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W.P.No.20795 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.03.2026

Pronounced on: 02.04.2026

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

W.P.No.20795 of 2002

1.Zahida Begum (Deceased)

2.Abrar Ahmed

(P2 substituted as Lrs of Deceased
sole Petitioner vide Order of this Court
dated 31.07.2025 made in WMP.No.2964 of 2025
in WP.No.20795 of 2002)

.. Petitioners

VS

1.The Competent Authority
Smugglers and Foreign Exchange
Manipulators (forfeiture of
Property) Act 1976, No.64/1,
G.N.Chetty road, T.Nagar,
Chennai – 600 017.

2.The Appellate Tribunal for
Forfeited property
4th Floor, Loknaya Bhavan,
Khan Market, New Delhi – 2.

3.Hajira Nasreen

4.Yasmeen



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5.Asfia

(R3 to R5 substituted as Lrs of Deceased
sole Petitioner vide Order of this Court
dated 31.07.2025 made in WMP.No.2964 of 2025
in WP.No.20795 of 2002)

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records of the second respondent dated 21.05.2001 in FPA.No.20/MDS/2001 confirming the orders of the first respondent dated 28/3/2001 in F.No.OCA/MDS/2866/98 and quash the same.

For Petitioner :Mr.B.Kumar
Senior Counsel
For Mr.Samir S.Shah

For Respondent :Mr.ARL.Sundaresan
Additional Solicitor General
Assisted by
Mr.J.Madanagopal Rao
Senior Central Government Standing Counsel

ORDER

(Order of the Court was delivered by Dr. ANITA SUMANTH, J.)

The detenu, one Abdul Razak @ Asmath Pasha is the husband of the petitioner herein. The detenu was proceeded against under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974 and an order of forfeiture of property at Door No.2/10, Wuthukattan Street, Periamet, Chennai ('property'/'property in question'), under the Smugglers and Foreign



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Exchange Manipulators (Forfeiture of Property) Act, 1976 (in short 'SAFEMA'/'Act').

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2. The property originally stood in the name of four persons, the parents of the detenu held 25% each, the detenu held 25% and the balance of 25% stood in the name of the petitioner. The share of the parents of the detenu ultimately came to be settled in favour of the daughters of the petitioner.

3. A copy of the notice under Section 6(1) issued to the detenu had been issued to the petitioner as well, under Section 6(2) of the Act. A show cause notice was issued to the petitioner calling upon her to show cause why her share of the property not be forfeited as illegally acquired property. In addition, the petitioner also received notice dated 22.09.1998, under Section 6(1) of the Act in the capacity of 'person affected'.

4. A detailed note has been furnished, tracing the trajectory that the shares of the detenu and his parents have taken. On the demise of the detenu's mother, her 1/4th share devolved on her husband and detenu at 6.25% and 19.75% respectively. The shares of the detenu and his father thus increased to 31.25% and 44.75% respectively. Out of his share of 31.25%, the detenu's father settled 6.25% inherited from his wife in favour of his grand-daughter, Asfia, and his original 25% share in favour of another grand-daughter, Ameena Bee @ Yasmeen.



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5. The forfeiture of the shares of the detenu's parents was ultimately set aside, the Appellate Authority, vide order dated 10.08.2001, accepting the source for the acquisition of their shares. Their grand-children derive their title from the grandparents. Hence, with the acceptance of their appeals, the shares of the detenu's parents stands accepted by the authorities. This Court, vide an order dated 30.09.2011, in *Abdul Razack alias Asmath Pasha V. Competent Authority*¹ has set aside the forfeiture in the case of the detenu as well. What remains under forfeiture is the 25% share of the petitioner alone.

6. Mr.B.Kumar, learned Senior Counsel for Mr.Samir Shar, takes us through the orders of the Appellate Tribunal for Forfeited Property (Tribunal) dated 10.08.2001 in the case of the grand-children, and this Court, in the case of the detenu.

7. A Division Bench of this Court, in *Abdul Razack alias Asmath Pasha*², considered the challenge of the detenu to the order of forfeiture of his share of the property. They noted the findings of the Appellate Tribunal in the cases of the detenu's children, that the sale deeds dated 12.10.1950 and 27.11.1953 amply proved the financial independence of the detenu's father. The following findings of the Tribunal have been noted by the Bench:

1 (2012) 1 MLJ 177

2 Foot Note Supra (1)



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We have therefore admitted the additional documents and carefully examined them. The sale deed dated 12.10.1950 and another sale deed dated 27.1.1953, certified copies of which were taken on record, during last hearing are ample proof of financial independence of grand-father Hajee Sheik Ahmed. The certified copy of the settlement deed No. 4133/1959, which settles two properties (property at 2/10 Wuthukattan Street, Periamet, Chennai-3-Ameenabee and at 2/10 Wuthukattam Street, Periamet, Chennai)-Fathimabee on the grand-mother Maqbul Jan, in lieu of mehr, is also ample proof of her financial independence. We do not agree within the learned C.A.'s findings that their shares in the property, totally valued at Rs. 40,000/-did not emanate from their own earnings, but were illegal earnings of their son Abdul Razak. We also do not think old cases such as this should be kept alive by remand to the lower authority and instead finalized on the basis of over all evidence before us.

Accordingly, we set aside the impugned order and allow the appeal.

8. The Court also took note of the settlement deed under which the subject property had been settled on the detenu's mother in lieu of Mahr, and took that to be ample proof of her financial independence. In light of the aforesaid, the 50% share of the grandparents was held to be unassailable, and consequently the devolution of the same in the hands of their granddaughters had been accepted.

9. Taking a wholistic and cumulative picture of the transaction, the Bench accepted that detenu's share in the property was also not liable to be forfeited. That finding of the Division Bench has attained finality.



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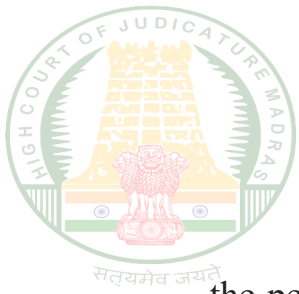
10. In the case of the Petitioner, forfeiture was ordered by the

Competent Authority on 28.03.2001 after having rejected her submissions attempting to justify the sources for acquisition of her share of the subject property, duly confirmed by the Tribunal. There are thus concurrent findings of facts against the petitioner.

11. Thus, while it is true that the case of the detenu and his parents has been accepted by the authorities, we agree with Mr.A.R.L.Sunderesan that this by itself, would not lead to an automatic conclusion in favour of the petitioner.

12. The primary submission of Mr. Kumar is premised on Section 9 of the Act, for payment of fine in lieu of forfeiture. According to learned Senior Counsel, Section 9 enables any person whose property is forfeited, to compound the same by paying fine at the rate stipulated in that Section itself. He would hence submit that the petitioner must be permitted to avail the mechanism under Section 9.

13. Per contra, learned ASG would point out that Section 9 would apply only in a case where the offer for compounding had been extended by the Competent Authority and accepted by the person before that Authority itself. In this case, admittedly the petitioner had received no such offer at the time of forfeiture and hence, according to him, it was too late in the day for that avenue to be pursued.



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14. Without prejudice to his objection, he would submit that even if

the petitioner wishes to compound the offence, the valuation of the asset would be the market value as on date, particularly since the offer for compounding has been made only now.

15. He refers to the judgment of the Supreme Court in *Platinum Theatre and Ors. V. Competent Authority, Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 and Anr.*³ and decisions of this Court in *The Competent Authority, Chennai. V. Abdul Razack (deceased) and Ors*⁴ and *Kanthabai V. Competent Authorities (SAFEMA) and anr.*⁵

16. We have heard the rival contentions and perused the material papers. Section 9 reads as follows.

9. Fine in lieu of forfeiture.—(1) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under section 7 and it is a case where the source of only a part, being less than one-half, of the income, earnings or assets with which such property was acquired has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to one and one-fifth times the value of such part. Explanation.—For the purposes of this sub-section, the value of any part of income, earnings or assets, with which any property has been acquired, shall be,— (a) in the case of any part of income or earnings, the amount of such part of income or earnings; (b) in the case of any part of assets, the

³ (2023) 19 Supreme Court Cases 378

⁴ W.P.No.8940 of 2000 dated 21.12.2024 Madras High Court

⁵ MP.No.34246 of 2024 in W.P.No.22098 of 2023 dated 06.12.2024



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proportionate part of the full value of the consideration for the acquisition of such assets.

(2) Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard. (3) Where the person affected pays the fine due under sub-section (1), within such time as may be allowed in that behalf, the competent authority may, by order, revoke the declaration of forfeiture under section 7 and thereupon such property shall stand released.

17. Section 9 applies in a case where the source in respect of part of a property, being less than one half, has not been proved to the satisfaction of the Competent Authority. In such a situation, which is a condition precedent to the benefit under that Section, the Competent Authority has been directed, by use of the word '*shall*', to extend an option to the person affected to pay, in lieu of forfeiture, a fine equal to one and one-fifth times the value of such part.

18. The order of the Competent Authority in this case has been passed on 28.03.2001. At that time, the proceedings were at large in the case of the co-owners as well, being the detenu and his parents. The Competent Authority thus, could not have invoked Section 9 in the case of the petitioner or any of the co-owners, as their shares were all under a cloud, being 100 percent of the value of the subject property.

19. On 10.08.2001, the Tribunal, in the case of the children's shares, set aside the forfeiture, and this Court, on 30.09.2011, set aside the forfeiture in the case of the detenu. Those orders have attained



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finality, and their shares amount to 75% of the subject property.

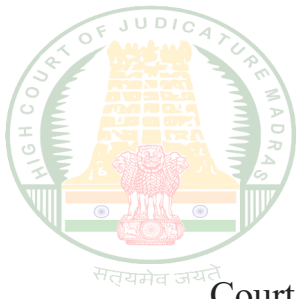
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20. The benefit under Section 9 would thus be available only thereafter, in light of the condition precedent that the forfeiture must relate to '*less than one-half, of the income, earnings or assets.....*'.

21. In our considered view, Section 9 would be applicable in every instance where the condition precedent is satisfied, irrespective of the stage at which the satisfaction transpires. Hence, in a case such as the present, where the forfeiture is of a jointly held property with multiple co-owners, the benefit of Section 9 becomes available to the co-owner/petitioner as and when the condition precedent is satisfied.

22. We, hence, find nothing untoward in the petitioner being entitled to the benefit of Section 9 at this stage, as she is, admittedly, owner of only 1/4th share in the subject property, and the forfeiture in respect of the remainder of the property (75%) has been set aside in appeal/writ petition.

23. Section 9 uses the word '*shall*' and in the present case, we read the word '*shall*' literally as '*shall*', mandating such option to be extended/given to the person affected. The petitioner having sought the benefit of Section 9, is so entitled to the option.



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24. In *Platinum Theatre*⁶ the challenge was to an order of the High

Court rejecting the request for imposition of fine in lieu of forfeiture, since the share of the person seeking the benefit was not in compliance of the condition under that Section. That apart, the conclusion of the High Court as noted by the Supreme Court, is as follows:

17. That apart, as regards the submissions made by the counsel for the appellants to impose fine in lieu of forfeiture, as contemplated under Section 9 of the 1976 Act, after noticing the argument advanced by the appellants before the High Court, a categorical finding has been recorded as to why the appellants are not entitled to seek protection of Section 9 of the 1976 Act, which is as follows:

"The argument of the petitioners' counsel is, major contribution is from the petitioners and that the land in question was acquired in the year 1969 prior to the entering into a partnership agreement out of the borrowings of 2nd petitioner Saheeda and that land in question ought not have been taken into consideration to forfeit the same, and as such, the competent authority and the Appellate Tribunal ought to have taken note of the same into consideration only to impose fine and not to forfeit the property and also the land in question should be available to the petitioners and it should not be the subject-matter of forfeiture.

In this regard, it appears the competent authority as well as the Appellate Tribunal having noted the transaction and also having noted that there is no explanation offered by the second petitioner properly regarding acquisition of the land

6 Foot Note Supra (3)



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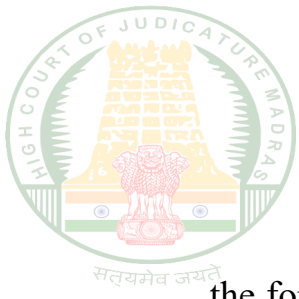
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in question for Rs 33,000 in the year 1969, and also having doubted the unsigned agreement between the second petitioner and N.A. Yusuf, and in the absence of any such proper explanation as to source of acquisition, held that major investment remain unexplained and also disbelieved the version of the second petitioner on the ground that the proof of gift from her marriage has not been produced. Thus, according to the competent authority as well as the Appellate Tribunal, even if the value of the land is taken only at Rs 33,000, the total value of the land and building will work out at Rs 25,20,000 and as such, it was of the view that major part of the investment remained unexplained. Even the accounts are not maintained in respect of the cost of construction of the building and all other various installations made."

25. The facts of that case are not similar when compared with the facts of the present matter and hence, reliance on the judgment in *Platinum Theatre*⁷ does not advance the case of the respondents.

26. The next point relates to the question of valuation. In the event of forfeiture of a part of an asset, the part being less than one half of the asset forfeited, the Competent Authority, under Section 9 may impose a fine equal to one and one-fifth times the value of such part and an option for the same shall be extended to the person affected. The fine would, evidently, be computed on the value of the property at that relevant point in time.

7 Foot Note Supra (3)



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27. In the present case, with the passing of orders in 2001 and 2011

the forfeiture of 75% share in the subject property in the hands of the co-owners stands vitiated at the very inception. Those orders have attained finality, meaning that the Authorities have accepted the illegality of the forfeiture. What remains now is only the Petitioner's share of 25% and we hence see no justification in the argument that the valuation should be on present market value of the property.

28. Had the forfeiture of 75% of the property not been made initially, the petitioner would have been entitled to the benefit of Section 9 even in 2001, at the time of forfeiture. The elapse of time in the interim is on account of the litigation initiated by her family members, that has ultimately culminated in their favour. The petitioner cannot be prejudiced on that account.

29. Hence, we are of the considered view that it is the value of the property as on date of forfeiture, 28.03.2001, that would apply for computation of fine under Section 9. The petitioner will appear before the Competent Authority within a week from date of uploading of this order to finalize the valuation of the property as on that date, and remit the same immediately on being furnished the same. If the petitioner does not appear before the Authority as directed, the benefit granted under this order stands withdrawn without further reference to the parties.



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30. This Writ Petition is disposed in the aforesaid terms. No costs.

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[A.S.M, J.] [S.M, J.]
02.04.2026

Index: Yes
Speaking Order
Neutral Citation: Yes
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To

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