



2025:DHC:9206



\$~

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 15<sup>th</sup> September, 2025**Pronounced on: 16<sup>th</sup> October, 2025*

+ W.P.(C) 678/1997

SHRI MANGAL SINGH &amp; ORS.

.....Petitioners

Through: Ms. Vandana Sharma Bhandari and  
Ms. Lakshita Negi, Advs.

versus

UOI &amp; ORS

.....Respondents

Through: Mr. P. S. Singh, CGSC with Mr.  
Ashutosh Bharti, Mr. Kumar Saurabh,  
Ms. Minakshi Singh, Advs. For R-1,  
2 and 3.**CORAM:****HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present petition under Articles 226 and 227 of the Constitution of India, 1950, seeks the following prayers: -

“(i) issue an order of Certiorari calling for the records of the Respondents relating to the petitioners and after hearing the petitioners, the order dated 28-4-1995 passed u/s 7(1) of the SAFEM FOP by Respondent No.3 be set aside and also the combined order passed u/s 12 of the SAFEM FOP by Respondent No.2 in F.P.A. Nos. 75/DLI/96, 55/DLI/96, 56/DLI/56 and 160/79-80 dated 20-11-1996 be also quashed.

(ii) issue a writ of Mandamus and/or any other writ or order or direction be issued commanding the Respondents to set aside the



order of the Respondent No.3 dated 28-4-1995 u/s 7(1) of the SAFEM FOP and of the Respondent No.2 u/s 12 of the SAFEM FOP being F.P.A. Nos. 75/DLI/96, 55/DLI/96, 56/DLI/96 and 160/79-60 dated 20-11-1996 be quashed;

(iii) issue a writ of Mandamus and/or any other appropriate writ or order or direction be given declaring the provision of Section 6-A of Section 12 of the SAFEM FOP Act as ultra vires Articles 14, 19 and 21 of the Constitution of India and read with Article 323-B of the Constitution of India.

(iv) Issue a writ of Mandamus be also issued that the constitution of the Bench u/s 12 of the SAFEM FOP must be manned by a person qualified to be a member having judicial experience in terms of Section 12 of the SAFEM FOP Act and the Chairman of the same be appointed in terms of Section 12 thereof; and

(v) any other order this Hon'ble Court may deem fit in the circumstances of the case be also passed."

2. The present petition was preferred; challenging the order of confiscation dated 28.04.1995 passed under Section 7(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, (hereinafter referred to as "**the Act**") by respondent no.3, and the consequent order dated 20.11.1996, passed under Section 12 of the Act by respondent no. 2. As per the record, the original petitioners were:

1. Shri Mangal Singh, Son of Shri Hazara Singh, R/o Village Sheron, Teh. Taran Taran, Dist. Amritsar, Punjab
2. late Shri Ajit Singh son of Hazara Singh, now represented Through Legal Heirs:
  - a) Shri Salvinder Singh
  - b) Shri Kabul Singh Sons of late Shri Ajit Singh



2025:DHC:9206



R/o Village Sheron, Teh. Taran Taran Distt. Amritsar, Punjab.

3. Late Shri Major Singh, son of Shri Hazara Singh now represented through legal heirs:
  - a) Shri Wazir Singh,
  - b) Shri Dilbagh Singh,R/o Village Sheron Tehsil Taran Taran Distt. Amritsar Punjab
4. Shri Gurnam Singh, S/o Shri Hazara Singh  
Village Sheron Tehsil Tarn Taran Distt. Amritsar

During the pendency of the present petition, an amended memo of parties was placed on record, impleading legal heirs of the petitioners, and the same is reproduced as under:

1. Shri Mangal Singh, Now representative through Legal Heirs:
  - 1/a Shri Sardool Singh
  - 1/b Shri Hira Singh
  - 1/c Shri Akashdeep Singh s/o late Sakhranj SinghS/o late Mangal Singh  
R/o Village Sheoran, Teh. Taran Taran  
Dist. Amritsar, Panjab
2. Late Shri Ajit Singh son of Hazara Singh,  
Now representative through Legal Heirs:
  - 2/a) Shri Salvinder Singh
  - 2/b) Shri Kabul Singh
  - 2/c) Shri Bhag SinghR/o Village Sheron, The Taran Taran  
Dist Amritsar Punjab
3. Late Sh Major Singh, Son of Shri Hazara Singh  
now representative through Legal Heirs:
  - 3/a) Shri Wazir Singh
  - 3/b) Shri Dilbagh SinghR/o Village Sheron, Teh.-Taran Taran  
Dist. Amritsar, Panjab



2025:DHC:9206



4. Late Shri Gurnam Singh son of Sh. Hazara Singh  
Now Represented through legal heirs:

- a) Sh. Nishan Singh  
R/o Village Sheron  
Tehsil And District Taran Taran  
Punjab
- b) Sh Nirmal Singh  
1/47 odessa avenue  
Keilor down postal code 3038  
Melbourne Victoria, Australia

However, the original affected parties *i.e.*, Mangal Singh, Ajit Singh, Major Singh and Gurnam Singh, will be referred to as the “petitioners”.

3. The relevant facts, for the purposes of consideration of the present petition, are as under: -

(i) Mangal Singh (original petitioner no. 1) was detained under Section 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, (hereinafter referred to as “COFEPOSA”) *vide* an order dated 19.12.1974, by the Competent Authority in Punjab. On the basis of the said detention order, proceedings were initiated under provisions of Section 2 (2) (b) & (c) of the Act, against the original petitioner no. 1 and his 3 brothers; late Shri Ajit Singh, late Shri Major Singh and late Shri Gurnam Singh.

(ii) The Competent Authority issued notices to the petitioners under Section 6(1) of the Act on 27.01.1977, with regard to properties mentioned in the schedule to the said notices. On the receipt of the said



notices, the petitioners had filed replies raising various objections with regard to initiation of proceedings, including the applicability of the Act on them. The petitioners in their response had provided details pertaining to source of acquisition of the scheduled properties. It is also the case of the petitioners that by way of oral evidence also, the petitioners had disclosed as to how and in what manner the properties mentioned in the schedules in the aforesaid notices were acquired.

(iii) During the pendency of the aforesaid proceedings, the petitioners filed Writ Petitions before Hon'ble Supreme Court of India, under Article 32 of the Constitution of India, 1950, and upon hearing the said petition, the Hon'ble Supreme Court was pleased to stay the confiscation of the property and the matter was pending before the Hon'ble Supreme Court.

(iv) *Vide* judgment dated 12.05.1994, the said Writ Petition was disposed of by the Hon'ble Supreme Court, along with other batch of matters, upholding the constitutional validity of COFEPOSA and the Act, and consequently directed that the cases to be proceeded in accordance with law.

(v) Subsequent thereto, the Competent Authority (respondent No. 3) issued fresh notice under Section 7 (1) of the Act to the petitioners for their appearance. The Competent Authority *vide* order dated 28.04.1995, rejected the claims of the petitioners by holding that the



latter had failed to discharge their burden of proof under Section 8 of the Act.

(vi) Aggrieved by the aforesaid order dated 28.04.1995, passed by the Competent Authority, the petitioners filed their respective appeals before the learned Appellate Tribunal (respondent No. 2). The said appeals were dismissed *vide* order dated 20.11.1996, and hence the present petition.

4. Learned counsel on behalf of the petitioners has argued that the Appellate Tribunal bench constituted, which disposed of the appeals on behalf of petitioners, was without a judicial member and therefore, the proceedings were *void ab initio*. Reliance has been placed on the judgment of the Hon'ble Supreme Court in **Union of India vs. R. Gandhi, President, Madras Bar Association**<sup>1</sup>. It is further argued that the properties were acquired on 06.04.1971, however, the detention order *qua* petitioner No. 1 Mangal Singh was passed on 19.12.1974. It was submitted that inspite of repeated submissions, "reasons to believe" were not supplied to the petitioners and for the first time they were disclosed during the dismissal of the appeals filed on their behalf in the year 1996. It has been further submitted by the learned counsel for petitioners that there was no nexus between the acquisition of the properties by the petitioners no. 2 to 4 and the alleged illegal activities attributed to petitioner no. 1 *i.e.*, Mangal Singh.

---

<sup>1</sup> (2010) 11 SCC 1



5. It has been argued by learned counsel for the petitioner that the agricultural land was purchased in 1971, by all the petitioners when COFEPOSA was not even in existence. It has been further argued that petitioner No. 1 *i.e.*, Mangal Singh, who had been detained under Section 3 (1) of the COFEPOSA, was never prosecuted under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “**NDPS Act**”), or any other Act for the alleged offence of selling or possessing smuggled opium. In absence of the same, it is submitted that there was no nexus brought on record by the respondents with respect to the properties forfeited by the respondents. The description of properties of the petitioners, as per the schedule in notices dated 27.01.1977, under Section 6 (1) of the Act, are as under: -

- |                 |                                                                                                                                                                                                                                                                    |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Mangal Singh | a) House property in village Sheron, Tehsil Tarn Taran, District Amritsar. (on ancestral plot of land measuring 6 Kanals)<br>b) 1/4 <sup>th</sup> share in agricultural land measuring 91 Kanals 6 Marlas in village Sheron, Tehsil Tarn Taran, District Amritsar. |
| 2. Gurnam Singh | 1/4 <sup>th</sup> share in agricultural land measuring 91 Kanals 6 Marlas in village Sheron, Tehsil Tarn Taran, District Amritsar.                                                                                                                                 |
| 3. Ajit Singh   | 1/4 <sup>th</sup> share in agricultural land measuring 91 Kanals 6 Marlas in village Sheron, Tehsil Tarn Taran, District Amritsar.                                                                                                                                 |
| 4. Major Singh  | 1/4 <sup>th</sup> share in agricultural land measuring 91 Kanals 6 Marlas in village Sheron, Tehsil Tarn Taran, District Amritsar.                                                                                                                                 |

6. *Per contra*, learned counsel for the respondents submits that the original petitioner no. 1 *i.e.*, Mangal Singh, was detained under COFEPOSA *vide* an



order dated 19.12.1974, and was involved in a number of cases pertaining to smuggling of opium. It is submitted that both, the Competent Authority as well as the Appellate Authority, have fully considered the evidence produced by the petitioners regarding the source of investment in land and thereafter passed a reasoned order. It is further submitted that the contention on behalf of the petitioners that the constitution of the bench of the Appellate Tribunal did not have a judicial member, is also misplaced. It is submitted that as per Section 12 (6A) of the Act, the Chairman can constitute a bench of two members to exercise and discharge power and function of the Appellate Tribunal, and in the present case the same was constituted. It is further submitted that there is no distinction between different types of members of the Appellate Tribunal, in the manner as has been pointed out by the learned counsel for the petitioners. It is submitted that there is no classification of judicial and technical members in the Appellate Tribunal, and neither there is a statutory requirement that the Chairman must sit on the bench.

7. It was also argued that it was not mandatory to give the petitioners a copy of the reasons recorded under Section 6 (1) of the Act, however, the copy of the reasons recorded were given to the petitioners at the time of hearing of appeals before the Appellate Tribunal and submissions on the same were considered by the said Appellate Tribunal.

8. Heard learned counsel for the parties and perused the records.



2025:DHC:9206



9. By way of illustration, one of the notices issued to the main petitioner No. 1 *i.e.*, Mangal Singh, under Section 6 (1) of the Act, is reproduced as under:-

NOTICE UNDER SECTION 6(1) OF THE SMUGGLERS  
AND FOREIGN EXCHANGE MANIPULATORS  
(FORFEITURE OF PROPERTY) ACT, 1976

.....

Government of India  
Dept. of Revenue & Banking

Office of the COMPETENT  
AUTHORITY  
Headquarters : New Delhi,  
Super Bazar Bldg. (4<sup>th</sup> fl.)  
Connaught Circus,  
New Delhi-110001,  
**January 27, 1977**

To-

**(1) Shri Mangal Singh,  
Village Sheron,  
Post Office Sheron,  
Tehsil Tarn Taran,  
Amritsar.**

**(2) Shri Mangal Singh,  
c/o the Superintendent,  
Nabhe Jail,  
Nabhe.**

Whereas, I, R.L. Malhotra, being the Competent Authority under section 5 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (13 of 1976), have, on the basis of relevant information and/or relevant material available to me, reason to believe that the properties described in the Schedule annexed hereto which are held by you or on your behalf are illegally acquired properties within the meaning of clause (c) of sub-section (1) of section 3 of the said Act;

Now, therefore, in pursuance of sub-section (1) of section 6 of the said Act, I hereby call upon you by this notice to indicate to me within 35 days of the service of this notice, the sources of your income, earnings or assets, out of which or



2025:DHC:9206



by means of which you have acquired the aforesaid properties, the evidence on which you rely and other relevant information and particulars and to show cause why the aforesaid properties should not be declared to be illegally acquired properties and forfeited to the Central Government under the said Act.

Competent Authority

#### THE SCHEDULE

| <u>Description of the property</u>                                                                                                   | <u>Name of the present holder of property</u> |
|--------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| 1. House property in Village Sheron, Tehsil Tarn Taran, District Amritsar. (on ancestral plot of land measuring 6 Kanals)            | Shri Mangal Singh                             |
| 2. 1/4 <sup>th</sup> share in agricultural land Measuring 91 Kanals 6 Marlas in Village Sheron, Tehsil Tarn Taran, District Amritsar |                                               |

Competent Authority

10. It is pertinent to note that the aforesaid notices were issued on account of the fact that petitioner No. 1 was detained under COFEPOSA *vide* order dated 19.02.1974. At this stage, it is relevant to examine the aforesaid detention order, which is reproduced as under:-

Grounds of detention of Sh. Mangal Singh, S/o Hazara Singh Jat,  
R/o village Sheran, P.S. Sadar, Tarn Taran, Distt. Amritsar.

In pursuance of the provisions of section 8(I) of the Maintenance of the Internal Security Act. No.26 of 1971 as amended by the Maintenance of Internal Security (Amendment) Ordinance 1974 and Clause (c) of sub-section (6) of section 6 of Defence of



2025:DHC:9206



India Act. No. 42 of 1971, you Sh. Mangal Singh, S/o Hazara Singh Jat are hereby informed that you have detained on the grounds that you have been dealing in smuggled goods as is clear from the facts stated in the following paragraphs: -

- a) that on 15.9.1974 you sold 5 Kgs. of smuggled opium for Rs. 400/- per Kg. to Gurdial Singh, S/o Sh. Sadhu Singh Jat, R/o village Kairon P.S. Sarhalf, Distt. Amritsar out of which 210 Gms. Of opium was recovered from the above said Gurdial Singh on 30.9.1974.
- b) that on the same day i.e. 15.9.1974 you sold 4 Kgm. Of smuggled opium @ 400/- to Arjun Singh, S/o Sh. Banta Singh, R/o of Padri Kalan, P.S. Chabal, Distt. Amritsar, out of which 1 Kgm. 25 Gms. was recovered from the above said Arjun Singh on 3.10.1974.
- c) that on 5.6.1974 you sold 2 kg. of smuggled opium to Amrik Singh, S/o Wali Singh Jat, R/o village Kheda P.S. Sarhali, Distt. Amritsar, for Rs. 800/- out of which 105 Gms. was recovered from his on 28.7.74.
- d) that on the same day i.e. 5.6.74 you purchased 40 Kgm. Of smuggled opium for Rs. 12,000/- from Ghafoor and Salim Pak Nationals.

All the transactions referred to paras(a) to (d) above took place at your residence situated in village Sheron, P.S. Sadar Tarn Taran, Distt. Amritsar.

The entire opium referred to paras (a) to (d) above was smuggled from Pakistan secretly and through unauthorized routes.

2. On account of the above said activation, I am satisfied that you are dealing in smuggled goods and therefore, I had passed



order for your detention to preventing you from dealing in smuggled goods.

3. You are further informed that you have a right to make a representation in writing against the order under which you are detained. If you wish to make such representation you should address it to the State Govt. through the Supdt. Of Jail as soon as possible. Your case will be submitted to the Advisory Board within 30 days from the date of your detention and if your representation is received late, it may not be considered by the Board.

4. You have also the right to personally appear before the Advisory Board for representing your case and if you wish to do so, you should inform the State Govt. through the Supdt. of Jail.

Sd/-  
District Magistrate  
Amritsar

11. It is pertinent to note that neither the counsel for the petitioners nor the respondents had any information with regard to the final outcome of the detention order. It is also not the case of the respondents that the petitioner no. 1 i.e., Mangal Singh, was ever prosecuted for any offence under the NDPS Act, or any other offence relating to smuggling of opium.

12. It is further pertinent to note that these grounds of detention have been taken into consideration by the Competent Authority while passing the impugned order dated 28.04.1995. After recording the aforesaid grounds of detention, the Competent Authority in its aforesaid order, further observed as under: -

“...2. All the above transactions took place at the residence of Shri Mangal Singh in Vill. Sheron, Teh. Taran Taran, Distt. Amritsar. The



entire opium referred to above was smuggled from Pakistan secretly and through some unauthorised routes.

3. On receipt of the detention order u/s 3 (1) of COFEPOSA, enquiries had been got conducted through the CIT, Amritsar regarding the properties in the name of Mangal Singh. In view of the detention order Shri Mangal Singh has been considered a person covered by the provisions of sec.2(2)(b) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (to be referred as the Act). Sh. Mangal Singh, hereinafter, will be referred to as Affected person- in short A.P.

4. The enquiries and investigations revealed that the A.P. jointly with his three brothers - Ajit Singh, Major Singh and Gurnam Singh purchased agricultural land measuring 91K-6M in Vill. Sheron, Teh. Taran Taran, Distt. Amritsar on 6.4.71 for Rs. 43750/- from one Shri Saudagar Singh of the same village. The A.P. has 1/4th share therein. He as per report was found to have constructed house property on a land measuring 6-K in Vill. Sheron, Teh. Taran Taran, Distt. Amritsar. The estimated cost of construction excluding the value of land was estimated at Rs. 40,000/- by the Income-tax authority concerned. Legal sources of investment in the two properties were not found ascertainable in view of the enquiries and investigations made. Hence, after recording reasons u/s 6 (1) of the Act, notice dated 27.1.77 under the said section was issued to the A.P. giving the details of the properties in the schedule enclosed therewith. For the sake of convenience, the description of the properties are given as under:-

Right, title and interest in

- (1) House property in Village-Sheron, Th. Taran, Taran, Distt. Amritsar.
  - (2) ¼th share in agricultural land measuring 91 kanals 6 Marlas in Village-Sheron, Teh. Taran Taran, Distt. Amritsar.
5. Vide notice u/s 6(1), the A.P. was required to indicate within specified time the sources of his income earnings or assets out of which or by means of which he acquired the above mentioned properties alongwith evidence relied upon. A.P. was further required



to show cause why the properties mentioned above should not be declared to be illegal acquired one and forfeited to the Central Govt. under the Act.”

**13.** It is further observed in the aforesaid order dated 28.04.1995 as under-

“...21. In view of above findings and observations out of Rs. 45,250/- purported to be explained as legal source of investment in the agricultural land discussed above, the A.P. has been found to have discharged the burden of evidence to the extent of Rs. 5000/- only. Since the legal sources of rest of the amount of Rs. 40,250/- (Rs. 45,250 – Rs. 5,000) invested in the agricultural land could not be explained satisfactorily. I hold that A.P. has failed to discharge the burden of proof u/s 8 of the Act regarding this property. Hence, the agricultural land acquired by the A.P. as per detailed discussion in the foregoing paragraphs is considered and treated as illegally acquired property of the A.P. and has to be forfeited u/s 7(3) of the Act.

**22.** House property in village- Sheron, Teh: Taran Taran, Distt.- Amritsar.

As per information and details available on record the A.P. had constructed a house on a plot of land measuring 6 Kanals in Village Sheron, Teh. Taran Taran, Distt-Amritsar. Regarding the cost of the plot there is an affidavit dated 26.8.1977 attested by Oath Commissioner, Taran Taran sworn in by the A.P. wherein he has deposed that the vacant site for the house was purchased on 15.4.1971 for Rs. 4000/- from one Shri Dalip Singh s/o Shri Inder Singh r/o Village- Sheron, Teh-Taran Taran, Distt.- Amritsar. One room (30' x 26') was constructed in 1972-73 and two rooms with an area of 1040 Sq.ft. were constructed in 1974-75. The constructed area of the house was thus 1820 Sq.ft. Its cost of construction excluding the cost of land was estimated by the Income-tax Department at Rs.40,000/-. In the schedule enclosed with the notice dated 27.1.1977 the legal sources of the house property referred to above were specifically required to be explained. From various letters and explanations filed available on record it is evident that no efforts had been made at any stage to explain the legal sources of



investment in this property. A reference may be made to A.P's statement recorded on 25.2.1978 before the then learned Competent Authority wherein the A.P. stated that the house in Village-Sheron was constructed between 1971-1973 spending about Rs. 10,000/- claimed to have been invested in the house. On the other hand in the report from the Income-tax authorities the constructed area has been indicated 1820 Sq.ft. and its cost has been shown at Rs.40,000/-. It gives rate of about Rs.22/- per Sq.ft. which cannot be considered unreasonable. Thus, the total cost of the house site and construction thereon come to Rs.44,000/-. As already mentioned no effort has been made either before my predecessors or before me during the course of proceedings and the opportunities allowed to explain the legal sources of the house site and the construction thereon. In my considered opinion A.P. has failed to discharge the burden u/s 8 of the Act. Hence, this property too is considered and treated as illegally acquired property and has to be forfeited u/s 7(3) of the Act.

23. Considering all the facts and circumstances of the case in view of A.P.'s explanations and my findings thereon, I hold that the properties mentioned in the schedule to notice dated 27.1.1977 u/s 6(1) of the Act are illegally acquired properties from income or earnings or assets of smuggling activities within the meaning of Section 3(1)(c) of the SAFEMFOPA, 1976. Hence, they are forfeited to Central Government free from all encumbrances u/s 7(3) of the said Act. For the sake of convenience, details of properties forfeited are given as under :-

Right, title and interest in

- (i) House property in Village- Sheron, Teh: Taran Taran, Distt.- Amritsar.
- (ii) 1/4th Share in agricultural land measuring 91 Kanals 6 Marlas in Village- Sheron, Teh: Taran Taran, Distt.- Amritsar, purchased from Shri Saudagar Singh of the same village on 26.4.1971.”

14. The Appellate Authority while dismissing the appeals filed on behalf of the petitioners, *vide* order dated 20.11.1996, observed and held as under: -



4.3 At this point it would be relevant to mention that after the reasons to believe has been communicated to the appellant's Advocate, he had put in a new plea that from the reasons to believe recorded by the Competent Authority the total investment in agricultural land exclusive of cost of stamp paper and registration charges appeared to be Rs. 43,750/- hence it was claimed that the investment which needed to be explained by each of the co-owners was in fact only one-fourth of the amount actually explained by each of them. However, Shri Harjinder Singh has not been able to file any copies of the Registration Deed of the agricultural land purchased by appellants by which it could be ascertained that the actual purchase price of agricultural land measuring 91 Kanals and 6 Marlas was in fact Rs. 43,750/- as believed by the Competent Authority and not four times this amount. Since each of the appellants have taken a lot of trouble to explain an investment of Rs. 45,000/- to Rs. 46,000/- in their individual hands, it appears that the belief of the Competent Authority in respect of the total cost of the agricultural land purchased was probably not correct. However, the Competent Authority's Office is unable to shed any light on this point. However, forfeiture of the land in all the four appellant's cases has been accepted as being correct for the investment in the purchase of agricultural land had not been properly explained, regardless of the quantum of the total investment made.

4.4. Keeping in view the fact that there is no authentic information available in respect of the total amount paid for the purchase of the agricultural land bought by the four appellants and also in view of the fact that almost all the investments had flown from the detenu, Shri Mangal Singh's sources, hence, it is not really relevant as to what was the actual amount spent by the appellants on the purchase of this agricultural land. Having explained an investment of Rs. 46,000/- plus in each case, the onus was on the appellants to re-establish that the actual investment was of a much lesser amount and to also explain as to why they had each explained to have been investing a sum of more than Rs. 46,000/- for acquiring a one-fourth share in this agricultural land which had been bought in April, 1971. In view of these facts, the dispute in respect of the total cost of the agricultural land would have no bearing on the finding of this Competent Authority in all these appeals. The forfeiture of the property as made by the Competent Authority in respect of Shri Gurnam Singh is also upheld.

5.1 In the result, all the four appeals are dismissed."



15. A perusal of the aforesaid notice, order passed by the Competent Authority and the order of the Appellate Tribunal would reflect that there is no material on record, except for a bald statement, connecting the alleged illegal activities of original petitioner no. 1, *i.e.*, Mangal Singh, to the subject properties.

16. Section 2 (2) (a), (b) & (c) and Section 6 of the Act reads as under: -

**2. Application—**

(2) The persons referred to in sub-section (1) are the following, namely: —  
(a) every person—

(i) who has been convicted under the Sea Customs Act, 1878 (8 of 1878), or the Customs Act, 1962 (52 of 1962), of an offence in relation to goods of a value exceeding one lakh of rupees; or

(ii) who has been convicted under the Foreign Exchange Regulation Act, 1947 (7 of 1947), or the Foreign Exchange Regulation Act, 1973 (46 of 1973), of an offence, the amount or value involved in which exceeds one lakh of rupees; or

(iii) who having been convicted under the Sea Customs Act, 1878 (8 of 1878), or the Customs Act, 1962 (52 of 1962), has been convicted subsequently under either of those Acts; or

(iv) who having been convicted under the Foreign Exchange Regulation Act, 1947 (7 of 1947), or the Foreign Exchange Regulation Act, 1973 (46 of 1973), has been convicted subsequently under either of those Acts;

(b) every person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):  
Provided that—



(i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board or before making a reference to the Advisory Board; or

(ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or

(iii) such order of detention, being an order to which the provision of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of that Act; or

(iv) such order of detention has not been set aside by a court of competent jurisdiction;

(c) every person who is a relative of a person referred to in clause (a) or clause (b);

...

**6. Notice of forfeiture.**—(1) If, having regard to the value of the properties held by any person to whom this act applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of action taken under section 18 or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act.



(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

**16.1** At this stage, it will be apposite to refer to the judgment of the Hon'ble Division Bench of this Court in **Union of India vs. Kamal Kumar, Raman Kumar<sup>2</sup>**. The aforesaid judgment was rendered in a Letters Patent Appeal filed on behalf of department against the judgment of the learned Single Judge, which has set aside the order passed under Section 7, and Section 7 (3) of the Act by the Competent Authority, as well as the decision of the Appellate Tribunal in the said case. The facts of the said case as enumerated in the said judgment are as under: -

“...2. One Piare Lal (the father of two petitioners and husband of the third and their common predecessor in interest) was served with a detention order dated 08.11.1976 issued in the name of the Governor of Punjab. The order claimed that to prevent him from dealing in smuggled goods, he had to be detained. A declaration was also issued by the Governor of Punjab under section 12A(2) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (“COFEPOSA”) declaring that the detention was necessary, and that it is not in public interest to disclose the facts or to give an opportunity of making a representation to the detenu. Piare Lal unsuccessfully challenged his detention. A notice, dated 10.05.1978 was issued by the competent authority under Section 6 of SAFEMA stating that he had reason to believe that the properties mentioned in the schedule have been acquired by him illegally within the meaning of clause (c) of sub section (1) of section 3 of SAFEMA. The petitioner was required to indicate the sources of his income, earnings and assets out of which, or by means of which, the petitioner had acquired the scheduled properties, and also to show cause as to why they should not be declared as illegally

---

<sup>2</sup> 2017 SCC OnLine Del 11361



2025:DHC:9206



procured properties and forfeited under the Act. The notice was with respect to the following properties:

| S.No. | Description of the property                                                                      | Name of the present holder of property |
|-------|--------------------------------------------------------------------------------------------------|----------------------------------------|
| 1.    | Plot Nos. 35 to 38, Chandrauli, Delhi                                                            | Shri Piara Lal                         |
| 2.    | Plot No. 13/1, 14/15, bearing Khasri no. 21-24 in village Karawal Nagar, Ilaqa Shahdara, Delhi   | DO                                     |
| 3.    | Plot No. 2, B-Block, Laxmi Industrial Enclav, V, Gharota, Pargna Loni, Tehsil Gahaziabad, Meerut | DO                                     |
| 4.    | ½ share in plots Khasra Nos. 13 to 17 in Karawal Nagar, Ilaqa Shahdara, Delhi                    | DO                                     |
| 5.    | 110 Tolas gold ornaments                                                                         | DO                                     |

**16.2** In the aforesaid factual background, it was observed and held as under:-

7. The learned single judge, by the impugned judgment, in allowing the writ petitions, relied on Shanti Devi v. Union of India 73 (1998) DLT 477 (DB) and held that:

*“... The Division Bench in this case held that the question of applying the rule of evidence enacted by section 8 of SAFEMA, casting the burden of proof on the person affected, shall come into play only on some connecting link or nexus being established or traced between the holding of the property or assets by the person proceeded against, and illegal activity of the detinuee/convict.*

*15. The “reasons to believe” as recorded in the present case by the competent authority undoubtedly raise a doubt about the source of funds wherefrom the aforesaid properties were acquired at the*



*relevant time. However, they do not go on to state that there was a nexus between the income derived from the alleged activity of smuggling and the scheduled properties acquired by the detainee, and the said “reasons to believe” do not show as to how a nexus is sought to be established between the income allegedly derived from the illegal activity of smuggling, and the acquisition of the said properties.*

*16. In the light of the aforesaid discussion, since the “reasons to believe”, as recorded by the competent authority appear to be wholly insufficient, the notice issued under section 6(1) of SAFEMA cannot be said to have been issued validly. The competent authority did not derive the jurisdiction to issue the same in the absence of the recording of the valid “reasons to believe”. Consequently, the orders passed on the said notice by the competent authority on 28.11.1994, and by the appellate tribunal on 08.03.1996 and the rectification order dated 08.05.1996 cannot be sustained and are, accordingly, quashed.”*

8. It is argued on behalf of the appellant Union of India, that the impugned judgment is erroneous as it holds that reasons to believe are not recorded in the show cause notice served under Section 6 of SAFEMA. It was argued that though it may not be stated in so many words that the properties in question were acquired from the illegal income of the detainee, such a link may be inferred and be discernible from the entire reading of the reasons to believe. Investigation in the said matter also revealed that the source of funds of the property could not be verified. On that basis the link was inferred and the properties were taken as illegally acquired properties. It was urged that these facts were the basis to conclude that the statutory conditions laid down under SAFEMA were satisfied and the burden was shifted upon the respondents to show the source of the said property and prove that they were not illegally acquired, which they failed to do. Counsel relied on *S. Narayanapa v. Commissioner of Income Tax* 63 ITR 219 and *S.T.O. v. Uttareshwai Rice Mills* 89 ITR 6 to argue that there is no requirement of disclosure of reasons under Section 6 of the Act to the person issued with show cause notice.

9. Learned counsel argued that the basis of forfeiture under SAFEMA cannot be questioned in terms of observations in *Mahesh Kantilal Zavefi v. Union of India* 2010 VII AD (Delhi) 804 which relied on *Amritlal Prajivandas*, which



had ruled that unless the detention order under COFEPOSA is successfully challenged, the basis of subsequent order under SAFEMA cannot be questioned. It was also argued that one of the respondents (Kamla Vati), widow of Piare Lal, was an affected person. She had no independent source of income and she was financially dependent on the detainee. She did not possess any means to make any investment as regards the property in her name for the same reason. In this regard, it was argued that in the absence of any explanation for the details of income, it could be concluded that the persons shall be covered under section 2 (2)(c) of SAFEMA and the competent authority's order for forfeiture of the property was therefore valid. Counsel lastly relied on *Sh. Zahid Pervaz v. Union of India* ILR (2012) 1 Del 566, where it was held as follows:

*“The impugned orders have to be tested on the basis of the materials produced before the authorities who have passed these orders. The said plea is clearly an afterthought and is an attempt to improve his case by petitioner. From the known source of income of the petitioner or his father, the aforesaid properties have not been established to have been acquired. It has not even been argued that the competent authority did not have, or did not record the reasons for issuance of the show cause notice.*

15. On the other hand, the principle of law contained in the aforesaid observations made by this Court in *Shahid Parvez* (supra), with due respect, appears to be per incuriam. I may refer to the provision contained in Section 68J of the NDPS Act which provides that “in any proceedings under this Chapter, the burden of proving that any property under Section 68H is not illegally acquired property shall be on the person affected.” Therefore, the observation of the learned Judge that the onus would be on the respondent authorities is in the teeth of the said statutory provision. I may note that Section 68J has not been noticed by the learned Judge in *Shahid Parvez* (supra).

16. So far as the competent authorities “reason” to believe that the aforesaid properties are illegally acquired is concerned, the acquisition of immovable properties by a minor of 12 years itself furnishes reason to entertain the said belief. The consequence of the said belief is only that an enquiry is set into motion by issuance of a show cause notice to grant the person concerned an opportunity to disclose his income, earnings or assets, out of which or by means of which he has acquired the property in question.”



10. Significantly, the appellants did not produce the original files containing any materials, other than what was mentioned in the notice, linking Piare Lal with any smuggling activities; they relied on the notice and the order of detention.

11. The successful writ petitioners-arrayed as respondents, resist the appeals, contending that the findings drawn on the basis of materials on the record are unexceptionable. It was pointed out that though Section 8 of SAFEMA casts a burden on the person receiving the notice, the basic premise is a valid notice. Thus, the notice should show some nexus or connection with smuggling activities, leading to acquisition of ill gotten wealth. If such nexus is missing, and the notice is upheld, SAFEMA would act in a draconian manner, casting a burden on proving that the wealth or assets acquired were through legitimate means, which may be impossible if, like in this case, the authorities proceeded to reject the income tax authorities' orders.

12. The decisions in *Fatima Mohammed Amin (supra)* and *P.P. Abdulla (supra)* are categorical as to the need for existence of a link between some smuggling activities and the acquisition of assets/properties that are to be the subject matter of SAFEMA proceedings. In *P.P. Abdulla (supra)*, this aspect was highlighted by the Supreme Court, in the following manner:

*“8. It must be stated that an order of confiscation is a very stringent order and hence a provision for confiscation has to be construed strictly, and the statute must be strictly complied with, otherwise the order becomes illegal.*

*9. In our opinion, the facts of the case are covered by the decision of this Court in Fatima Mohd. Amin v. Union of India (2003) 7 SCC 436. In the present case the contents of the notice, even if taken on face value, do not disclose any sufficient reason warranting the impugned action against the appellant as, in our opinion, the condition precedent for exercising the power under the Act did not exist. Hence, the impugned orders cannot be sustained.”*

...16. In this case, the entire basis of the notice appears to be a detention, the challenge to which was declined. Here, it is important to remember that the detinue's access to Article 226 of the Constitution of India was doubted; nine High Courts held that access existed. The Supreme Court, however



overturned their rulings in *ADM Jabalpur v. Shivakant Shukla* (1976) 2 SCC 521 : AIR 1976 SC 1207, in its majority judgment. This meant that even petitions challenging validity of detention orders, on the ground that no valid rationale for detention existed under the COFEPOSA could not be entertained. The internal emergency that existed at the time, was lifted; liberties that were taken away or suspended, were restored. And yet, late Piare Lal's troubles were far from over. The wheels of bureaucracy grind-inexorably. For Piare Lal (*supra*) there appeared to be no respite or exit, from the black hole which he entered into, on account of the notices issued under SAFEMA. The *rationale* for that notice was a valid COFEPOSA detention (in his case, its legality was undisputable, because he was denied the liberty of challenging it). The other rationale was suspicion, based on rejection of the income tax authorities' orders.

17. The importance of establishing a link-howsoever rudimentary, but real nevertheless, between an individual and some smuggling activities, can be the only basis of a valid “reason to believe” under Section 6(1) of the Act. Otherwise, there is a danger of SAFEMA or any other authority concluding that since the subject is unable to establish the legitimacy of his source of income, it must be on account of smuggling. In other words, suspicion is elevated into certainty or a finding. Clearly, that occurred in the facts of this case. The court is therefore of the opinion that the notices initiating the proceedings, in these cases were vitiated and unsustainable. The Union's argument regarding Kamla Vati's acquisition of property is unpersuasive. The Benami Properties (Prohibition) Act, 1988 was not in existence, when the notice was issued; in any case, even if it were assumed that the properties were acquired with Piare Lal's funds, nevertheless, the same infirmity, i.e absence of any link with smuggling activities, applies to those properties too. The argument therefore, fails.

**16.3** It is pertinent to note that in the said case, challenge to the detention order had been dismissed. In the present case, nothing has been brought on record with respect to the outcome of the detention order.

**17.** This requirement of notice under Section 6 of the Act, to establish the link between the properties sought to be forfeited and the convict/detenu, was



reiterated by Hon'ble Madras High Court in **Competent Authority Safem (FOP) and NDPS Acts v. M. Khader Moideen and Another**<sup>3</sup>. In the said judgment, first respondent therein was the husband of a person who have been convicted for violation of Foreign Exchange Regulation Act (FERA). The said respondent came within definition of relatives as per explanation 2 to Section 2 (2) (c) of the Act, and his properties were forfeited after issuance of notice under Section 6 (1) of the Act. The Appellate Tribunal set aside the forfeiture order passed by the Competent Authority, and against the said order of Tribunal, a Writ Petition was preferred on behalf of the Competent Authority, which was dismissed by observing and holding as under:

**“9. Upon perusal of the notice under section 6 of the SAFEM Act dated January 10, 1992, it is evident that it is a printed pro forma. In the notice, the petitioner has stated that he has reason to believe that the properties were acquired by illegal means. The first respondent is treated as the independent owner of the properties. There is nothing to show that these were the properties acquired by the convict in the name of the first respondent. The statement of reasons, which have been recorded has not been referred to in the notice. A perusal of the statement of reasons indicates that the petitioner has initiated the proceedings based on the Income-tax proceedings of the first respondent, wherein certain explanations of the first respondent were accepted by the Income-tax authorities. The petitioner has in the statement of reasons concluded that the properties were illegally acquired properties and proceeded to issue the notice. However, there is nothing to show that the properties acquired have a link with that of the convict/detenu.**

**10.** It has been urged by the learned Additional Solicitor General that there is a reference to the conviction of the first respondent's wife under the SAFEM Act and it is not required to specifically state the link or the nexus as the first respondent is none other than the husband of the convict. The learned Additional Solicitor General has also relied upon the judgement of

---

<sup>3</sup> 2016 SCC OnLine Mad 33627



the honourable Supreme Court reported in Smt. Kesar Devi v. Union of India (2003) 7 SCC 427, in support of his contentions. In the said decision, in paragraph 13, it has been held as under:

"13. We are, therefore, clearly of the opinion that under the scheme of the Act, there is no requirement on the part of the competent authority to mention or establish any nexus or link between the money of the convict or detenu and the property sought to be forfeited. In fact, if such a condition is imposed, the very purpose of enacting SAFEMA would be frustrated, as in many cases it would be almost impossible to show that the property was purchased or acquired from the money provided by the convict or detenu. In the present case, the appellant is the wife of the detenu and she has failed to establish that she had any income of her own to acquire the three properties. In such circumstances, no other inference was possible except that it was done so with the money provided by her husband."

11. The above judgment has been rendered by the apex court holding that the judgment of the Constitutional Bench in Amratlal Prajivandas (1995) 83 Comp Cas 804 (SC) ; (1994) 5 SCC 54 does not explicitly lay down that it must be established that a link between the convict and the source must be established. However, the apex court in the subsequent judgment reported in Aslam Mohammad Merchant v. Competent Authority (2008) 14 SCC 186, while dealing with similar provisions under the NDPS Act has held as follows:

"27. It is, therefore, evident that the property which is sought to be forfeited must be the one which has a direct nexus with the income etc. derived by way of contravention of any of the provisions of the Act or any property acquired therefrom. What is meant by identification of such property having regard to the definition of 'identifying' is, that the property was derived from or used in the illicit traffic. ..

34. Analysis of the aforementioned provisions clearly establish that a link must be found between the property sought to be forfeited and the income or assets or properties which were illegally acquired by the person concerned. ..



39. Section 68-H of the Act provides for two statutory requirements on the part of the authority, viz., : (i) he has to form an opinion in regard to his 'reason to believe' ; and (ii) he must record reasons therefor. ..

45. Our attention, however, has been drawn to a decision of a two judge Bench of this court in Smt. Kesar Devi v. Union of India (2003) 7 SCC 427 wherein Fatima Mohd. Amin v. Union of India (2003) 7 SCC 436 was distinguished by a Bench of this court, inter alia, opining that no nexus or link between the money of the debt and property sought to be forfeited is required to be established under the Scheme of the Act, stating:

'10. .. The condition precedent for issuing a notice by the competent authority under section 6(1) is that he should have reason to believe that all or any of such properties are illegally acquired properties and the reasons for such belief have to be recorded in writing. The language of the section does not show that there is any requirement of mentioning any link or nexus between the convict or detenu and the property ostensibly standing in the name of the person to whom the notice has been issued. ..

13. We are, therefore, clearly of the opinion that under the scheme of the Act, there is no requirement on the part of the competent authority to mention or establish any nexus or link between the money of the convict or detenu and the property sought to be forfeited. In fact, if such a condition is imposed, the very purpose of enacting SAFEMA would be frustrated, as in many cases it would be almost impossible to show that the property was purchased or acquired from the money provided by the convict or detenu. In the present case, the appellant is the wife of the detenu and she has failed to establish that she had any income of her own to acquire the three properties. In such circumstances, no other inference was possible except that it was done so with the money provided by her husband.'

We, with utmost respect to the learned judges express our inability to agree to the said observations. The necessity of establishing link or nexus in our opinion is writ large on the face of the statutory provision as would appear from the definition of 'illegally acquired property' as also that of 'property'. The purport and object for which the Act was enacted point out to the same effect. ..



2025:DHC:9206



47. In the final order, the rule of evidence as envisaged under section 68-I read with section 68-J of the Act must be applied. A person affected would be called upon to discharge his burden provided a link or nexus is traced between the holder of the property proceeded against and an illegal activity of the detenu. Such a formation of belief is essential."

**12. In the above judgment, the apex court has not only disagreed with the findings in Smt. Kesar Devi's case, but also followed the ratio laid down in (2003) 7 SCC 436 by a quorum of three-judge bench following Amratlal Prajivandas (1995) 83 Comp Cas 804 (SC) ; (1994) 5 SCC 54 and in the judgment reported in 2007 CrL L.J 1449 to hold that to initiate proceedings for forfeiture of properties, a link must be established between the properties and to the convict. It has been contended that the judgment in Aslam Mohammad Merchant's case is under the NDPS Act and therefore has no application. This court is unable to accept the contention. Upon perusal of the relevant provisions under the NDPS Act, It is evident that section 68 is pari materia to section 3 and section 68B to section 2(c) of the SAFEM Act. Also, the apex court in the judgment referred to supra, has followed the ratio laid down under the SAFEM Act, while interpreting the scope of notice under section 6. It is also pertinent to mention here that the petitioner is the competent authority both under the SAFEM Act and the NDPS Act as evident from the proceedings dated September 30, 2005. Therefore, it is safe to conclude that the notice under section 6 must explicitly establish the link between the properties and the convict/detenu as per the law laid down by the apex court.**

**...14. In the case on hand, we have already held that the notice does not establish any link between the convict and the properties. It is also not the case of the petitioner that the properties were purchased out of illegal income earned in India by the convict. It is also pertinent to point out that the proceedings against the detenu were dropped on February 10, 1991. Had there been any nexus or link, the petitioner would not have dropped the proceedings. Though the burden of proof lies on the person affected under section 18, the statutory requirement for commencement of the proceedings cannot be forfeited to forfeit the properties. That stage would arise only when the notice is as per the statute. What by law requires to be express, cannot be left to be inferred. This court after careful consideration of the relevant provisions and the judgments referred to above, accepts the findings of the Tribunal and holds that the**



2025:DHC:9206



**notice under section 6 must establish the link or nexus and in the absence of the same, the entire proceedings would stand vitiated.”**

(emphasis supplied)

18. In the present case, the Competent Authority has relied upon Section 8 of the Act to conclude that the petitioners could not discharge the burden cast on them as per the said provision. In **Shanti Devi v. Union of India & Ors.**<sup>4</sup>, learned Division Bench of this Court, on the applicability of the aforesaid provision, observed and held as under:

**“21. It is thus clear that the question of applying rule of evidence enacted by Section 8 casting the burden of proof on the person affected shall come into play only on some connecting link or nexus being established or traced between the holding of the property or assets by the person proceeded against and illegal activity of the detenu/convict : In the case at hand, undisputedly the house property was acquired by the wife in the year 1961. The detenu (husband) did not indulge in any illegal activity prior to the year 1967. No connecting link or nexus between the holding of the property by the petitioner in the year 1961 has been traced to the illegal activities of the detenu which on the material available on record commenced in the year 1967 only. The notice of forfeiture under Section 6 could not have been issued to the petitioner, there being no reason to believe available to the Competent Authority within the meaning of Section 6, providing jurisdictional foundation for issuance of notice of forfeiture; a decision adverse to the petitioner forfeiting her property could not have been taken solely by relying on the rule of evidence enacted by Section 8 of the Act and merely because of the petitioner being a relative of the detenu Basantlal.”**

(emphasis supplied)

---

<sup>4</sup> 1998 SCC OnLine Del 354



19. As noted hereinbefore, the grounds of detention of petitioner no. 1 *i.e.*, Mangal Singh, referred to his alleged activities in 1974. The said grounds of detention were the basis on which the Competent Authority proceeded to determine the show cause notice dated 27.01.1977. It is pertinent to note that the agricultural properties belonging to the petitioners were acquired on 1971. Even otherwise, the show cause notice refers to “certain relevant information/and/or relevant material available” to reasonably believe that the scheduled properties were illegally acquired within the meaning of clause (c) of sub-section (1) of Section 3 of the Act. However, no material or information has been placed on record. There is nothing in the show cause notice to establish any connection or link or nexus between the alleged illegally acquired money of petitioner no. 1, *i.e.*, Mangal Singh and the scheduled properties sought to be forfeited. As noted hereinbefore, it is not the case of the respondents that the petitioner no. 1, *i.e.*, Mangal Singh was even arrested or even prosecuted under NDPS Act, or any other statute for commission of an offence. Similarly, there is nothing on record to demonstrate that the said petitioner was in possession of money/asset derived from any illegal activities.

20. Insofar as prayer (iii) is concerned, it is noted that the Hon’ble Supreme Court in **Attorney General for India v. Amratlal Prajivandas and Others**<sup>5</sup>, upheld the constitutional validity of COFEPOSA and the Act, with respect to its applicability to relatives and family members of the detenu. In view

---

<sup>5</sup> 1994 SCC OnLine SC 21



thereof, the relief sought under this prayer does not survive for consideration and is rendered infructuous.

**21.** With respect to prayer (iv), the Hon'ble Divisional Bench of this Court in **Ajit Singh (Deceased) through their LRs v. Union of India & Others**<sup>6</sup>, while disposing of a challenge to the vires of Section 12 (6A) of the Act, observed and held as follows: -

“...The insistence of learned counsel for the Petitioner that one of the members of a two member Bench of the Tribunal should be a “judicial member” is not warranted, by the provisions of SAFEMA, which only recognizes a “member” of the Tribunal. It is true that some other statutes do provide for an administrative member and a judicial member, such as the Income Tax Act, 1961 and the Administrative Tribunals Act, 1985. On the other hand, there are Tribunals (covered by the meaning of this word in Article 136 of the Constitution) which do not provide for a “judicial member”. Such instances are the Central Board of Revenue and the Central Government (exercising appellate and revisional Jurisdiction respectively) under the Sea Customs Act, 1878 or the Central Government exercising revisional jurisdiction under the Mineral Concession Rules, 1960. SAFEMA does not create any distinction between members of the Tribunal, being administrative or judicial and we see no reason why we should create a distinction where none exists.

In this context, learned counsel for the Petitioner did not explain what he meant by a “judicial member”. Would a “judicial member” be a person who is qualified to be a Judge of the Supreme Court or of a High Court or would it mean a member who is qualified to be a District Judge? It is also not clear whether learned counsel would, expansively, include within the meaning of the expression “judicial member” a person who is merely a graduate in law or a person who has had a few years experience in the legal profession or a person who may not have been a practising advocate but has experience in

---

<sup>6</sup> 2002:DHC:5118-DB



the law such as a member of the Indian Legal Service. In the absence of anything specific in this regard, it is not possible for us to read in the provisions of Section 12 of SAFEMA the requirement of a "judicial member" and thereafter to lay down the minimum qualifications for the appointment of such a "judicial member" and thereafter to lay down the minimum qualifications for the appointment of such a "judicial member".

In view of the above, the relief sought under the prayer (iv) is devoid of merit and is dismissed accordingly.

**22.** In light of the discussion hereinbefore, prayers (i) and (ii) are allowed. Notices dated 27.01.1977 issued by the Competent Authority under Section 6 (1) of the Act, are hereby set aside. In consequence thereof, order of forfeiture dated 28.04.1995 passed by the Competent Authority, as well as, the order dated 20.11.1996 passed by the Appellate Tribunal, affirming the said forfeiture, are also set aside.

**23.** The present petition stands disposed of in the above terms.

**24.** Pending applications, if any, also stands disposed of.

**25.** Judgment be uploaded on the website of this Court *forthwith*.

**AMIT SHARMA**  
**JUDGE**

**OCTOBER 16, 2025/nk/sg/db**