rs. 33,000/- to Kamaluddin are bogus and that no credence can be given to the books of accounts maintained by the appellant. From the Income tax assessments, it is not possible to come to a conclusion that there was building of capital since 1950, as claimed by the appellant. No books of accounts were produced and no evidence has been furnished to substantiate that the appellant had agricultural income or was earning interest from loans. We therefore, agree with the finding of the Competent Authority that this property was acquired out of tainted sources, traceable to the convict.*

15. The appellant Padmavathy is said to have purchased 10.5 Acs. of land at Kumbakonam 26.11.59 for a consideration of Rs. 32,225/-by investing from independent income as shown in the books of account for the year 1959-60. The appellant was not able to establish the source for the capital, said to have been introduced in her personal account in the year 1950-51. The contention on behalf of the appellant is that the source of income was from loans given on promissory notes and also out of gifts and *presents received by the appellant on various occasions, including at the time of her marriage in the year 1946. No books of accounts have been produced and no evidence has been furnished. Not even the basic details of the person by whom such loans were advanced, are reflected in the account copies. There is no evidence with regard to the alleged gifts, said to have been received by the appellant. We therefore, agree with the finding of the Competent Authority that the capital introduced 1.12.50 is from tainted sources. It is therefore, clear that the agricultural land acquired with tainted sources is also an illegally acquired property.*

16. The appellant gave no explanation as the how much money she was advancing to the firm M/s V.P.V Padmavathy Jewellery from 1976 onwards. The explanation was that she was advancing monies from her personal account. No details are furnished about the investiment made by the appellant in the said firm from time to time. It was, therefore, rightly held by the Competent Authority that the investment in the firm is from tainted sources.

17. The appellant Padmavathy declared the

Jewellery only under the Voluntary Disclosure of income sachem. She has not offered any explanation regarding the source of acquisition of the Jewellery, except by making a bald claim that she acquired the jewellery from out of income derived from lawful business activities. Though, there is no requirement to disclose the source of acquisition under VDIS Scheme, the appellant was bound to explain the source for acquisition of the jewellery when the proceeding are launched under the provisions of SAFEMA. There is no immunity with regard to thes proceedings, as held in Takchand Vs Compete Authority (1993) 201 ITR 658. The Jewellery was rightly held as illegally acquired property. No other contentions were raised before us."

27. Regarding the appeal filed by Mr.V.Mohan writ petitioner in W.P.No.1149 of 2001, in F.P.A.No.32/MDS/98, the Tribunal made the following findings:

"19.<u>FPA No. 32/MDS/98:</u>

The appellant V. Mohan is the son of the appellant Padmavathy. He has no independent income and the investments made in M/s V.P.V.

Jewellery Mart and V.P.V Gold Palace are traced only to the income derived by his mother with initial source; which have held as illegally acquired. The Competent Authority disbelieved that the initial source of capital of Padmavathy was from out of tainted funds and the subsequent acquisitions made by her are all illegally acquired properties. The cash gifts, alleged to have been received by the appellant from his mother, also acquired nature of tainted funds.

20. The building No.113 at Kumbakonam is said to have been gifted to the appellant by his mother. The agricultural lands at Thepperumal Nallur are said to have been given by appellant's mother by way of gift. For the same reasoning, it was rightly held by the Competent Authority that these properties are also tainted, in as much as they were acquired by the appellant Padmavathy from out of tainted Income.

21. It is clear that most of the properties were acquired by appellant padmavathy during the period when Selvaraj was actively engaged in smuggling activities, and it is clear that the funds have flown from him to his sister-in-law and the properties of the appellant Padmavathy and the *appellant Mohan are illegally acquired."*

28. 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 authorities in consonance with the statutes and rules in force, but not the decision itself. In the present case, rules of nature justice has been complied with. The petitioners availed themselves of the opportunities in full and participated in the proceedings.

29. The Competent Authority and the Appellate Tribunal elaborately considered the facts on merits. Re-adjudication of those facts became unnecessary, as both the Competent Authority and the Appellant Authority have adjudicated the issues based on the documents and evidences available on record. The factual findings in the orders impugned are candid and convening.

30. The petitioners have failed to discharge their burden of proof under Section 8 of SAFEMA. Therefore, we do not find any infirmity in respect of the order of forfeiture passed under the provisions of the SAFEMA.

31. In fine, the orders impugned are confirmed and consequently, the Writ Petitions are dismissed. There shall be no order as to costs.

[S.M.S., J.] **[M.J.R., J .]**
18.12.2024
(1/2)

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

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