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W.P.Nos.18925 & 18926 of 2000

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.Nos.18925 & 18926 of 2000

and WMP.Nos.27420 & 27421 of 2000 and 33404 of 2001

**W.P.No.18925 of 2000**

1.K.T.M.S.Mahmood (Died)

2.T.M.J.Khadijath Nooriya

3.M.Anwar Hussain (Deceased)

4.M.Aishath Munaware

5.M.Aishtha Najiya

6.M.Aishth Razeena

7.M.Authad

8.M.Aishth Lubaina

(P2 to P8 substituted as LR's in the place  
of Deceased petitioner as per order dated  
14.03.2014 in W.P.M.P.No.261/2013)

9.Malika Nawar Husain

10.Nooriya Thahseen

11.Shahnaz Aisha

12.Ahmed Jawad Mahmood Anwar

(P9 to P12 are substituted as LR's of deceased  
P3, as per order dated 02.04.2024 in



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W.M.P.No.6887/2022 in W.P.No.18925/2000)

... Petitioners

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***Vs.***

1.The Competent Authority,  
Smugglers & Foreign Exchange Manipulators,  
(Forfeiture of Properties)Act, 1976,  
UTSAV, No:1, 64/1, G.N.Chetty Road,  
Chennai – 600 017.

2.The Appellate Tribunal for Forfeited Property,  
4<sup>th</sup> Floor, Lok Nayak Bhavan, Khan Market,  
New Delhi – 100 002.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Second respondent in its order dated 05.09.2000 made in FPA No:29/MDS/96.

For Petitioners  
(For P1 to P3) : Died (Steps Taken)

(For P4 to P6, P8) : Mr.M.M.K.Alifudeen and  
Mr.M.Harri viswanath

(For P7, P9 to P12) : Mr.T.SundarRajan

For Respondents : Mr.AR.L.Sundaresan  
Additional Solicitor General of India  
Assisted by  
Mr.B.Rabumanohar  
Senior Central Government Panel Counsel



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(For R1 & R2)

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**W.P.No.18926 of 2000**

- 1.TMJ.Kadijath Nooriya (Deceased)
  - 2.Ms.M.Aishath Munuwara
  - 3.M.Aishath Najiya
  - 4.M.Aishath Razeena
  - 5.M.Authad @ Mahmood Authad
  - 6.M.Aishat Lubaina
  - 7.Malika Anwar Husain
  - 8.Nooriya Thahseen
  - 9.Shahnaz Aisha
  - 10.Ahmed Jawad Mahmood Anwar
- (P2 to P10 substituted as LR's of deceased  
sole petitioner vide order dated 03.11.2022 made  
in W.M.P.No.28842/2021 in W.P.No.18926/2000)

... Petitioners

***Vs.***

- 1.The Competent Authority,  
Smugglers & Foreign Exchange Manipulators,  
(Forfeiture of Property Act), UTSAV,  
No.64/1, G.N.Chetty Road,  
T.Nagar, Chennai – 600 017.
- 2.The Appellate Tribunal for Forfeited Property,  
SAFEM (FOP), 4<sup>th</sup> Floor,  
Lok Nayak Bhavan, Khan Market,  
New Delhi – 110 003.
- 3.The District Collector,



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Ramnad District.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Second respondent in its order dated 04.09.2000 made in FPA No:25/MDS/96.

For Petitioners  
(For P1) : Died (Steps Taken)  
  
(For P2 to P4, P6) : Mr.M.M.K.Alifudeen and  
Mr.M.Harri viswanath  
  
(For P5, P7 to P10) : Mr.T.SundarRajan

For Respondents : Mr.AR.L.Sundaresan  
Additional Solicitor General of India  
Assisted by  
Mr.B.Rabumanohar  
Senior Central Government Panel Counsel  
(For R1 & R2)

**COMMON ORDER**

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

Since the issues involved in the present writ petitions are one and the same and hence both the writ petitions were heard together and disposed of by this common order.



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2. The writ petition in W.P.No.18925 of 2000 has been filed to quash the order dated 05.09.2000 passed by the Appellate Tribunal made in FPA No:29/MDS/96 and the writ petition in W.P.No.18926 of 2000 has been filed to quash the order dated 04.09.2000 made in FPA No:25/MDS/96 dated 05.09.2000 passed by the Appellate Tribunal.

3. The writ petition in W.P.No.18925 of 2000 was filed by Mr.K.T.M.S.Mahmood and the writ petition in W.P.No.18926 of 2000 was filed by Smt.Kadijath Nooriya, wife of the petitioner in W.P.No.18925 of 2000. During the pendency of the writ petitions, both the writ petitioners were died. Thereafter, both the petitioner's legal representatives were substituted.

#### **The case of the petitioner in W.P.No.18925 of 2000**

4. Thiru.K.T.M.S.Mahmood was detained under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) has filed an appeal against the order of the Competent Authority, Madras dated 29.12.1995 passed under Section 7 (1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976



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(SAFEMA), whereby the house property No.1/5, Whannels Road, Egmore, Madras and amounts due from three Life Insurance Policies namely (a) Policy No.41844043 (b) Policy No.43196746 and (c) Policy No.43196747 were ordered to be forfeited.

5. Smt.T.M.J.Khadijath Nooria, wife of K.T.M.S.Mohamood, has filed an appeal against the order of the Competent Authority, Madras, dated 22.01.1996 passed under Section 7 (1) of the SAFEMA, whereby the three properties namely No.25, Subba Rao Avenue, Madras, share of interest and title in M/s.Broadway Textiles, Madras, along with the balance of Rs.55,191/- as on 31.03.1975 and 1480 gms of jewellery were forfeited.

6. The Competent Authority had initiated proceedings by issuance of Section 6 notice, why the property bearing No.1/5, Wallers Road, Egmore, Chennai should not be forfeited. The petitioner was detained during Emergency time in 1975. During Emergency time, as the fundamental rights have been suspended, there was no opportunity to the petitioner to question the detention



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order.

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7. The SAFEMA Act itself was challenged before the Hon'ble Supreme Court of India, but the validity was upheld subject to certain observations in the year 1994. The petitioner had given explanation including tax assessment records. The property at Waller's Road was purchased on 20.02.1959. Section 6(1) notice was issued on 13.07.1976. The proceedings were commenced only in the year 1995 i.e., from the date of first notice, the property has been acquired 17 years earlier and from the date of effective commencement of the proceedings i.e., 36 years earlier. In the interregnum period, the Constitutional validity of the Act was pending. The prejudice to the persons affected by reason of this extraordinary delay is not difficult to visualise. It will not be possible for him to preserve the primary as well as supporting evidence to show lawful acquisition. It will not be possible to preserve the primary as well as supporting evidence to show lawful acquisition. The assessment order of 1959/60 shows that the petitioner had explained the source for acquisition of the property. The same had been accepted and assessment order has been made. An affidavit from erstwhile partner of Nandanlal & Co. is produced, who affirmed the loan transaction. The other loan



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transactions, which were of the year 1959 or earlier, but reflected in the books accounts of the petitioner could not be established, as the lender died. The respondents have committed a serious error in thinking that the petitioner must explain the source for a sum of Rs.89,869/-. Sale deed dated 20.2.1959 recites that the consideration paid for only Rs.50,000/-, rest was taking over of the then existing mortgage debt. The petitioner had placed documentary evidence of assessment orders. They are supported by unimpeachable documentary evidence may even assessment orders, which have all become final. Briefly stated they are as under:

Income from sale of rings : Rs.4,450.00  
(This is accepted by the Respondent)

Loan from Khadijath Nooriya : Rs.1,500.00  
(This is accepted by the respondent)

Loan from K.T.M.S.Hameed : Rs.24,000.00  
(brother of the detenue) in 1958

8. It is unfortunate that both the respondents have overlooked several vital aspects. The petitioner had availed from K.T.M.S.Hammed a loan totalling to Rs.69,000/- of which the petitioner had transferred Rs.45,000/- to his wife Smt.Kadijath Nooriya to enable her to purchase a property at 45 and 46, Bundar Street, Madras. While dealing with the case of Smt.Kadijath Nooriya, particularly





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the acquisition of 45 and 46, Bundar Street, the Competent Authority and on appeal by Appellate Authority, both have come to the conclusion that this transaction to be valid and transfer of Rs.45,000/- by the petitioner was duly explained. When Income Tax authorities have accepted by scrutiny assessment made in the year 1959/60, the respondents after 37 years cannot doubt its validity without any material at all. The 4<sup>th</sup> source for the acquisition of properties is the loan of Rs.25,000/- from Nandalal & Co. The loan from Nandalal & Co., i.e., Rs.22,614/06 (Gross loan of Rs.25.000 - Interest of Rs.2,358/94) is fully explained. The loan from Mohammed Mustaffa Marikayar of a sum of Rs.5,000/- as well as Rs.25,000/- from Khupchand Vasumal have also been reflected in the account books, which were all duly audited and seen by Income tax authorities and subject matter of assessment. Thus, not only 50% of whole of the consideration has been fully explained and the order of confiscation of the property is patently unjustified.

9. The valuation of the cost of construction of Rs.42,525/- was made after detailed scrutiny. It has been accepted by the Wealth Tax authorities and assessment made on that basis. After 11 years during Emergency time, there was



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an attempt to reopen the valuation, without any notice or enquiry, a revaluation have been done, fixing the cost of construction at Rs.94,000/- and the authorities erred in confiscating the LIC policies, since the payments have been made from and out of the income earned by the petitioner from his income from the business at Srilanka. When the income is realised from outside India, the receipt of the income having been accepted by the Income Tax Authorities contemporaneously in 1958 and subsequent years, the same ought to be accepted by the respondents.

**The case of the petitioner in W.P.No.18926 of 2000**

10. The petitioner is not a detenue. She is not a convict for any offence under the Customs Act or FERA. She was sought to be proceeded against on the basis that she is a relative of K.T.M.S.Mohammed (the petitioner's husband who was detained under COFEPOSA). K.T.M.S.Mohammed (the petitioner's husband who was detained under COFEPOSA). Therefore, any property in the name of the petitioner as in this case, could not be dealt with or confiscated under this act even if they are illegally acquired. The Competent Authority before issuance of notice



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under Section 6 must have materials and he must be so satisfied, which satisfaction must be recorded in writing, before issuance of a notice under Section

6. If he so records, then the notice could only be issued to K.T.M.S.Mohammed, but the person in whose name the property stands like the petitioner must be sent a notice under Section 6(2) of the Act. Thus qua a relative, there could never be a notice under Section 6(1) but only a notice under Section 6(2). In such case, proceeding inevitably and as a rule, the detenu viz. K.T.M.S.Mohammed must also be a party. Admittedly, no notice under Section 6(2) has been issued to the petitioner herein. The property at Mu.Ka.Nallamuthu Street was acquired in 1965. The petitioner states that the property Mu.Ka.Nallamuthu Street was acquired in 1965 i.e. 11 years before the issuance of Section 6(1) notice and 30 years earlier to proceedings became active before Competent Authority. It will be impossible to expect any person to keep accounts and documents in support of the accounts for as long as 30 years and prove by evidence and affidavits. All aspects of the transactions after such a long number of years. The detenu was detained in 1975, the property have been acquired 16 years earlier by then. It is not proximate to the alleged illegal activity and detention order. Originally, a vacant plot of land was acquired in August 1966. The cost of acquisition was Rs.30,060/-. On this



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construction was made to the value of Rs.1,12,687/52. If the cost of acquisition of plot is fully explained from lawful source, then it cannot be forfeited. It is not illegally acquired property. The total investment including the site is  $\text{Rs.1,12,687.52} + 30,060.00 = 1,45,747.52$ . The source for Rs.59,621/52 was accepted by both the authorities and the balance to be explained is Rs.86,126/-. Source is part of the amount of Rs.50,000 received under National Defence Remittance Scheme, Rs.20,100/- received from selling the import entitlement certificate, Rs.14,701/- rental income from House at 46, Bundar Street, Madras, Rs.10,000/- as agricultural income from K.T.M.S.Hameed and others, who are the collecting agents for agricultural income and Rs.1634/79 being the bank interest.

11. The petitioner had explained the source and also identified the person, who had sent the money from outside India. The authorities under the Act have no jurisdiction to enquire how and what source the person who had sent the money at outside India. The assessments under the Income Tax Act for 1966/67 has been made under scrutiny assessment under Section 143(3) of the Act. Hence, the Board is bound to accept the amount received from NDRS Scheme as from a lawful source. Even if the income from NDRS Scheme and income from borrowal, it is



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not accepted, still the consideration is fully explained to an extent of more than

50%, such that Section 9 (1) of the Act becomes applicable to the property cannot be totally forfeited but the option to pay 1.1/5<sup>th</sup> time of the consideration should be given to the petitioner. Even income from Bundar Street alone is more than 50% of the consideration. Thus, there is no method by which the property could be confiscated without giving an option under Section 9 of the Act. The petitioner along with other wives of petitioner's brother (he had three brothers) had with them 22.92 acres of coconut thoppu in Keelakarai. They are properly maintained, order shown to I.T. authorities and accepted by them. The Ledger folios have also been produced. The Purchase of site alone was a sum of Rs.33,060/-. The amounts drawn from Magestic Motors, who are the Rent Collecting Agent for Bhandar Street from time to time were putting the amount into the account of K.T.M.S.Mohammed after accumulation Rs.25,000 withdrawn from K.T.M.S.Mohammed and deposited with IOB in the name of Nooriya, deposited on 15.02.1996. The property purchased on 25.08.1966. As regards the amounts realised by jewellery, the petitioner has clearly explained their source. K.T.M.S.Mohamood had pledged his wife's jewells on 12.07.1947 and obtained a loan of Rs.9,000/- from Indo Commercial Bank, Ramnad.



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12. The learned counsel appearing on behalf of the petitioner in W.P.No.18925 of 2000 would submit that the forfeiture notice, which is a stereotype notice and no reasons have been recorded in writing as mandatorily prescribed under Section 6 of the Act. The Competent Authority has not any enquiry under Section 18 of the Act or even otherwise has not recorded any reasons in writing to believe that the properties have been acquired from illegal source. The petitioner has been declaring all such incomes and has assessed the same to Income Tax from the year 1947. No such reasons have been recorded in the Forfeiture notice. The Competent Authority cannot simply put the burden on the Person affected to prove all his income sources after 39 years. Therefore, the Forfeiture notice itself is bad in law and the entire proceedings pursuant to the 6(1) notice are vitiated and liable to be quashed.

13. The learned counsel appearing on behalf of the petitioners, to strengthen his contentions, has relied upon the following judgments:

(a) In the case of ***Fatima Mohd Amin (dead) through LR's Vs Union of India and another reported in (2003) 7 Supreme Court Cases 436***, the Hon'ble



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Supreme Court has held that when the notices under Section 6(1) does not disclose existence of any link or nexus between the property sought to be forfeited and the illegally acquired money of the detenu under COFEPOSA Act, the impugned orders of forfeiture cannot be sustained.

(b) In the case of *Aslam Mohammad Merchant Vs. Competent Authority and others reported in (2008) 14 Supreme Court Cases 186*, the Hon'ble Supreme Court has held that for forfeiture of property in terms of NDPS Act, a direct nexus/link is necessary between the property sought to be forfeited and the properties illegally acquired, income etc., derived by way of contravention of the act and also that before actual order of forfeiture is passed, issuance of a show cause notice is essential so as to fulfil the requirements of natural justice.

14. The learned counsel for the petitioner would submit that the House property of Petitioner at 1/5, Whannels Road was purchased by way of a registered Sale Deed dated 20.2.1959, for a total Sale consideration Rs. 82,000/-, Stamp Duty and other Expenses Rs.6,939/-. The source of income for purchase is



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Sale of Rings : Rs. 4,450.00

Loan from Nandlal & Co-25,000/-

less interest 2385.94 : Rs. 22,614.06

Amount received from  
K.T.M.S.Hamid : Rs. 24,000.00

Amount received from  
T.M.J.Khadijth Nooria : Rs. 1,500.00

Total : Rs. 52,564.06

15. Remaining Rs.38,000/- Vendor's loan with the Bank of Mysore agreed to be repaid by the 1<sup>st</sup> Petitioner/Person Affected. The 1<sup>st</sup> Petitioner/Person Affected gave a detailed explanation about the loans availed. He would further submit that after purchase of the said property, the 1<sup>st</sup> Petitioner/Person Affected was running a lodge in the name of Peoples Lodge and generated income from the same from November 1959. In the year 1963 to 1965, by incurring Rs.42,525/-, renovated the building. A loan of Rs.40,000/- availed by the 1<sup>st</sup> Petitioner from the Egmore Benefit Society on 6.7.1964 for additional construction. Therefore, Construction cost loan was repaid from the income generated from the lodge and other immovable properties. The Competent Authority relied on a Valuation Report of the I.T Department dated 15.3.1977 and calculated the construction cost as





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Rs.94,000/-. The petitioner gave a detailed reply dated 14.11.1995. The report was not accepted and the cost of construction is only Rs.42,525/- which was accepted by the income Tax and Wealth Tax authorities. Though the Appellate Tribunal admitted certain amounts as legal source, overall rejected the claim of the petitioner.

16. The 1<sup>st</sup> Respondent simply rejected all the sources of income by its order dated 29.12.1995 and forfeited the properties against which an Appeal was preferred before the 2nd Respondent who, after admitting certain amounts as legal source, overall rejected the claim of the Petitioner by the impugned order dated 5.9.2000.

17. The learned counsel for the petitioner further would submit that the petitioner in his I.T. Returns also declared that he borrowed Rs.69,000/- from his brother Mr.K.T.M.S.Hamid on several dates and also declared purchase of the subject property at 1/5 Whannels Road subject to mortgage. Also declared that Rs.45,000/- given as Mehr gift to wife Mrs.Khadijath Nooria. The liability of



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Rs.38,000/- to the Bank of Mysore, at Madras was also declared.

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18. The findings of the 2<sup>nd</sup> respondent is illegal and perverse. The respondents failed to see that the petitioner was a businessman and it is general practice to avail short term hand loans and to repay the same and go for loans with lesser interest. An order passed by the Income Tax Appellate Tribunal in ITA No.2418/MDS/74-75 for the AY 1972-73, the sum of Rs.55,000/- has been accepted by the Appellant Tribunal as the income from the partnership firm business at Ceylon. In such circumstances, the Respondent ought to have held the premia paid for the Insurance Policies as legal.

19. The learned counsel for the petitioner would submit that the Respondents have not given a valid notice under Section 6(1) of the Act, with reasons recorded in writing. Therefore, there is no burden over the Person affected to prove the source of income under Section 8. The petitioner had given all the necessary proof and details substantiating the income along with the statements and IT returns and discharged his burden. The burden of proof to prove the contrary. Therefore, shifted to the Respondents who failed to discharge the same.



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21. The petitioner has sufficiently placed all the materials to establish the sources of income for the subject property and the burden therefore shifted to the Respondents who failed to disprove the same. Therefore, the writ petition is to be allowed.

22. Mr.AR.L.Sundaresan, learned Additional Solicitor General of India would submit that it was found that the petitioner was in possession of certain movable and immovable and immovable properties purchased out of illegal sources, the petitioner was a detinue under COFEPOSA and hence, the foundational facts for invoking SAFEMA was very much available. There was no



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evidences placed by the petitioner to prove licit sources of income. He would submit that the house property in Egmore was acquired in 1959 for Rs.88,939/-, subsequently Rs.42,525/- of further construction in 1963-64 and 1964-65. Thus, the total investment comes to Rs.1,31,464/-. Assistant evaluation officer evaluated if the construction is to be newly built, it will cost around Rs.94,000/- as against Rs.42,000/- claimed by the petitioner and the petitioner has not provided any information to justify that contention. The additional construction was done by procuring loan of Rs.40,000/- from Egmore benefit society. The petitioner claims that it was repaid out of the rental income from that very same house property, which he has constructed. Therefore, the Tribunal found that the Competent Authority has *prima facie* case, where the rental income from an illegally acquired property cannot be held to be from a legal source. He would submit that sufficient and full opportunity was provided and availed by the person against whom the proceedings were initiated. There was absolutely no explanation for any lawful source of income for the investment that has been made. The petitioner took 19 years to show income, therefore the person affected cannot take a shelter under the procedural means. Burden of proof lies on person affected, who has been issued notice. He would submit that is a person is unable to discharge the burden of proof



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placed upon him. If, *pima facie*, the link between the ill gotten wealth and the property, which is proceeded against is established then as per paragraph 44 of the judgment of Attorney General of India case, the burden will shift on the notice to establish the fact that the property has been acquired through lawful sources and provide satisfactory explanation for the same. Once the above events have taken place and have become final, forfeiture of property is a consequence if the link between the ill-gotten wealth and the property is established. The Competent Authority and the Appellate Tribunal have carefully scrutinised all the materials that were placed before them and have passed the order of forfeiture. Therefore, the present writ petitions are devoid of merits and deserves to be dismissed.

23. We have considered the submissions made on either side and perused the materials available on record.

24. It is seen from the records that one Mr.K.T.M.S.Mahmood was detained under COFEPOSA. Invoking Section 2(2) (B) of SAFEMA, 1976 as the detenu was found to be in possession of certain movable and immovable properties acquired through illegal means. Therefore, a notice under section 6 (1) of



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SAFEMA was issued to the person affected on 13.07.1976. With regard to (i) The property bearing No.1/5, Whannels Road, Egmore, Madras acquired in 20.02.1959 and (ii) 3 Life insurance policies bearing policy numbers 41844043, 43196746, 43196747 were attached. In the meantime, the writ petition filed by the one Tmt.Khadijath Nooria, the wife of the petitioner herein filed a Writ petition in W.P.No.3445 of 1977 against the proceedings and the proceedings were stayed. The writ petition was dismissed on 18.07.1994 and therefore, the proceedings continued. Thereafter, adjudication was conducted and an order was passed under Section 7 (1) of the Act by the Competent Authority vide order dated 29.12.1995 to forfeit the above properties, finding that there were nothing to substantiate the investments were made through legal sources. The petitioner herein filed an appeal against the order passed in 29.12.1995 and the Appellate Tribunal confirmed the order of the Competent Authority. Challenging the above said orders of the Competent Authority and the Appellate Tribunal, the present writ petitions have been filed.

25. The claim of the petitioner that the property was purchased before initiation of proceedings by issuing notice under Section 6(1) of the Act is



unreasonable. During the course of arguments, a copy of the the reasons for the issuance of notice under Section 6 of the SAFEMA Act was also placed and the same is extracted hereunder:

*“Shri K.T.M.S.Mohamed is a detenu under COFEPOSA. He has been assessed to Income tax since the assessment year 1943-44. Yet he has not properly explained the source for the purchase of the property bearing door No.1/5, Whannels Road, Egmore, on 20.02.59 from B.V.Narayana Gupta and D.Vanganna Gupta for Rs.82,000/- according to the sale deed. The property stood mortgaged to one Shri Hazarimul Roopchand for Rs.42,000/- and to the Bank of Mysore for Rs.38,000/-. He therefore paid only Rs.2,000/- to the vendors. The property fetched a net annual income of Rs.9,495/-. Even at 15 times the annual net income, the value of the property works to about Rs.1,42,000/-. Apart from this, the mortgagees would not have advanced the full value of the property to the mortgager. At best, they would have given a loan to the extent of 50% to 60 of the value of the property. So a substantial amount of Rs.50,000/- to Rs.60,000/- has been understated. In other words, this amount should have been paid to the vendors in black. Be that as it may, even the admitted value of the consideration was met from withdrawals from K.T.M.S.Hameed, hi brother, sale of rings to the tune of Rs.4450/-, sale of jewels to the tune of Rs.9590/- and hundi loan of Rs.25000/- from Nandalal & Company, Hundi*



*Bankers, Bombay. The rings were said to have been brought from Ceylon and sold in Bombay. There is no evidence for having brought the rings from Ceylon. The alleged sale of jewels to the tune of Rs.9590/- was added to the income returned by the Income Tax Officer, but, however, it was deleted by the A.A.C. The amount due to Bank of Mysore was discharged in the subsequent year. Also, the amount borrowed from K.T.S.Hameed was also discharged in the subsequent year. These loans were discharged with alleged hundi borrowals made in the subsequent year. But later, all the hundi loans were admitted to be bogus and the assessee offered those hundi loans as income from undisclosed sources.*

*During the account years 63-64 and 64-65 some additions were made to the property. The total area was 5973 sq.ft., out of which 2390 sq.ft. was covered with A.C. roofing. The cost of improvement was said to be only Rs.42,525/-. This works out to about Rs.7/- per sq.ft. on the average which is very much on the low side. The cost of R.C.C. construction of 2583 sq.ft. works to about Rs.89575/- at Rs.25/- per sq.ft. and the cost of A.C. roofing works to about Rs.35850/- at Rs.15/-sq.ft. So the total cost comes to about Rs.1,25,000/-, as against which he has accounted for only Rs.42,525/-. So about Rs.80,000/- has been spent outside the accounts on addition to the property. Even the admitted cost was met from the borrowals made from Egmore Benefit Society and*





*other borrowals which were later discharged out of the income from the very same property.*

*For purchasing the property, he initially borrowed a sum of Rs.25,000/- from the bankers Nandalal & Co., Bombay. Later, he offered these loans as income from undisclosed sources. Subsequently, he brought into account some hundi loans and discharged the liabilities incurred for purchasing his property. The subsequent hundi loans were also offered in the later years as income from undisclosed sources. So the property was purchased with income from undisclosed sources and therefore, the property should be held as an illegally acquired property. The liability incurred for improvement made to the building was ultimately discharged for improvement made to the building was ultimately discharged with income from the very same property. So the addition made to the building should also be treated as an illegally acquired property.*

*In the circumstances, the entire property bearing door No.1/5, Whannels Road, Egmore, should be treated as an illegally acquired property and so it is liable to be confiscated under Section 6(1) of the Act. He has stated in his letter dated 27.10.1971 filed with I.T. that he had brought a sum of Rs.55,000/- from Ceylon when he rated from that country. There was no corroborative evidence for this. This amount should also be treated as an illegally*



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*acquired property.*

*He has contributed a sum of Rs.81,310/- in all by 31.3.75 towards L.I.C. Premium. This may be related to the amount said to have been brought from Ceylon. This is liable for confiscation u/s 6(1) of the Act. Issue notice accordingly.”*

26. It is seen from the reason for issuance of notice under Section 6(1) of SAFEMA that the petitioner was in possession of certain movable and immovable and immovable properties purchased out of illegal sources, the petitioner was a detainee under COFEPOSA and hence, the foundational facts for invoking SAFEMA was very much available. Therefore, the contentions of the petitioner in the entire proceedings is bad in law and is not acceptable. It is made clear that a notice under Section 6 was issued as a result of investigation made under Section 18 of the Act.

27. With regard to the house property, the Appellate Tribunal made a finding as follows:

*:7. The house property No.1/5, Whannels Road, Egmore, Madras, was acquired in 1959 for Rs.88,939/-. Subsequently, the appellant claims to have spent Rs.42,525/- on further*



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*construction in 1963-64 and 1964-65. Thus, the total investment comes to Rs.1,31,464/-. The appellant had claimed before the Competent Authority that he had mobilised Rs.90,564/- for the initial purchase and Rs.60,000.00 for subsequent construction.*

*8. According to the information furnished by the appellant to the Competent Authority, the sources of Rs.1,50,564.06 were as follows:*

- (i) Sale of Rings : Rs.4,450.00*
- (ii) Loan from firm, Nandlal & Co- Bombay  
(Net of interest-Rs.22,614.06) :Rs.25,000.00*
- (iii) Loan from K.T.M.S.Hamid,  
brother :Rs.24,000.00*
- (iv) Loan from T.M.J.Khadijth Nooria : Rs. 1,500.00*
- (v) Loan from Mysore Bank :Rs.38,000.00*
- (vi) Loan from Egmore Benefit  
Society :Rs.40,000.00*
- (vii) Property rent collection :Rs.15,000.00*

28. The Appellate Tribunal also discussed about the source of payment in Paragraph 12, 19, 20 and 21 of its order and the same is extracted hereunder:

*“12. Before advertng to the contentions of the appellant and*



*the submissions of the respondent, we would like to make it clear that the sources of repayment of loans as well as the sources of repayment of loans are very relevant for determining the legality or otherwise of the acquisition of the property. Otherwise, the smugglers and foreign exchange manipulators may raise the loans from perfectly legal sources in the first instance and get away by returning the loan from their illegal earnings.*

*19. We agree with the Competent Authority that the loan of Rs.1,500/- from the wife on 26.11.1958 cannot be accepted as genuine in considering the claims that the appellant had gifted Rs.45,000/- to her on 26.12.1958 and the house property No.1/5, Whannels Road, was purchased in February 1959. The introduction of wife's name as lender seems to be an attempt to account for the amount invested by the appellant out of his own illegal sources.*

*20. Thus Rs.80,500/- (being the loans of Rs.25,000/- from Nandlal & Co Rs.24,000/- from K.T.M.S. Hamid, Rs.1,500/- from wife, Rs.5,000/- from Md.Mustafa Marakyar and Rs.25,000/- from Khubchand Vasumal) for repayment to the Bank of Mysore) which is more than 50 per cent of investment in the original property is clearly held to be from illegal sources. Even the story of sale of ring for Rs.4,450/- is full of inconsistencies and is not possible to accept. Since more than fifty percent of the investment in the original house*



*property No.1/5, Whannels Road, is found to be from illegal sources, the rental income from the same property is also held to be illegal. Therefore, rental income from the same house for additional construction or for repayment of loan of Rs.40,000/- claimed to have been taken from the Egmore Benefit Society for the additional construction during 1963-64 and 1964-65 out of that rental income is also held to be from the illegal sources.*

*21. The Competent Authority was, therefore, justified in ordering the forfeiture of the house property No.1/5, Whales Road, Egmore, Madras.”*

29. The learned counsel for the writ petitioner in W.P.No.18926 of 2000 would submit that the petitioner is a relative of the person affected, was served with the Notice dated 27.05.1976 under Section 6(1) of the Act. The husband of the petitioner Mr.K.T.M.S.Mahmood is a businessman and an Income Tax Assessee and having income in India and from Ceylon and also from various Immovable properties and joint family properties, which have been duly assessed to tax periodically from 1947. There are no reasons specified in the Notices issued under Section 6(1) to believe that the subject properties in the notices are acquired from tainted monies or that the said K.T.M.S. Mahmood was involved in any violations of FERA or any other law. There is no nexus or link specified in the



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Notice between subject properties sought to be forfeited. It is seen from records that the Forfeiture Notice dated 27.5.1976 under Section 6(1) of the SAFEMA Act has been issued with respect to the following three items:

*a) Immovable Property in the name of the 1<sup>st</sup> Petitioner at No.25, Subba Rao Avenue, Madras.*

*b) Share of interest and title including capital and current account balance in M/s. Broadway Textiles, Madras value Rs.1,78,407/-*

*c) Jewellery value Rs.68,938/-*

*Total Rs.3,02,536/-*

30. The learned counsel appearing for the petitioner would submit that the vacant land in respect of the property in question measuring 4198 Sq.ft was purchased by the 1<sup>st</sup> Petitioner by way of a registered Sale Deed dated 25.8.1966 for a consideration of Rs.30,000/-. The investment for purchase of vacant land was Rs.33,060/- including the stamp charges. The construction cost was Rs.1,12,687.52. Constructions commenced from 30.11.1966 to 10.9.1969. The total investment in the Subba Rao property was Rs.1,45,747.52/-. The said property has also been assessed to Wealth Tax by way of the Assessment Order of the Wealth Tax Officer for the Assessment year 1968-69. There is not even a single



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allegation in the 6(1) notice that establishes a link or nexus between this property and the alleged illegal income of Late K.T.M.S.Mahmood, who was a detainee. In fact, the Petitioner brought to the notice of the Competent Authority that they have not been made aware about the material available and the information on which notice has been issued.

31. It is seen from the records that the source of investment for the purchase of the property at Subba Rao Avenue has been declared by the 1<sup>st</sup> Petitioner as follows:

- a. Amount received under National Defence  
Remittance Scheme : Rs. 50,000.00
- b. Amount received from selling Import  
Entitlement Certificate : Rs. 20,100.00
- c. Amount drawn out of rental income  
from No. 45-46, Bunder Street, Madras : Rs. 74,322.00
- d. Amount of loan received back from  
Jamal Mohd Lent out of past income : Rs. 13,000.00
- e. Amount received from K.T.M.S.Hamid  
& Bros Out of agricultural income  
of Khadijath : Rs. 10,000.00
- f. Amount received as Bank Interest : Rs. 1,634.00

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Total : Rs. 1,69,057.00  
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32. The learned counsel appearing on behalf of the petitioner would submit that the Bunder Street properties are not subject matters of 6(1) notice, the respondents gone to the extent of examining the source for those properties, which is without jurisdiction. The Competent Authority has observed that the total the total cost of acquisition of Rs.1,45,747.32/- only an amount of Rs.59,621.52/- is through source acceptable as legal. Therefore, this amount is less than 50% of the total cost and thus, the entire property at Door No. 25, Subba Rao Avenue, is to be treated as having unexplained sources and to be forfeited. If the rental income of Rs.74,322.52/- from the Bunder Street properties are accepted as genuine, this will be more than 50% of the value of the Subba Rao Avenue property and Section 9 of the SAFEMA will become applicable.

33. The contention of the petitioner is that a notice under Section 6(1) cannot be issued to a relative. This contention is not tenable. According to Section 6(1) of the Act, the notice can be issued to any person, to whom, the SAFEMA applies. The petitioner is being wife and therefore, relative of the detinue, the





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petitioner is a person affected in terms of Section 2(2)(c) of the SAFEMA Act.

Therefore, the Competent Authority was fully justified in issuing notice under Section 6(1) to the petitioner. Further, Section 8 of the SAFEMA Act clearly lays down that 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. Therefore, the petitioner cannot take shelter behind the provisions of Section 18 of the Act or the reasons recorded. She had over 19 long years to prove the source of investment before the Competent Authority. The Appellate Tribunal elaborately discussed the factual findings of the Competent Authority in F.P.A.No.25/MDS/96 dated 04.09.2000 and the same reads as under:

*“21. Thus, the appellant failed to prove that more than 50 per cent of investment in the house property No.25, Subba Rao Avenue, Madras came from her own sources. The natural presumption is that her husband provided the fund. Under the circumstances, we see no reason to differ with the Competent Authority that the house property is illegally acquired and has to be forfeited under the SAFEMA.*

*22. The next property ordered to be forfeited is the share of interest and title including capital and current account in M/s.Broadway Textiles, Madras. The appellant claims to have invested Rs.35,000/- in M/s.Broadway Textiles in December 1966. Prior to that, on 31.8.1966, she claims to have invested Rs.20,000/- in*



*another firm, M/s Decent Cycle Co. The appellant claims that she withdrew this amount in December 1966 to invest in M/s.Broadway Textiles. About the sources of Rs 20,000/- initially invested on 31.8.1966 and that of additional Rs.15,000/- to mobilise Rs 35,000/- invested in December, 1966, she claimed before the Competent Authority that she had received Rs.17,000/- from K.T.M.S. Hamid and Brothers on account of agricultural income and the balance, which is naturally Rs.18,000/-, came from the receipt of Rs.50,000/- from Meera Leebai Marikar under the NDR Scheme.*

*23.We have already rejected the story of agricultural income and the genuineness of gift of Rs 50,000/- from Meera Leebai Marikar. The Competent Authority was therefore justified in treating the sources of investment of Rs.35,000/- in M/s Broadway Textiles as illegal. We see no reason on to interfere with the order of the Competent Authority forfeiting the interest and title including the balance in the capital and current account in M/s.Broadway Textiles, Madras.”*

34. In the concluding paragraph, the Competent Authority has stated that the affected person has no evidence to support her claims made before the Appellate Tribunal regarding forfeited property.



35. The Tribunal, while confirming the order of the Competent Authority, adjudicated the facts independently with reference to the documents available on record. The facts has been elaborately adjudicated by the Tribunal along with the assessment order passed by the Competent Authority. The findings of the Tribunal in F.P.A.No.29/MDS/96 dated 05.09.2000 are as follows:

*“21. The Competent Authority was, therefore, justified in ordering the forfeiture of the house property No.1/5, Whales Road, Egmore, Madras.*

*22. The other property ordered to be forfeited by the Competent Authority is the amount due from three Life Insurance Policies. The appellant paid premia of Rs.89,869/- from all the three policies during the period 09.11.1964 to 20.01.1976.*

*23.Regarding the legality of the sources of Rs.89,869/-, the appellant's contentions are that (a) he had disclosed the sources to the Income Tax Department and portion of the same had come from Sri Lanka and (b) the Income Tax Department had issued a circular that the funds received from Sri Lanka have to be accepted in the Income Tax assessment even though the particular mode of remittance may not be proved or may be illegal.”*

36. The Tribunal concluded by stating that the nexus between the forfeited properties and the detinue are clearly established and consequently, confirmed the



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orders passed by the Competent Authority.

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37. We are of the considered opinion that the procedures as contemplated under Section 6(1) of the SAFEMA Act are complied with by the authorities. Under Section 8 of the SAFEMA Act, the burden of proof lies on the person affected.

38. In the present cases, neither the affected person nor their legal heirs including the petitioners failed to discharge the burden, which resulted in forfeiture of the properties under the provisions of SAFEMA Act. 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 petitioners have also failed to prove that more than 50% of the sources of income is a legal source and therefore, they are not entitled to seek any relief under Section 9 of SAFEMA Act.

39. The power of judicial review 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



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the decision itself.

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40. 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. We do not find any infirmity in respect of the orders impugned.

41. Consequently, the impugned orders are confirmed and both the writ petitions are dismissed. No 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, 1976,

UTSAV, No:1, 64/1, G.N.Chetty Road, Chennai – 600 017.

2.The Appellate Tribunal for Forfeited Property,

4<sup>th</sup> Floor, Lok Nayak Bhavan, Khan Market,

New Delhi – 100 002.



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W.P.Nos.18925 & 18926 of 2000

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

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**30.01.2025**