IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2025

PRONOUNCED ON : 30.01.2025

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.Nos.19837 & 19838 of 2000

W.P.No.19837 of 2000

1.Mr.M.R.K.S.Abdul Kareem
@ Pallakku (Deceased)

2.Mrs.Aminambmal
3.Nadhira Begum
4.Jarina Begam
5.Haja Mohideen
6.Hawwamma
7.Najurudeen
8.Musthaq Rahuman
9.Sumaiya Parveen
10.Raheed Khan

(P2 to P10 are substituted as LRs of
Deceased P1, as per order dated 24.01.2025 in W.M.P.No.652/2025
in W.P.No.19837/2000)

... 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), 4th Floor,
Lok Nayak Bhavan, Khan Market,
New Delhi – 110 003.

3.The District Collector,
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 2nd respondent order dated 14.07.2000 made in Appeal Nos.FPA No.26 & 27/MDS/96, confirming the order of the 1st respondent made in F.No.OCA/MDS/145/76 dated 10.01.1996 and quash the same.

W.P.No.19838 of 2000

Smt.M.R.K.S. Ameena Ummal ... Petitioner

Vs.

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Smugglers & Foreign Exchange Manipulators,
(Forfeiture of Property Act), UTSAV,
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For Petitioners (in both W.Ps) : Mr.B.Kumar
Senior Counsel
For Mr.M.Adul Nazeer

For Respondents (in both W.Ps) : Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by
Mr.J.Madanagopal Rao
Senior Panel Counsel (For R1)
Mr.B.Rabumanohar (For R2)

For R3 : No appearance

COMMON ORDER

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

Under assail is the order dated 14.07.2000 passed by the Appellate Tribunal in Appeal Nos.FPA Nos.26&27/MDS/96 and confirming the order of the Competent Authority passed in F.No.OCA/MDS/145/76 dated 10.01.1996.

2. 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.

3. The writ petition in W.P.No.19837 of 2000 was filed by Mr.K.T.M.S.Abdul Karim and the writ petition in W.P.No.19838 of 2000 was filed by Smt.M.R.K.S. Ameena Ummal, wife of the petitioner in W.P.No.19837 of 2000. During the pendency of the writ petitions, both the writ petitioners were died. Thereafter, their legal representatives were substituted.

4. The case of the petitioners is as follows:

Mr.K.T.M.S.Abdul Karim (deceased) went to Ceylon in the year 1949 for earning and returned to India in the year 1953. He was having savings of about Rs.10,000/-. He married Mrs.Ameena Ummal in the year 1954. At the time of marriage, he had received 30 sovereigns of gold from his Mother as gift. He was doing Paddy business between 1962 to 1968. He had sold 30 sovereigns of gold and also sold his ancestral properties. He was also doing dry fish business and had purchased a Jeep from M/s.T.V.S. & Sons, Madurai on hire purchase scheme during 1967-1968. The father-in-law of the petitioner was doing business at Srilanka and he was also helping him and his wife. He was detained under COFEPOSA Act during Emergency time. The Competent Authority issued a notice dated 13.07.1976 under Section 6(1) of the COFEPOSA Act, proposing to forfeit the immovable properties. Out of the five immovable properties, the first item of the property stands in the name of his wife and therefore, the Competent Authority issued a notice to her under Section 6(2) of the said Act. After receiving notice, he had sent a letter dated 09.08.1976. Thereafter, a reply notice was sent on 18.8.1976 to the above notice, stating that the properties were acquired out of the legal income earned from legal sources. The wife of the petitioner is the absolute owner of the 1st item of property and the entire value of the properties themselves are about Rs.22,750/-. The petitioner did not indulge in smuggling activities. He had filed a writ petition in W.P.No.3007/77 before this Court, challenging the proceedings initiated against him. The Competent Authority forfeited the properties by its order dated 10.01.1996. He had filed an appeal before the second respondent. Similarly, his wife also filed an appeal before the Appellate Tribunal. The Appellate Tribunal for Forfeited property, the 2nd respondent herein by its common order dated 09.01.1997, granted interim stay of the forfeiture of the properties in Item Nos.1 and 2. The appeals were posted for hearing on 19.11.1999 at Hyderabad. Subsequently, the Appellate Tribunal for Forfeited property by its impugned order dated 16.02.2000, dismissed the appeals for non-prosecution and it was dispatched on 21.2.2000. On 18.5.2000, the Tashildar-Tiruvadanai Taluk, asked him to handover the possession of the property. Immediately the petitioners have preferred a Petition to restore the appeals before the 2nd Respondent. The petitioners were filed writ petitions in W.P.No.8688/2000 and W.P.No.8689/2000 before this Hon’ble Court for a direction to the second respondent to restore the appeal and to dispose of the appeal on merits. This Hon'ble Court was pleased to allow the writ petition on 7.6.2000 and directed the 2nd Respondent to hear the appeal on merits within 60 days. Thereafter, the Appellate Tribunal heard the appeal and by its order dated 14.7.2000, has confirmed the order of the Competent Authority forfeiting the property. But the Appellate Tribunal dismissed the Petition filed by him to receive additional documents in M.P.75/MDS/2000 since it was filed belatedly. Aggrieved by the same, the petitioners have preferred the present writ petition.

5. Mr.B.Kumar, learned Senior counsel appearing on behalf of the petitioners would submit that the first property is a 'manaikattu' 60 x 50 kaladi for a sale consideration of Rs.300/-. The second property is purchased by M.R.K.S.Abdul Kareem in his name in February, 1972 to an extent of 3.5 acres in S.No.111/18 for a consideration recited in the sale deed is Rs.800/-. He would submit that the first property was acquired by the petitioner's wife for

Rs.300/- in the year 1967, which is 11 years earlier to the notice as well as the detention of her husband. Smt.Ameena Ummal belongs to the well to do family as could be seen from the records in Nikka Marriage Certificate issued on 30.06.1954, which clearly shows that they have given a Mehar of Rs.154/ at the time of her marriage and the bridegroom was given Rs.51/-. Therefore, it is impossible to say that she did not have Rs.300/ to purchase the property.

6. The learned Senior counsel appearing on behalf of the petitioners would further submit that it is settled law that every rupee need not be explained, it is only on preponderance of probability. The proceedings taken after a long time and it will not be able to produce the actual amount. The judgment of this Hon'ble Court in ***Krishnaveni, Legal Heirs of the deceased Seshammal vs. The Competent Authority*** states that the Competent Authority is clearly an authority for this said proposition. Similarly, the judgment in ***Chattarsingh-1980***, wherein it is held that the explanation is sufficient. He would further submit that as regards the other property, the Petitioner had given an explanation that he was getting agricultural income as also commission agent for paddy. The Competent Authority insisting that he should produce documentary evidence and it is neither feasible nor correct as enquiry has taken up 29 years later for no fault of the Petitioner. By virtue of the investigation,

where the property value is less than Rs.1,00,000/-, they would be entitled for relief.

7. To strengthen his contentions, the learned Senior Counsel appearing for the petitioners relied upon the judgment reported in ***2022 SCC online SC 1073*** in the case of ***Union of India and another Vs. Citi Bank, N.A***. will clearly shows that law requires no person to maintain accounts more than 8 years. Section 6(1) notice is only on the construction and not the site. Site was separately purchased under a document that is not put in issue. The building alone cannot be forfeited.

8. The learned Senior counsel for the petitioners to strengthen his contentions further relied on a judgment in the case of ***Bishan Das & Others Vs. State of Punjab & Others*** reported in ***AIR 1961 SC 1570***. Therefore, both the properties should be released.

9. Mr.AR.L.Sundaresan, learned Additional Solicitor General of India, appearing on behalf of the 1st respondent would submit that the Competent Authority after observing the principles of Natural Justice and due process of law, forfeited the properties under Section 7 (1) of SAFEMA, since the

petitioners could not establish licit nature of source. He would submit that the order of the Competent Authority dated 23.03.2000 under Section 19(1) to deliver possession of the forfeited properties are in accordance with law pursuant to the dismissal of appeal by the 2nd respondent. Production of additional evidences cannot be considered as a matter of right and the 2nd respondent has discretion to accept or reject the claim. The Appellant Tribunal, while passing the order dated 14.07.2000, considered the materials on record and justified the reasons given by the Competent Authority, which are valid in law. The petitioner cannot take shelter under the pretext of investigation as there are evidence of record to prove the illegality of sources employed. Hence, the present writ petitions are devoid of merits and deserves to be dismissed.

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

11. It is seen from the records that M.R.K.S. Abdul Kareem (deceased) was detained under the COFEPOSA Act, 1974, which attracts Section 2(2)(b) of the SAFEM(FOP) Act, 1976. A notice of forfeiture under Section 6(1) was issued to the petitioner on 13.07.1976 in respect of the following properties:-

(a) house bearing Door No.32, Ward No.11 at M.R. Pattinam, Ramnad District, valued at Rs. 12,000/-.

(b) Dry land, KS.No.111/1B, Patta No.91, 3.5 acres at M.R.Pattinam, valued at Rs. 1,750/-.

(c) Dry Land, Patta No.46/3, 3.55 acres at Sirudavayal of Karangalkudi Group, valued at Rs. 2,000/-.

(d) Wet Land jointly owned with Abdul Kader, 1.30 acres, S.No.24/A Patta No.43, Kadangudi Group, valued at Rs.3,000/-.

(e) Wet Land jointly owned with Abdul Kader, 62 cents, S.No.82/4B(1A), Chinna Tondi Village, Valued at Rs.4,000/-.

12. Since, the property mentioned under (a) was in the name of the wife of the petitioner, a notice was sent to her under Section 6(2). The petitioner Mr.M.R.K.S.Abdul Kareem replied to the letter initially through a letter dated 09.08.1976 and submitted his explanation in detail to the notice on 18.08.1976. Subsequently, he preferred a writ petition in W.P.No.3007/77, challenging the provisions of SAFEMA and obtained stay of the proceedings, which was finally dismissed on 18.07.1994. Thereafter, the Competent Authority continued the proceedings against the petitioner and a notice of intimation of the hearing was sent on 12.12.1995 and on 29.12.1995 for a further hearing on 05.01.1996. Then, he submitted his reply on 04.01.1996.

13. The Competent Authority had observed that carefully gone through

the records of the case and observed that the written submissions made by person affected and the points urged at the time of personal hearing. The first property for consideration is the house bearing Door No.32, Ward No.11 at M.R. Pattinam, which is held in the name of Smt.M.R.K.S.Ameena Ummal, wife of the person affected. In the written reply dated 18.08.1976, the person affected had stated that this property absolutely belongs to his wife and that the structure of the house was constructed by her father. Against the above contention, the person affected, in his written reply dated 04.01.1996, has stated that the land site for the said house property was purchased by him for Rs.300/-, vide document dated 10.08.1967, out of his agricultural income and paddy commission agency business. He has further explained that the construction of the house was done during the year 1967-1968 at a total cost of Rs.7,000/-, which was met by him, partly out of the amount received from the sale of his ancestral properties and partly with the help of his father-in-law, who was a businessman in Srilanka. Further, the Competent Authority observed that the stand taken by the affected person in his written submissions made in letter dated 04.01.1996, is totally contrary to that stated in his letter dated 18.08.1976. Further, the affected person has not furnished any document to substantiate the purchase of this property by him. He has not given any details with regard to any agricultural income or any paddy commission agency business. It was also stated in his reply dated 18.08.1976, that he went to Ceylon in the year 1949 and returned to India in 1953 with his savings of Rs.10,000/-. However, he has not furnished any evidence regarding the repatriation of this amount through any legal sources. Further, it has also been claimed that at the time of his marriage in 1954, he received 30 sovereigns of Gold from his mother as gift, which was sold in the year 1963 at the rate of Rs.87/- per sovereign. Again the person affected has not furnished any evidence to substantiate his contention. Additionally, the affected person has claimed that he had sold his ancestral properties and engaged in Paddy Commission Agency Business. But the affected person did not produce any sale deed or any other documents.

14. The person affected has not claimed that his wife Smt.Ammena Ummal had any independent source of income or avocation through which she could acquire this property. Finally, the Competent Authority concluded that in overall consideration, the properties were held to be acquired through illegal sources and hence, liable for forfeiture under the Act.

15. The Competent Authority also made a finding regarding the dry lands, to an extent of 3.5 acres, the person affected claimed that the said land

were purchased by him for Rs.800/- in the year 1970, but he has not furnished any details with regard to the agricultural income or Paddy business. The Competent Authority finally concluded that the agricultural lands under consideration, are held to be illegally acquired and hence liable for forfeiture under the Act. The Competent Authority also made a finding that the remaining three properties, i.e., the agricultural lands, the person affected has not tendered any explanation either in his reply dated 18.08.1976 or letter dated 04.01.1996. However, he has made a general claim that he got a Jeep under hire purchase scheme and had a dry fish business successfully. Again, the person affected has not substantiated this claim with any evidence and not furnished any details about the Jeep purchased by him. Finally, the Competent Authority also made a finding that the person affected claimed that except for the two properties, i.e., the house property at Door No.32 and the dry lands at Survey No.111 of 2018, he had already disposed of the remaining properties immediately after his release from jail to support his family. In this context, it was also observed that the person affected had filed an affidavit on 20.09.1977, before the Hon'ble High Court of Madras in the course of writ proceedings that he would not alienate the properties mentioned in the forfeiture notice during the pendency of the writ proceedings. The Competent Authority concluded that it is apparent that the person affected had disposed of the said properties under notice after the issuance of the forfeiture notice and in violation of the undertaking given by the Hon'ble High Court. Accordingly, such disposal is null and void under Section 11 of the Act.

16. The learned Senior counsel appearing on behalf of the petitioners vehemently would submitted that the Competent Authority has relied upon the documents relating to income tax assessments and the sale which have not been furnished to the petitioners, and therefore, it is a clear violation of natural justice.

17. The Competent Authority also made a finding that the person affected has totally failed to furnish any evidence either with regard to the acquisition of properties put to notice or details of particulars with regard to the sale of ancestral properties and also failed to adduce any evidence with regard to purported agricultural income, Paddy Commission business and dry fish business.

18. With regard to the above findings, the Appellate Tribunal independently considered the facts and adjudicated. The contradictory

statements made by the person affected and the writ petitions were considered by the Appellate Tribunal in Paragraph Nos.4, 5, 6 of the impugned order dated 14.07.2000, which reads hereunder:

> *"4. The stand of the appellants with regard to the house property bearing door No.32 situated at M.R.Pattinam standing in the name of the second appellant that it was constructed by Ameena's father and the site in which the house was constructed was purchased by the detenue on 10.8.1967 out of his agricultural income and paddy commission agency business. It was further stated by him that the cost of construction was met by him by sale of ancestral property, partly with the help of his father-in-law. This stand of the detenue is contrary to what he stated in his letter dated 18.8.1976. The appellant failed to produce any document to substantiate his claim, as no details of the paddy commission received in agency business was filed. There was no evidence relating to the sale of ancestral property. He failed to produce any statement relating to the ancestral property and business, inspite of being required to do so by the Competent Authority. His claim that he returned fro Ceylon along with savings of Rs.10,000/- was not substantiated.The claim that he received 30 sovereigns of gold as gift was also not supported by any evidence. The financial status of*

his parents was also not stated and proved. No evidence to show that Ameena Ummal had any independent source of income. or avocation was produced. In the said circumstances, the Competent Authority was justified in holding that the property is illegally acquired property.

5. For the purchase of item No.2, which is 3.5 acres of dry land, the appellant could not produce any documentary evidence and merely stated that the land was purchased from out of agricultural income and paddy commission. No evidence was adduced in support of the said claim.

6. The appellant made a general claim that he was engaged in dry fish business and hence he purchased item Nos.3 to 5 from the income derived from the said business. He failed to produce any evidence in support of the said claim."

19. In the concluding paragraph, the Competent Authority stated that the person affected has no evidence to support their claims made before the Appellate Tribunal regarding the forfeiture property. The Appellate Tribunal also made a finding that the reasons given in the affidavit filed in support of the petition for filing the documents late at this stage are that the person affected fell seriously ill in the year 1999 and was suffering from heart ailments during

January and February and was taking treatment in his native place. He did not state why he could not produce the documents soon after the receipt of the notice under Section 6 (1) in the year 1976 and even after the proceedings re-commenced on 05.1.1996 and at the time of filing of the appeal on 14.2.1996. The appellants had notice of the proceedings nearly 16 years ago and he was required by the Competent Authority to file documentary evidence and having filed to do so, the person affected will not be permitted at this stage to file these documents. Accordingly, M.P.No.75/MDS/2000, the petition for admission of additional evidence was rejected.

20. The facts relating to the case was also elaborately adjudicated by the Tribunal along with the assessment order passed by the Competent Authority. The Tribunal concluded by stating that the nexus between the forfeiture property and the detenue are clearly established and consequently, confirmed the orders of the Competent Authority.

21. We are of the considered opinion that the procedures as contemplated under Section 6(1) and 7(1) of the SAFEMA were complied with by the authorities and under Section 8 of SAFEMA, the burden of proof lies on the affected person. In the present cases, neither the affected person nor the legal heirs, including the petitioners, 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 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.

22. 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. Accordingly, both the writ petitions are dismissed. No costs.

[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

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