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W.P.No.16815 of 1999

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.01.2025

PRONOUNCED ON : 30.01.2025

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.16815 of 1999

and

W.M.P.Nos.24388 of 1999 & 11617 of 2000

1.Sobhagmal Sowcar(Died)
2.U.Nirmala Bai
3.S.Manak Chand
4.P.Guna Mala
5.P.Lalitha
6.S.Prema
7.S.Ashok Kumar
8.A.Santhosh Bai
9.T.Yasoodha
(P2 to P9 substituted as LR's of deceased
sole petitioner vide order dated 26.10.2022
made in W.M.P.27363/2022 in
W.P.16815/1999)

... Petitioners

Vs.

1.The Competent Authority,
Smugglers & Foreign Exchange Manipulators,



W.P.No.16815 of 1999

(Forfeiture of Properties) Act 1996
G.N.Chetty Road, Madras 17.

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2.The Appellate Tribunal for Forfeited Property,
SAFEM (FOP), 4th Floor,
Lok Nayak Bhavan, Khan Market,
New Delhi – 110 003.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, callin for the records of the second respondent made in FPA.18/MDS/96 dated 12.7.1999 and quash the same.

For Petitioners : Mr.B.Kumar
Senior Counsel
For Mr.R.Loga Nathan
and Mr.S.Ramachandran

For Respondents : Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by
Mr.J.Madanagopal Rao
Senior Counsel for Central Government
(For R1)
Mr.K.Venkataswamy Baabu
Senior Counsel for Central Government
(For R2)



W.P.No.16815 of 1999

ORDER

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(Order of the Court was made by *M.JOTHIRAMAN, J.*)

Under assail is the order dated 12.07.1999 passed in FPA.18/MDS/96 on the file of the Appellate Tribunal for Forfeited Property.

2. The unsuccessful appellant before the Appellate Tribunal have preferred the present writ petition.

3. During the pendency of the present writ petition, the writ petitioner died. Thereafter, his Legal Representatives were substituted.

4. It is the case of the petitioner that the petitioner was characterised as a person affected on the basis of that he was detained under the COFEPOSA Act during Emergency time in the year 1975. At that time, due to suspension of the fundamental rights, the petitioner had no remedy of challenging the said detention. A notice under Section 6(1) of the Act was issued 31.3.1976 by the competent authority. The entire Act and its application was stayed originally by this Hon'ble Court and later by the Hon'ble Supreme Court of India pending consideration of



W.P.No.16815 of 1999

the Constitutional validity of the Act. After the Constitutional validity was determined in 1994, the matters were taken up for hearing on merits. The authority had passed an order on 8.12.1995, forfeiting all the properties of the petitioner, for which, notice under Section 6(1) was originally issued.

5. The petitioner states the properties sought to be forfeited including the house property at 78, Waltax Road, Chennai, which was purchased on 20.4.1972 for a total consideration of Rs.1,24,969/-. The second property was a land purchased in 1968 for Rs.1,903/-.

6. The petitioner had been doing business from 1945 in hosiery and from 1950 onwards, he had started his own business in the name "Shobhagmal Mahaveer Chand" in Villupuram, Tamilnadu. The petitioner was an Income tax Assessee from the year 1955 onwards. From the year 1972/73, he had always been assessed to Wealth Tax. The petitioner had also been a Partner in the firms viz., Srimal Textiles, Kamadhenu and Ranka & Co. The records disclose that in the said three businesses, the petitioner had made investments of Rs.4,000/-, Rs.5,000/- and Rs.4,879/- respectively in the years 1952/53, 1954/55 and 1955/56.



W.P.No.16815 of 1999

The acquisition of the assets of the house property was disclosed in the Income Tax return in the year 1973/74 and assessment has been made on that basis. Again in the Wealth Tax Return for the Assessment Year 1973/74, the assessment has been disclosed and tax paid thereon. The Competent Authority had ignored the assessment orders of the Income Tax and Wealth Tax Authorities. The petitioner started the business and was doing business under the name Sobaghamal Sri Sri Mal. The competent authority conducted enquiry after 32 years later. There were no two sets of account books as has been mentioned in the order of the Competent Authority. Unfortunately, the competent authority had not sought for clarification after he had the authorities. The order of the Appellate Authority is *exfacie* erroneous, violation of natural justice and failed to adhere the principles, which require an Appellate authority to independently analyse and evaluate the evidence on record. The case was adjourned before the Appellate Tribunal at New Delhi in July 1999. Thereafter, the hearing was posted at its camp sitting in Bhuvaneswar, Orissa State. The amount of Rs.75,000/- for acquisition of the property had come from borrowal and not from business. In fact, under the Income Tax Act, the petitioner as against the assessment, has filed an appeal to the Appellate Tribunal on a question of law and the matter was remitted to the Income Tax Officer to redo



W.P.No.16815 of 1999

the assessment. Thereafter, it became a scrutiny assessment under Section 143(2)

of the IT Act and assessment orders passed afresh in the light of the remand order passed by the Appellate Tribunal. In earlier decided cases, the Appellate Tribunal under SAFEMA, had taken the view that the assessment under Section 143(2), is entitled to the greatest credence because it is a scrutiny assessment. All these facts have been totally overlooked and ignored. A matter of serious concern where all the properties earned in his life time is forfeited and reduced to economic destitute certainly it is a matter of a serious nature, which ought not to have been permitted to be argued without proper representation. The Appellate Tribunal assigned the reasons against Section 15 of the Act. The Tribunal and the High Courts have uniformly taken the view that where the property had been disclosed in the Income Tax Assessments and the order of assessments made taking that into account, then it is binding on the Competent Authority unless there are contra materials, which will render the assessments factually incorrect. The Competent Authority was not justified in asking the assessee to produce accounts for the year 1972 and earlier. The Tribunal has also overlooked that out of the cost of acquisition only Rs.75,000/- was from borrowing and other amounts have not been discussed at all which have also been clearly explained. This lapse on the part of the second



W.P.No.16815 of 1999

respondent has deprived the petitioner of the benefit under Section 9 of the Act

which says that where 50% of the consideration is explained, then the property cannot be confiscated in its entirety but option of paying the cost must be given to the person affected. As regards the land at Mahabalipuram, it has been acquired only for a sum of Rs.2464/-. It is amazing that even this property had been forfeited. The acquisition must be viewed in the background of the fact that the petitioner had been an Income Tax assessee from 1955 onwards. Neither the notice under Section 6(1) nor the order of the Competent Authority nor the second respondent show what exactly is the amount that is sought to be forfeited in respect of the 5 firms mentioned above. There cannot be a notice of forfeiture muchless a final order. The Tribunal and Competent Authority have made the presumption under act as if it is irrebuttable. The nature of the proof required is only slight on the petitioner has been totally overlooked and lost sight of by the authorities.

7. Mr.B.Kumar, learned Senior counsel appearing on behalf of the writ petitioner would submit that the petitioner acquired the house at Waltax Road for Rs.1,24,969/- on 20.04.1972. For that, he had borrowed Rs.75,000/- from seven



W.P.No.16815 of 1999

persons was duly disclosed and also accepted by the department. The liability of

Rs.75,000/- is borrowed, is also noted and accepted and there is a scrutiny assessment under section 143 (3) of the Income Tax Act. It is important to note that no amount is added as from unclaimed source. The petitioner had produced the assessment orders, which are scrutiny assessment under Wealth Tax Act and Scrutiny Assessment under the Income Tax Act. He would submit that for the Assessment Year 1971-1972, Wealth Tax Assessment under Section 16(3) to the Act in which jewellery owned by the petitioner, valued at Rs.1,093/- is accepted. Further the Assessment Year 1973-1974, Sree textiles and Kamadhenu income is a sum of Rs.31,915/- is computed and accepted. Similarly, in 1974-1975, the assessment was redone and total income of Rs.8,029/- is computed. For the Assessment Year 1975-1976, taxable income from the firms is accepted at Rs.18,570/-. The persons from whose borrowal was made in the year 1972, affidavits were filed before the competent authority. i.e.,

Vanitha Devi	-	Rs. 10,000/-
Mohanlal and Co	-	Rs.10,000/-
Sree Chand	-	Rs.15,000/-
Shikarchand	-	Rs.10,000/-
Keasrbai	-	Rs.10,000/-



W.P.No.16815 of 1999

8. He would submit that the competent authority overlooked the assessment orders, which finding is accepted by the Tribunal. This appears to be not correct in law.

9. The learned Senior counsel for the petitioners would submit that the Appellate Tribunal SAFEMA had consistently taken the view that income tax assessment orders, where they are scrutiny assessments have to be accepted unless there is other positive over whelming evidence not to accept the same.

10. The learned Senior Counsel for the petitioners, to strengthen his contentions, relied upon the following judgments:

(a) Ramnath Prasad banka Vs. Competent Authority, Calcutta, Judgment of the Tribunal dated 10.8.1990. (1990 SCC Online ATFP page 3)

(b) Roopchand Prasad Vs. Competent Authority, order of the Tribunal dated 26th April 1989.

(c) M.D.GulamRasool mia Vs. Competent Authority, order of the Tribunal dated 19.4.1989.



W.P.No.16815 of 1999

11. The learned Senior counsel for the petitioners would further submit that where the decision of the Tribunal is not followed by the lower authority is a very serious violation of procedure in the law and ought not to be permitted. The decision of the Tribunal are binding precedents and each and every officer is bound to follow the same. Not following the decision of the higher authority will even amount to a Civil Contempt. To strengthen his contentions, he relied upon the following judgments:

(i) In the case of UOI Vs Kamalakshi Finance Corporation, reported in 1992 SC 711.

(ii) In the case of *Union of India v. Kamalakshi Finance Corpn. Ltd.*, reported in 1992 Supplement 1 SC 443.

(iii) In the case of *Caprihans India Ltd. v. Union of India* reported in 1991 51 ELT 249 (Bombay) DB.

(iv) In the case of *E I Dupont India Private Limited v. Union of India* reported in 2014 (305) ELT 282 (Gujarath) DB5

12. The learned Senior Counsel further would submit that the assessment orders in this case are of the year 1971 to 1974, 1975 and earlier, period



W.P.No.16815 of 1999

assessments cannot be motivated. Those, where the returns and acceptance in contemporaneous time, it cannot be judged as false when enquiry is held in 1995 i.e., after 29 years. The assessment order itself describes the names and the details of the person from whom money was borrowed by the affected person. Such a situation, the Competent Authority is bound to conduct investigation under Section 18 of the Act. He would submit that another reason given by the Tribunal is equally wrong and totally unacceptable. The Tribunal held that the person affected is not able to explain his initial capital investment into the firm and therefore, the entire profit earned in the business is also illegal. This is totally wrong and have been repeatedly held so by various decisions. To strengthen his contentions, the learned Senior counsel for the petitioners relied upon the following judgments:

(a) In Viyas Chand Vs CA, 1990 (181) ITR 463.

(b) 1990 SCC Online ATFT (3) Ramnath banka

He submitted that both the authorities have committed serious errors of law.

13. The learned Senior counsel further would submit that in 1972-1975, before the person was detained during emergency time, the only requirement of



W.P.No.16815 of 1999

law is to file the return, disclosing the acquisition of the property before the IT authorities. The same was done accepted by the Income tax authorities. Therefore, the petitioner had acted in accordance with requirements of law at that time. The Tribunal ought not to have refused to receive the affidavits of the persons, who lent money filed before him, in which, they have also stated that it is reflected in the assessment orders/books of accounts. The very refusal of the Tribunal to receive additional evidence is patently contrary to the Division Bench of this Hon'ble Court in the case of *N.M.Ayishath Munawara vs UOI dated 1.2.1995*. The Orders of the authorities have also violated another important principles that where there is an order of a authority exercising the power under the statute to decide the right of the party, cannot be subjected to collateral challenge in a different proceedings. The judgment of the Hon'ble Supreme Court in **2019 (2) SCC 525** will clearly support such a view.

14. It is impossible to hold that the entire property, the detinue had not paid the consideration. This is a requirement under section 9(1) of the Act, which is also a valuable right. Therefore, the order of directing forfeiture clearly is not sustainable and the writ petition is liable to be allowed.



W.P.No.16815 of 1999

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15. Mr.A.R.L.Sundaresan, learned Additional Solicitor General of India appearing for the respondents would submit that the link between the property and the detenu has been established and there is no explanation worth acceptance for the lawful acquisition of the properties by lawful and known sources of income. The Income Tax Authorities have not gone into the issues of credit worthiness of the persons lent loan. Because the Assessment Authority accepted the source, does not mean that competent authority should also accept that, the competent authority can independently decide the issue. He would submit that if the legal sources for acquisition of various properties not produced, then it is to be considered as illegal source. The competent Authority and the Appellate Tribunal have carefully scrutinized all the materials that were placed before them and have passed the order of Forfeiture and confirmation of the same.

16. The learned Additional Solicitor General of India appearing for the respondents, to strengthen his contentions, has relied upon the following judgments:



W.P.No.16815 of 1999

(a) 1994 (5) SCC 54 in the case of Attorney General of India Vs. Amratlal Prajivandas.

(b) 2014(4) SCC 392 in the case of Biswanath Battacharya Vs. Union of India.

He further submit that there is no merit in this writ petition and hence, the same is liable to be dismissed.

17. We have considered the submissions made on either sides and perused the materials available on record.

18. It is seen from records that the petitioner Thiru.Shiri.Sobhagmal Sowcar (Since died) was detained under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA). The competent authority, Chennai, treating the petitioner as covered by the provisions of Section 2(2)(b) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA), issued a notice under Section 6(1) of the Act, dated 31.03.1976 to the petitioner, to show-cause why the properties mentioned in the notice should not be forfeited as illegally acquired properties,



W.P.No.16815 of 1999

after recording the reasons for the issuance of the notice.

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19. Accordingly, forfeiture notice was issued to the affected person, proposing forfeiture of the following properties:

Immovable Property:

- (i) House bearing Door No.225, Waltax Road, Madras, valued Rs.1,50,000/-
- (ii) Land at Mahabalipuram as designed in Wealth Tax return for 1974-75, valued Rs.2,464/-

Movable Property:-

- (iii) Gold Jewellery, as disclosed in Wealth Tax return for 1974-75, valued Rs.2,000/-
- (iv) Stock-in-trade and other assets in the business carried on under the name and style of (a) Sobhagmal Mahavirchand and (b) S.M.Jewellery.
- (v) His right, title and interest including his capital and current account in:-
 - (a) Shree Textiles, 267/1, N.S.C.Bose Road, Madras-1
 - (b) Radha & Co., 217/1, N.S.C.Bose Road, Madras-1
 - (c) Kamadhenu, 41/42, N.S.C.Bose Road, Madras – 1.

20. The person affected responded to the forfeiture notice vide his reply dated 29.04.1976. It is also seen from the records that in the meanwhile, the person affected filed a writ petition in W.P.No.3474/77 before this Court and proceedings were stayed. Thereafter, the case was finally disposed on 18.07.1994, allowing the



W.P.No.16815 of 1999

competent authority to complete the proceedings as per law. This Hon'ble Court also directed that the affected person may file objections, if any before 18.08.1994 and be personally present. However, the person affected neither filed any objection nor appeared in person. Thereafter, the matter was posted for hearing and suo motu on 26.10.1994. The competent authority observed that on the request made by the counsel to the affected person, a copy of the forfeiture notice and the reasons recorded were furnished. Thereafter, a detailed reply dated 27.12.1994 was furnished by the counsel. The competent authority considering the various written replies and following submissions have been made by and on behalf of the affected person, made a finding as hereunder:

“4. Copies and extracts of certain documents such as Trading, Profit and Loss Account, Trial balance, Capital Account, Income-Tax assessment orders, etc., have been furnished to substantiate the contentions made. The account books for the accounting year 1972-73 have also been furnished.

5. I have carefully gone through the records of the case and the written submissions made in defence. The first property for consideration is the house bearing door No.225, Waltax Road, Madras-1. The contention of the person Affected for this property is that it was purchased for Rs.1,26,969/-including registration charges and not Rs.1,50,000/-, as indicated in the forfeiture notice. Further, it



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is stated that the consideration for the property was partly paid from the withdrawals from business and partly by raising loans from various parties who were all income-tax assesseees. It is also stated that the property and its sources have been declared both in the Income Tax and Wealth Tax returns for the assessment year 1973-74. This investment was made by borrowing Rs.75,000/- from six parties from 1-4-1972 to 20-4-1972 and the balance was paid by the person Affected from his own earnings. The person Affected's contention is that since this has been accepted by the Income-Tax authorities and the assessment order passed accordingly, it should be accepted. While considering this contention, it is seen that the assessment orders of the Wealth Tax Officer for the year 1973-74 had been passed on 27.01.1979, i.e. much after the date of issue of the forfeiture notice. Again, the order does not indicate that the Income-Tax authority had verified the credit worthiness of the persons from whom the loans have been claimed to be obtained. Notwithstanding this, in the present proceedings, the person Affected has not furnished any documentary evidence to substantiate the borrowal of loans. He has not even indicated the Income Tax assessment details of these persons, nor furnished the Assessment orders of returns to substantiate that the loans obtained have also been shown in their respective assessment same accounting year in the name and style of two different firms. I have carefully examined this issue. I find that the Day Book of both the firms, as already stated, contain exactly similar entries. So also,



W.P.No.16815 of 1999

the ledgers contain exactly similar entries with regard to the business transactions. However, there are several overwritings and interpolations, in several entries which indicate that the entries have not been made in the course of normal business activities. This fact is borne out from the following irregularities noticed:-

1) In the Day Book of "Sobhagmal Srimal", on the very first day in Samvat, the entry '2000' has been changed to '2029' and the English year has been changed from 01-04-1973 to 1-4-1972

13-4-1973 changed to 13-04-1972

20-4-1973 |

03-05-1973 | The year has not been changed to 1972

04-05-1973 |

09-05-1973 |

19-05-1973 changed to 19-05-1972

20-05-1973 changed to 20-05-1972

21-05-1973 changed to 21-05-1972

22-05-1973 changed to 22-05-1972

23-05-1973 changed to 23-05-1972

24-05-1973 changed to 24-05-1972

26-05-1973 changed to 26-05-1972

27-05-1973 changed to 27-05-1972

07-06-1973 changed to 07-06-1972

22-06-1973/Not changed to 1972



(ii) *The Opening balance for the stock of gold jewellery and the silver articles as shown in both the day books of both the firms are the same without any change in their weight and value. In the set of books of accounts for "Sobhagmal Mahavirchand" the fact regarding seizure of the gold jewellery by the Central Excise Differs on 12-05-1972 is indicated. These entries are not existing in the set of books of accounts of the firm, "Sobhagmal Srimal".*

(iii) *In the set of books of account of "Bobhagmal Mahavirchand", there is no entry with regard to the orders. For that matter, even the details like the addressees of the persons or confirmatory letters from them have been furnished in support. Thus the Person Affected has totally replied upon the order of the Wealth Tax Officer to prove his point. In this connection, it is significantly observed that the person Affected has furnished two sets of books of accounts during the course of present proceedings on 17.8.1976. As against this assessment order was passed on 27.1.1979. This would clearly show that the original books of accounts were not produced by the Person Affected along with the*



Wealth Tax Returns. Apparently these books of accounts were not taken into consideration while passing the assessment order. Thus, it is obvious that the assessment order had been passed by the Wealth Tax Officer without taking into consideration the corroboratory and supporting documents of the Person Affected's business. In view of this fact, the assessment order, for the purposes of the present proceedings cannot be considered as a conclusive evidence and hence is not binding on me."

18. In the entire case proceedings, the person affected has not brought on record any evidence or explanation in regard to the position of the movable assets in the various business firms as on the date of issue, of the forfeiture notice. Under Section 11 of the Act, the person affected cannot transfer any of the properties put to notice. In these circumstances, the movable assets in various firms as available on 31.03.1976 shall become liable for forfeiture under the Act.

21. After perusing the documents produced by the person affected and giving a personal hearing, the competent authority rejected his contentions and passed the order under Section 7(1) of the SAFEMA on 08.08.1995, directing the forfeiture of the properties mentioned in the order. With reference to the above



findings, the Appellate Tribunal independently considered the facts. The factual details are elaborately considered by the competent authority. The contentions raised by the person affected and the documents produced were considered by the Appellate Tribunal in Paragraph 7 of the impugned order, which reads as under:

“7. It is the contention of the appellant that he declared the house property both in the Income-tax and Wealth-tax returns for the assessment years 1973-74, which were accepted by the Income-tax authorities and the assessment orders were passed. It is to be noted that the said orders were passed without verifying the creditworthiness of the persons from whom the loans have been claimed to be obtained. Even the details like the addresses of persons from whom confirmatory letters have been furnished were not mentioned before the Competent Authority. The original books of account along with Wealth-tax returns were not produced. books of account were, examined by the Competent Authority and were rightly held to be unreliable due to several over-writings and interpolations in several entries, indicating that the entries have not been made in the normal course of business. Two sets of books of account were furnished and were not given any credence as the Competent Authority was convinced that they are not reliable. The books of accounts of Sobhagmal Mahavirchand did not contain any entry relating to the purchase of the house property and the borrowing of Rs.75,000/- as claimed by the appellant. The appellant introduced



W.P.No.16815 of 1999

several cash credits in his account books totalling Rs.2,69,000/- in the names of several Marwaries, so as to cover the cost of jewellery and the house and he could not prove the genuineness of such credits, either before the ITO or before the Competent Authority. The ITO did not accept the sources of the appellant for the acquisition of the house property. We are in agreement with the Competent Authority in holding that the appellant failed to adduce evidence to show that the house property was acquired through legal source and that it is an illegally acquired property.”

22. The Tribunal concluded by stating that the competent authority held that the person affected produced two sets of books of account and that they were created for the purpose of the proceedings. The person affected is unable to explain why he maintained two sets of books of account. In the said circumstances, the competent authority was justified in holding that the amount flowing from the transfer of account in the name and style of S.M.Jewellery is liable for forfeiture, as existing at the closing of the financial year 1972-73 with accruals thereon.



W.P.No.16815 of 1999

23. The person affected was unable to show that the findings of the competent authority are incorrect.

24. 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, failed to discharge the burden which resulted in forfeiting the properties under the provisions of SAFEMA. 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. 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.



W.P.No.16815 of 1999

25. Therefore, we do not find any infirmity in respect of the actions taken.

Consequently, the impugned order is confirmed and the writ petition is dismissed.

There shall be no order as to costs. Connected miscellaneous petitions are closed.

[S.M.S., J.] [M.J.R., J.]
30.01.2025

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

1.The Competent Authority,
Smugglers & Foreign Exchange Manipulators,
(Forfeiture of Properties) Act 1996
G.N.Chetty Road, Madras 17.

2.The Appellate Tribunal for Forfeited Property,
SAFEM (FOP), 4th Floor,
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WEB COPY



W.P.No.16815 of 1999

S.M.SUBRAMANIAM, J.
AND
M.JOTHIRAMAN, J.

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W.P.No.16815 of 1999

30.01.2025