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WP.Nos.19319 and 19327 of 2000

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2025

PRONOUNCED ON : 30.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

and

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.P.Nos.19319 and 19327 of 2000
and WMP.Nos.28001 & 28008 of 2000
33395 & 33396 of 2001

Fathima ... Petitioner in WP.No.19319 of 2000

K.P.Abdul Kadar ... Petitioner in WP.No.19327 of 2000

... Vs ...

Competent Authority
64/1, G.N.Chetty Road, SAFEM (FOP) Act
T.Nagar, Madras – 17.

2. Appellate Tribunal
4th Floor, Loknayak Bhavan
Khan Market,
New Delhi – 3.

... Respondents in both cases

PRAYER : Writ petition filed under Article 226 of Constitution of India

to issue a Writ of Certiorari to call for the records made in FPA.Nos.11 &



WP.Nos.19319 and 19327 of 2000

12/MDS/98 respectively dated 18.08.2000 on the file of the second respondent and quash the same.

For Petitioners : Mr.B.Kumar, Sr.Counsel
for Mr.R.Loganathan
and Mr.S.Ramachandran

For Respondents : Mr.AR.L.Sundaresan
Addl. Solicitor General of India
Assisted by
Mr.S.Diwakar, SPC in WP.No.19319/2000
Mr.B.Rabu Manohar, SCGPC
in WP.No.19327/2000

COMMON ORDER

(The Order of the Court made by Justice **M. JOTHIRAMAN**)

Under assail is the order dated 18.08.2000 passed in FPA.Nos.11 & 12/MDS/98 on the file of the Appellate Tribunal / second respondent. The unsuccessful appellants before the Appellate Tribunal have preferred the present writ petitions before this Court.

2. The brief case of the petitioners is as follows :-

(i) The petitioner in WP.No.19327 of 2000 K.P.Abdul Kadar was employed for more than 12 years from 1976 onwards at Dubai. Smt.K.Fathima is the wife of K.P.Abdul Kadar, she is the writ petitioner



in WP.No.19319 of 2000. It is a grave injustice that all the properties have been directed to be forfeited merely because the brother of the petitioner/Abdul Kadar viz., Thiru.Abdul Majeed was a detinue under COFEPOSA for contravention of Customs Act. Out of earning from Dubai the petitioner remitted money through banking channel in his account in India during 1987-1988. All the money remitted through lawful channel from a place outside India. Only from the money which were remitted through banking channel in the petitioner's bank account in India was utilised for acquisition of properties in India.

(ii) Initially notice was issued under Section 6(1) of the Act in F.No.OCA/MDS/2622/86 dated 18.02.1986 proposing to confiscate only one property. The notice described the property as 1/6th share in the property situated at Block No.20 Ward No.21, S.no.585 Panniankara of Calicut Corporation. The aforesaid property was owned by the petitioner/Abdul Kadar and five other relatives.

(iii) While the matter was pending the first respondent issued supplementary notice on 29.11.1990, in which item No.1 referred to property i.e., 4 rooms with upstairs situated at S.M.Street, Calicut, the



value is shown as Rs.8 lakhs and two other properties were also mentioned in the notice. Notice under Section 6(1) stated that the property was jointly owned by the petitioner and his brother K.P.Abdul Majeed, the petitioner replied and stated that how the property was acquired in respect of all the three items. During the course of proceedings, the Competent Authority made an enquiry through a nodal agency and purported to get particulars of the salary paid in Dubai from 1979 to 1988. The Competent Authority showed that 2,60,700 Dhs was the salary paid to the petitioner. The petitioner requested to furnish the details of the same, without furnishing the same the Competent Authority come to the conclusion that the property was illegally acquired and ordered confiscation in respect of all the properties excluding the property mentioned as item No.1 in Section 6(1) notice issued in the year 1986. The Appellate Authority had on a total non consideration of the points urged issues put-forth, evidence on record had come to the conclusion that the appeal is to be dismissed. Aggrieved over the same, the present writ petitions came to be instituted.

3. The learned Senior Counsel appearing for the petitioners would submit that there is a violation of principles of natural justice by referring



to the documents in any of the proceedings have not been communicated to the petitioner at any point of time. The entire proceedings connected with the issuance of the so called supplementary notice on 06.01.1990 is totally without jurisdiction. He would submit that Section 6(1) notice requires that the Competent Authority must have reason to believe which reason must be recorded in writing. The very issuance of notice under Section 6(1) itself is invalid on the face of record, since the petitioners are not a detainee and they are not relatable to the illegal activities of Thiru.K.P.Abdul Majeeth. As such, records are available, then the notice could only be issued to detainee K.P.Abdul Majeeth, but not the person in whose name the property stands as like the writ petitioners, the notice must be under Section 6(2) of the Act. No notice under Section 6(2) of the Act has been issued on the petitioners.

3(i) The learned Senior Counsel would submit that the whole of the proceedings is in violation of principles of natural justice, ex facie vitiated by bias. The petitioners have not provided with any opportunity to rebut the evidence put forth by the Competent Authority. The petitioners have requested the evidence so gathered, the letter received from the Foreign Country and the details of the enquiry made in the



Foreign Country, but the same was not furnished to the petitioners.

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3(ii) The learned Senior Counsel would further submit that the petitioner had remitted monies from the place outside India from the lawful banking channel and the remittance available in the Bank account (at his NRE account) was utilised for purchase of the property. Further, the learned Senior Counsel would submit that both the authorities have failed to consider and appreciate the materials available on record viz., the first property building with four rooms in the ground floor and the first floor are lawfully acquired. Firstly, the sale consideration shown in the document is Rs.1.5 lakhs, the explanation for getting an amount of Rs1.5. lakhs is a sum of Rs.2 lakhs received from M/s.Rosy a readymade garment retailer by way of cheque. The said amount was received as a advance for letting the property in the ground floor M/s.Rosy readymade garments retailer. The Competent Authority from the investigations had come to the conclusion that from 1979 to 1988, the petitioner/Abdul Kadar was paid a salary of Rs.2,60,700 Dhs, at the rate of exchange then prevailing i.e., Rs.3.55 per Dhs., the amount earned at Dubai worked out to Rs.9,25,485/-. The admitted payment of Rs.2 lakhs by M/s.Rosy to be added, then the total amount comes to Rs.11,25,485/-. This enough



funds are available for the purpose of acquisition of the first property.

The petitioners have requested to provide cross-examination of the person who had given the information to the Competent Authority, but the facility of the cross-examination was not available.

3(iii) Further, the learned Senior Counsel would submit that the authorities ought to have seen that the consideration of more than 50% is in any event explained and therefore ought to have invoked the provisions of Section 9(1) of the Act and directed the retention of the property on the stipulation provided under the section. The payment of Rs.10 lakhs was paid to the tenant a Doctor who runs a Clinic in the property. This amount was paid him to give up his tenancy right in the properties.

3(iv) In fact, Section 6(1) of the notice proceeded to say that the value of the property at Rs. 8 lakhs, the petitioners were never put on notice by the Competent Authority to explain source of acquisition of the property is a sum of Rs.12 lakhs. The Authorities have failed to consider as regards the other property which is a Coconut garden acquired for a sum of Rs.39,000/- in the year 1984. The Appellate Authority erred in



stating that when the petitioner/Abdul Kadar was employed in Dubai he would have spent 3/4th of his income for his family and therefore would not be able to save more than 1/4th the amount. It has also overlooked that the petitioner worked in Dubai from 1976 to 1979, the earnings during this period has been omitted to be taken into consideration. Thus the order of the Appellate Tribunal suffers from errors of law and fact apparent on the face of the records.

3(v) To strengthen his contentions the learned Senior Counsel has placed reliance on the following decisions :-

(i) ***AIR 1961 SC 1684 – Guru Datta Sharma v.***

State of Bihar

(ii) ***Division Bench Judgment of the Kerala High Court in WA.No.1645 of 2007 (E) dated 24.02.2009 - Kannancherry Abdu v. The Competent Authority, Chennai-17 and others.***

(iii) ***2012 SCC Online Mad 1558 – The Competent Authority, Chennai -17 V. A.Sowkath Ali and others.***

(iv) ***(2007) 2 SCC 510 – P.P.Abdulla and***



another v. Competent Authority and others.

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4. Per contra, Mr.AR.L.Sundaresan, learned Additional Solicitor General of India appearing for the respondents would submit that the brother of the writ petitioner Mr.Abdul Majeed suffers detention under COFEPOSA. Smt.Fathima is the sister-in-law of the detenu and is attracted as a person in terms of Section 2(2)(c) of the Act. The property jointly held by the petitioners herein. Accordingly a notice under Section 6(1) of the Act dated 07.01.1998 was issued to the petitioner proposing forfeiture of the property. The Competent authority while passing the forfeiture order 27.03.1998 under Section 7(1) clearly discussed about the sources claimed by the petitioners and finally held that the acquisition of the property came out of maintained sources and accordingly held liable for forfeiture. The petitioners could not establish the licit sources of income for acquisition of the properties. The first respondent was right in treating those properties as illegally acquired and ordered for forfeiture under the Act. The Appellate Tribunal had fully observed the principles of natural justice and passed the order dated 18.08.2000. After elaborate discussion in respect of each contentions, the claim involving the provisions under Sections 9(1) of the Act in the



present proceedings cannot be accepted. Since, the benefit under Section 9(1) of the Act, the petitioners should have explained the licit sources more than 50% of the total investment. But the petitioner failed to establish the lawful sources as required under the law.

4(i) He would submit that the petitioners claim that an amount of Rs.10,50,000/- to the property for taking possession, as the possession of the property was with the 3rd party and he had paid an amount of Rs.10,50,000/- to get the possession of the property. Therefore, the petitioners have paid a total amount of Rs.12,00,000/- for possession of the property.

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

6. It is seen from the records as against the order of the Competent Authority dated 27.03.1998 passed under Section 7(1) SAFEMA of the Act, two appeals were filed by Thiru.Abdul Kadar in FPA.No.12/MDS/98 and Smt.Fathima in FPA.No.11/MDS/98 before the Appellate Tribunal for Forfeited Property, New Delhi. Whereby two properties namely (i) 4 rooms with upstairs building situated at Calicut



and (ii) 13.92 cents of Coconut Garden in Panniyankara Village, Calicut were directed to be forfeited. It is not in dispute that the brother of the writ petitioner/Abdul Kadar viz., K.P.Abdul Majeed was detained under the provisions of COFEPOSA. Thiru.K.P.Abdul Kadar is the brother of detinue and as such is attracted as a person by Section 2(2)(c) of the Act.

7. It is seen from the records that the petitioners have taken a stand that the properties were not illegally acquired properties and they were acquired with the legal earnings of Abdul Kadar from the salary received by him during the period employed in Dubai from the year 1979 to 1988 and also through the money earned by working overtime and by doing part time business and that a part of amount was paid with an advance received from M/s.Rosy. A notice under Section 6(1) of the Act was issued on 18.02.1996 proposed forfeiture of the properties stand in the name of Abdul Kadar and five others. With regard to 1/6th share in the property situated in Block No.20, Ward No.21, Survey No.585 at Panniyakara of Calicut Corporation. Thiru.Abdul Kadar submitted his reply on 30.03.1986, in the meantime, the investigation further reveals that Thiru.Abdul Kadar was in possession of some other immovable properties in the reasons recorded in writing to have been acquired



through illegal sources, accordingly a supplementary notice dated 29.11.1990 under Section 6(1) of the Act proposing the forfeiture of the properties (i) 4 rooms with upstairs building No.10/17/18/19 of Calicut Corporation at S.M.Street, Calicut the value of the property is Rs.8 lakhs stands in the name jointly by Thiru.Abdul Kadar and his brother Abdul Majeed and (ii) 14 cents of Coconut Garden in R.S.No.21-28-731, Panniyakara village value of Rs.56,000/- and (iii) 1.20 acres of Coconut Garden in R.S.S.No.21-28-731 of Panniyakara Village, Calicut the value of the property is Rs.5 lakhs stands in the name of Thiru.Abdul Kadar and his brother Thriu.Abdul Majeed. In the case of proceedings, it was also held that one of the property in building No.10/17/18/19 of Calicut Corporation at S.M.Street, Calicut was held by Thiru.Abdul Kadar along with his wife Tmt.Fathima. Being the wife of Thiru.Abdul Kadar, Tmt.Fathima is attracted as a person in terms of Section 2(2)(c) of the Act, accordingly, forfeiture notice was issued to her on 07.01.1988. Smt.Fathima responded to the forfeiture notice vide her reply dated 18.01.1998.

8. The Competent Authority accepted the explanations tendered and evidences furnished with regard to the first property for



consideration is 1/6th share Thiru.Abdul Kadar in the property situated at Block No.20, Ward No.21, S.No.585, Panniyakara of Calicut Corporation acquired through legal sources. Accordingly, the same is not liable for forfeiture and further proceedings in respect of other property was dropped.

9. The property is claimed to have been purchased by Thiru.Abdul Kadar as per Doc.No.2284 of 1988 for the sale consideration or Rs.1,50,000/-. It is jointly assigned in the names of both the writ petitioners. It was contended the Abdul Kadar received a sum of Rs.2,00,000/- from M/s.Rosy as advance for the lease. Out of this said amount, the purchase consideration is said to have been paid. An amount of Rs.10,50,000/- was paid to a tenant i.e., M/s.P.Kuttan brothers towards good will for getting possession of the building, the petitioner/Abdul Kadar paid an amount from his NRE account. Thiru.Abdul Kadar was specifically asked to furnish the evidence regarding drawal of salary earning claimed from the part time business, bank account maintained in abroad and the remittance effected therefrom.

10. The learned counsel for the petitioner/Abdul Kadar stated that



the documents showing salary and savings abroad were lost in a huge fire that engulfed in February, 1995. This fact had been reflected in the Income Tax returns and was accepted by the Income Tax authorities for the loss sustained in the fire. Thus, no evidence was furnished, he made an attempt to get certificate from the Bankers abroad to show the deposits made by him, no such certificate was produced. Thereafter, the Competent Authority directed the nodal agency of the Government of India to verify the employment details and salary drawn by the Abdul Kadar in Dubai. On verification, it reveals that he was employed with M/s.Ali Akbar Bahadur from 06.03.1979 till June 1988 and his visa was cancelled in October 1988, during that time he was drawing a salary of Dhs.2000 from March 1979 to June 1981. Dhs.2300 from July 1981 to March 1983, Dhs 2500 from April 1993 to July 1987 and Dhs.2400 from August 1987 to June 1988. It reveals that the claim made by Abdul Kadar about the salary drawn is false and an opportunity was given to him to clarify the position. The learned counsel further explained that the total income claimed as Dhs.15000 was stated on a rough calculation and the documents evidencing the salary, deposit details etc were destroyed in the fire. The Competent Authority observed that Thiru.Abdul Kadar remitted the source amount in the years 1987 and



1988 as indicated below :-

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It is seen that Abdul Kadar had remitted the source amount in the years 1987 and 1988 as indicated below :-

<i>September 10, 1987</i>	<i>Rs.10,000/-</i>
<i>July 18, 1988</i>	<i>Rs.1,00,000/-</i>
<i>August 18, 1988</i>	<i>Rs.1,00,000/-</i>
<i>October 22, 1988</i>	<i>Rs.8,00,000/-</i>

As per the exchange rate of Rs.3.55 per Dh. prevailing at that time, the amount repatriated in rupees works out to the equivalent of Dhs.2,84,507. This would mean that over the years, Abdul Kadar would have saved this much of amount from his earnings at Dubai. AS per the Salary particular ascertained, the total emoluments drawn by him from his employer are detailed as below :-

<i>Duration earnings</i>	<i>Earnings (in Dhs.)</i>	<i>Months (in Dhs.)</i>	<i>Total</i>
<i>March 1979 to to June 1981</i>	<i>2000 28</i>	<i>56,000</i>	
<i>July 1981</i>	<i>2300 21</i>	<i>48,000</i>	



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to March 1983

April 1983 2500 52 1,30,000
to July 1987

August 1987 2400 11 26,400
to June 1988

2,60,700

11. From the above details, it is seen that the amount of foreign exchange repatriated as savings are far more than the total emoluments drawn by the petitioner/Abdul Kadar towards entire period of stay at Dubai. The Competent Authority observed that in overall consideration of the arguments made and the verification done, it is clear that though employed at Dubai, the salary drawn by the Abdul Kadar and any earnings from overtime allowance and part time business were grossly insufficient to make remittances into India to an extent of Rs.10,49,000/- (including Rs.39,000/- remitted allegedly in 1984). Thiru.Abdul Kadar had failed to substantiate the source of investment of the entire amount of Rs.12,00,000/- spent by him in acquiring the property under consideration, therefore, the property is held liable for forfeiture under the Act.



12. The Competent Authority observed with regard to 14 cents of coconut garden, Thiru.Abdul Kadar claimed that he had loaned an amount of Rs.39,000/- to his brother Thiru.K.P.Basheer in 1984, that amount was returned to him at the time of purchase of property, no evidence has been tendered by him about the return of amount by his brother. It is also noticed that he has not adduced any explanation for the source of this amount stated to have been remitted by him into his NRE account and held this property is also liable for forfeiture under the Act.

13. Yet another property put to notice is 1.20 acres of coconut garden, Thiru.Abdul Kadar claims that he was not in possession of any such property. But the records indicates that as on date of issue of notice dated 29.11.1990 he was in possession of 13.92cents of land, this property apparently is the same as stated supra. The notice for 1.20 acres of coconut garden is therefore not valid. Aggrieved over the order of the Competent Authority dated 27.03.1998 passed under Section 7(1) of the SAFEMA, the petitioners have preferred an appeal before the Appellate Authority for Forfeited Property, New Delhi.

14. The Appellate Tribunal held in paragraphs 9, 10 and 11 reads



as follows :-

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“9. The fact remains that the appellant has paid Rs.12,00,000/- in all for the building and the burden was on him "to establish that the property has not been acquired with the monies or assets provided by the detenu/convict or that they, in fact, did not or do not belong to such detenu/convict", as held by the Supreme Court in Attorney General of India Vs Amratlal Prajivani Dass AIR 1994 SC 2179. The appellant has produced evidence to show that he remitted Rs. 10,10,000/- to India between September 1987 and October 1988, which works out to Dhs.2,84,507, and taking exchange rate of Rs.3.55 per Dh., this amount falls far short of the consideration paid for purchasing the property and for obtaining possession. The total earnings of the appellant during his employment in Dubai was only Dhs.2,60,700, which he could not have remitted in full, in as much as the appellants would have spent at least 3/4th of the earnings for their maintenance at Dubai. At the most, the appellant



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would have saved only about Dhs.60,000 or 70,000 which may work out to about Rs.2 or 2.5 lacs. There is not even an iota of evidence let in by the appellant to prove that he was earning extra money by doing overtime work and extra business. The detenu brother of the appellant was also resident of Dubai. The preponderance of evidence leaves us with no doubt in our minds, that a major portion of the money, amounting to nearly Rs.10 lacs., was the money belonging to the detenu brother and the same was utilised in the purchase of the property.

10. The learned Counsel for the appellant strenuously contended that there was no requirement of law, that the appellant should not only prove the legal source of the funds but also prove the source from where the funds have been obtained from abroad. He contended that a property can be treated as illegally acquired, only if it is acquired in violation of the laws made by the Parliament and not if it is



acquired with funds obtained in violation of any foreign laws. In the present case, the fact remains that the brother of the appellant who was detained under COFEPOSA, was indulging in smuggling activities from Dubai. The earnings of the appellant from his employment in Dubai after deducting expenditure were meager and were not adequate for purchasing the property and hence the irresistible conclusion is that the property was acquired with the monies provided by the detenu brother. The nexus between the detenu and the acquisition of the property is clearly established.

11. For acquiring the coconut garden, the appellant explained that he got back an amount of Rs.39,000/- which he gave to his brother as a loan in the year 1984. The appellant has not adduced any evidence to show that the appellant has given the said amount to his brother and that it has been returned to him. In the absence of any evidence of details of the return of the money, the Competent Authority was



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*justified in holding that this property was also
acquired from illegal sources.”*

15. The Appellate Tribunal considered all the submissions/evidences on record and conclusively established that the Abdul Kadar acquired the properties out the illegal earnings of his detenu brother. As per the provisions of Section 3(1)(c) of the Act that if the source of the properties put to notice could not be established, then the same will be treated as an illegally acquired property and liable for forfeiture under the Act. Since, the Abdul Kadar could not established his licit source of income for acquisition of properties, the Competent Authority was right in treating those properties as illegally acquired and ordered for forfeiture under the Act.

16. The Appellate Tribunal had fully observed the principles of natural justice and passed the order dated 18.08.2000 in FPA.No.12/MDS/98 after and elaborate discussion in respect of each contentions made. The claim that involving the provisions Section 9(1) of the Act in the present proceeding cannot be accepted. In order to extend the benefit under Section 9(1) of the Act the petitioner should



have explained the licit sources more than 50% of the total investment.

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17. We are of the opinion, in the cases on hand, the petitioners have not established the lawful sources as required under the law. Accordingly, the facility of Section 9(1) of the Act cannot be made applicable to the petitioners.

18. A complete analysis of the facts recorded by the Competent Authority and the findings of the Appellate Tribunal would be sufficient to show that there is no further reason to interfere with the orders impugned. The power of judicial review of the High Court under Article 226 is to ensure that the processes, through which a decision has been taken by the Competent Authority are in consonance with the Statutes and Rules in force.

19. However, in the present cases, we have considered the factual findings of the Competent Authority and the Appellate Authority, as well as the grounds raised between the parties. We do not find any infirmity with regard to the actions taken, and consequently, impugned orders are confirmed.



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20. In the result, both the writ petitions are dismissed.

Consequently, connected miscellaneous petitions are closed. No costs.

(S.M.S., J.) (M.J.R., J.)
30 .01.2025.

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To

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Pre-Delivery Common Order in

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30.01.2025