IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-03-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

WP Nos. 7196 and 7478 of 2001

S.Aysath Zulaika ..Petitioner in W.P.No.7196 of 2001

Katheejathul Rilwana ..Petitioner in W.P.No.7478 of 2001

Vs

1. Competent Authority, Smugglers Foreign Exchange Manipulators (Forfeiture of Properties) Act, Chennai.
2. Appellate Tribunal for Forfeited Property, New Delhi

..Respondent in both W.P.'s

Common Prayer: Writ petition filed under Article 226 of Constitution of India for issuance of writ of Certiorari calling for the records of the second respondent the Appellate Tribunal for Forfeited Property, New Delhi in the order dated 31.1.2001 made in FPA.Nos.70/MDS/95 and 68/MDS/95 confirming the findings of the Competent Authority, Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, Chennai in OCA/MDS/348-352/76 dated 2.2.2000 and quash the same.

In both W.P.'s

For Petitioner(s): Mr. B.Kumar
Senior Counsel
for Mr.S.Ramachandran

For Respondent(s): Mr. ARL.Sundaresan
Additional Solicitor General of India
for Mr.J.Madhanagopal Rao
Senior Standing Counsel (for R1)
R2 – Tribunal

COMMON ORDER

(Order of the Court was made by Dr.Anita Sumanth J.)

W.P.No.7196 of 2001 is filed challenging an order passed by the Appellate Tribunal for Forfeited Property (Tribunal). The decision is dated 31.01.2001 and has been passed in common in the case of the Writ Petitioner and other relatives of one S.S.A.Sahul Hameed, a detenu under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974 and held to be a 'person' under Section 2(2)(b) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (in short 'SAFEMA'/'Act').

2. The petitioner is the daughter of the detenu and was also proceeded with on the basis that she was a 'person' under Section 2(2)(c) of the SAFEMA. The implication is that the petitioner is one to whom the provisions of Act would apply in terms of Section 2 thereof.

3. A notice under Section 6(1) was issued to the detenu on 09.02.1977, accompanied by an annexure that identified various parcels of land for the purpose of forfeiture under Section 5 of Act. Inter alia, the Competent Authority identified a parcel of 8 cents in S.Nos.324/1693, 1694, 1695 and 1818 ('subject property') as standing in the name of detenu's wife Mohammed Daha Ummal.

4. Along with the notice, reasons were recorded, and at paragraph 11 of the reasons, there is mention of the 8 cents as aforesaid, though standing in the name of his wife Mohammed Daha Ummal. The notice under Section 6(1) contains an endorsement in conclusion, to the effect that a copy has been forwarded to a) Smt.Mohammed Daha Ummal, wife of the detenu and b) Ameenathu Fathima, daughter of the detenu, in terms of Section 6(2) of the SAFEMA.

5. While so, a separate notice has been issued under Section 6(1) of the SAFEMA to Mohammed Daha Ummal proposing forfeiture of properties alleged illegally acquired, as per the schedule thereto. The schedule contained the description of agricultural lands in Kooriyur, Mayakulam and Erwadi. Significantly, the subject property identified under the notice issued to the detenu, did not figure in the aforesaid notice.

6. Show cause notices were issued to the petitioners, in response to which, they tendered the explanation that out of the 8 cents that stood in the name of Mohammed Daha Ummal, (i) 1386 sq.ft. along with construction

thereupon had been settled in favour of the petitioner in W.P.No.7196 of 2021 as Sridhana, vide registered document bearing No.1164 of 1978 dated 02.08.1978, and (ii) 1245 sq.ft had been settled on the petitioner in W.P.No.7478 of 2001, as Sridhana vide document dated 04.07.1984.

7. The said documents have admittedly been produced before the authorities as well. It was thus her express submission that the land had devolved on her through her mother as Sridhana, and hence could not be made the subject matter of forfeiture under the SAFEMA.

8. Overriding the explanations tendered, the Competent Authority passed an order dated 28.04.1995 which was carried in appeal before the Tribunal. In the course of hearing, the Tribunal considered the preliminary ground of violation of principles of natural justice and passed orders dated 05.05.1998 and 16.11.1999 calling for a remand report from the Competent Authority after hearing the petitioner as well as other legal heirs of the detenu.

9. The Competent Authority took note of the submissions of the petitioner as well as others and tendered his comments on 02.02.2000, considering which, the impugned order of the Tribunal has been passed, which is assailed in these Writ Petitions. The legal issue that arises for our consideration is as to whether the procedure adopted by the authorities in this case is proper.

10. Mr.B.Kumar, learned Senior Counsel appearing for Mr.S.Ramachandran, learned counsel for the petitioner would take us through the scheme of SAFEMA, particularly Sections 2, 6, 7 and 11. His submissions are that the property sought to be forfeited was outside the ambit of the SAFEMA and that the provisions of Section 7 would be inapplicable in the present case. He relies on the following decisions:

i. *R.Ramakrishnan V. Appellate Tribunal for Forfeited Property.*[1]
ii. *C.A. V. Mohammed Thahaumma & Ors.*[2]
iii. *SSA Khatija Rilwana and Ors. V. Competent Authority*[3]
iv. *Aminath Fathima V. Competent Authority*[4]
v. *Income Tax Officer, Circle 1(2) V. V.Mohan*[5]
vi. *Attorney General for India V. Amratial Prajivandas*[6]
vii. *Fatima Mohd Amin V. Union of India*[7]
viii. *Kesar Devi V. Union of India*[8]
ix. *P.P.Abdulla V. Competent Authority*[9]
x. *Mohammed Merchant V. Competent Authority*[10]
xi. *Competent Authority V. M.Khader Moideen*[11]
xii. *South Central Railway Employee Co-OP. Credit society employees Union V. B.Yasodabai and others.*[12]

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[1] 2011 (2) MWN (Crl) 582
[2] 2024 SCC Online Mad 4060
[3] SLP Civil Diary No (S) 5372/2025
[4] 2017 (4) TMI 1069
[5] 2021 SCC Online SC 1240
[6] AIR 1994 SCC 2179
[7] 2003 (7) SCC 436
[8] 2003 (7) SCC 427
[9] 2007 (2) SCC 510
[10] 2008 (14) SCC 186
[11] 2017 (1) LW (Crl) 139
[12] Civil Appeal No.7130/2002

xiii. *Suganthi Suresh Kumar V. Jagadeesan*[13]

xiv. *Surinderkumar & anr V. UOI and others*[14]

xv. *Gulshan Ahuja and Ors. V. UOI and others*[15]

xvi. *Radhey Shyan Datta V. UOI & another*[16]

xvii. *Hamida beevi V. C.A.*[17]

xviii. *V.P.Ranganathan V. Appellate Tribunal for Forfeited Properties*[18]

xix. *Competent Authority, Delhi V. Manpreet Singh Oberai*[19]

xx. *Kannanchery Abdu V. C.A. and Ors*[20]

xxi. *Aamenabai Tayebaly V. Competent Authority under SAFEMA*[21]

xxii. *Parvathi Bai V. C.A.*[22]

xxiii. *Raza Textiles V. I.T.Officer, Rampur*[23]

xxiv. *Sh.Gulshan Ahuja and Ors.V. Union of India and Ors.*[24]

xxv. *Aslam Mohammad Merchant V. C.A and Ors.*[25]

11. Mr.AR.L.Sundaresan, learned Additional Solicitor General, assisted by Mr.J.Madana Gopal Rao, learned Senior Standing Counsel appearing for R1, for his part, would submit that notice under Section 6(1) had been issued to the mother of the petitioner. That apart, a copy of the notice issued under Section 6(1) to the detenu was also marked to the mother of the petitioner and together,

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[13] 2002 (2) SCC 420
[14] 2011 SCC Online Delhi 3187
[15] 2004 SCC Online Delhi 1158
[16] 2023 SCC Online Delhi 4907
[17] 1994 SCC Online AFTP 5
[18] 2010 SCC Online Mad 4222
[19] 2017 SCC Online Del 11521
[20] W.A.No.1645 of 2007 (E) dated 24.02.2009 High Court of Kerala
[21] AIR 1998 SC 484
[22] W.P.No.31869 of 2003 dated 11.11.2008 High Court of Madras
[23] AIR 1973 SC 1362
[24] WPC.5577/1999, 1274/2000 and 1606/2000 dated 17.12.2004 High Court of Delhi
[25] (2008) 14 SCC 186

the notices would subserve the provisions of the Act. Hence, the forfeiture of the property has been rightly done. He too relies on a decision in *R.Ramakrishnan*[26]

12. Having heard both learned counsel, our decision is as follows. In the interests of clarity, we would recapitulate the facts, to the extent to which they are admitted. Notice under Section 6(1) was issued to the detenu on 09.02.1977. The annexure to the notice identifies, in S.No. 4 (d), the subject property, being 8 cents in S.No.324/1693, 1694, 1695, 1818 standing in the name of Mohammed Daha Ummal. A copy of notice dated 09.02.1977 issued under Section 6(1) to the detenu has been forwarded to Mohammed Daha Ummal, in line with Section 6(2) of SAFEMA.

13. Separately, notice has been issued under Section 6(1) of SAFEMA on the same day to Mohammed Daha Ummal, wherein other parcels of agricultural lands have been identified. However, the subject property does not find mention therein. It is thus the submission of the petitioners, that 1386 sq.ft. out of the subject property along with construction thereupon, settled on one petitioner by way of registered Sridhana vide document dated 02.08.1978, and 1245 sq.ft settled on the other petitioner as Sridhana vide document dated 04.07.1984, would stand out of the ambit of forfeiture.

[26] Foot Note Supra (1)

14. Section 2 of SAFEMA states that the provisions of the Act would apply to the detenu and every person who is a relative of a detenu. Explanation (2) to Section 2 defines a relative as a spouse, brother or sister of the spouse, lineal ascendant or descendant of the detenu, lineal ascendant or descendant of the spouse of the detenu and various other categories of relatives with which we are not concerned in the present matter.

15. Admittedly, the spouse of the detenu is a person to whom the provisions of the Act would apply. Section 6 provides for issuance of a notice for forfeiture and Section 6(1) provides for a notice to be issued by the Competent Authority, if he has reason to believe that properties have been illegally acquired by a person (referred to as a 'person affected') calling upon them to show cause why they should not be declared to be illegally acquired properties.

16. In the present case, the reasons recorded for issuance of notice under Section 6(1) to the detenu identifies at paragraph 11, the following properties:

> *11. There is also information that this person holds the following lands and car.*
>
> *1) 11 cents - S.No.324/1815, 2663.*
>
> *2) 9 cents - S.No.324/1693, 1694, 1695, 1818 in the name of his wife Mohd.Taha Umma.*
>
> *3) 3.40 acres – Patta 344 and 285/4 – Jointly owns with Habeeb Mohd. Meera in a property of 8 acres.*
>
> *4) 8.90 acres - Patta No.214-S.No.174/2.*

5) 1.23 acres – Patta No.302 – S.No.291/2-1/5th share owned by his wife.

6) 30 acres – At Nallikarai in his name.

7) 3 acres – At Ramnad Opp: to Periakanmai in his name.

8) 18 acres – At Mayakulam in the name of his wife Smt. Mohd. Daha Ummal.

9) 1.16.5 acres – Patta No.823 – S.No.396/4 Asst.2.33 Dry Land – Cocoanut plantation.

10) 0.90.0 acres – Patta No.572-S.No.392/1 Asst. 1.80 Dry land.

11) 1.79.5 acres – Patta No.831 – S.No.420/2 Asst. 3.59 Dry Land in the name of daughter Ameenathu Fathima

12) 4.50 acres – Patta No.198- S.No.394 Asst. 16.17.

13) Car TMN.1206 Ambassador.

There is no evidence that these lands and car were acquired from any legal or explained sources. Hence these will be taken as acquired from out of unexplained sources of funds. The estimated value of these lands will be not less than Rs.25,000/-.

17. Notice dated 09.02.1977 has been issued under Section 6(1) of the Act to the detenu, proposing forfeiture of the properties set out in the Annexure thereto. The details of properties as per Annexure read thus:

ANNEXURE

S.No.	*Description of the Property*	*Present holder of the property*
1.	*Indian Bank – Rs. 136*	*Sri S.S.A.Shahul Hameed alias Lucky Savanna*
2.	*Right, title and interest in the firm of M/s.Lucky Electricals, Madras, including Rs.52,351/-*	*-do-*
3.	*Cash balance as on 31-3-75 Rs.5998*	*-do-*

4.	*AGRICULTURAL LANDS.*		*-do-*
a)	*Agricultural lands at Erwadi, Ramnad Dist., acquired on 24-11-1964 Rs.500/-*		
b)	*Agricultural lands at Erwadi, Ramnad Dist., acquired on 29-1-1971 Rs.500/-*		
	Extent of land		*Description.*
c)	*11 cents (k... not legible)*	*...*	*S.No.324/1815, 2663 (wife's name*
d)	*8 cents (")*	*...*	*S.No.324/1693, 1694, 1695, 1818 in the name of his Wife Mohd. Daha Ummal*
e)	*3.40 acres*	*...*	*Patta 344 & 285/4 – jointly owned in a property of 8 acres.*
f)	*8.90 acres*	*...*	*Patta No.214-S.No.174/2*
(wife) g)	*1.23 acres*	*...*	*Patta No.302-S.No.291/2-1/5th share owned by his wife. Smt.Mohd. Daha Ummal.*
(wife) h)	*18 acres*	*...*	*At Mayakulam in the name of his wife Smt.Mohd. Daha Ummal*
i)	*30 acres*	*...*	*At Nallikarai in the name of himself*
j)	*3 acres*	*...*	*At Ramnad opposite toPeriakanmai in the name of himself.*
k)	*1.16.5 "*	*...*	*Patta No.823 S.No.396/4 Asst. 2.33 Dry land – Coconut plantation.*
l)	*0.90.0 "*	*...*	*Patta No.572 S.No.392/1 Asst. 1.80 Dry land.*
m)	*1.79.5 "*	*...*	*Patta No.831- S.No.420/2 Asst. 3.59 Dry land in the name of daughter*

Ameenathu Fathima.

n) 4.50 acres ... Patta No.198 S.No.394 Asst. 16.17.
Value of items (c) to (n) Rs.25,000.

5. Car TMN 1206 Ambassador.

6. Interest in Life Insurance Policy. Mr.S.S.A.Sahul Hameed

a) All India General Insurance Company
Policy No.34811 dt.13-5-1961 for Rs.5,000.

b) The United India Life Insurance Co., Ltd., Madras
Policy No.105614 dt.29-12-1961 for Rs.2,500.

c) National Indian Life Insurance Co., Calcutta.
Policy No.64197254 dt.30-12-1961 for Rs.4,000.

18. It is relevant to note that the properties stated to be standing in the name of Mohammed Daha Ummal as per the notice issued to the detenu do not find place in notice dated 09.02.1977 (erroneously stated as 09.02.1976) issued to Mohammed Daha Ummal. Instead, the properties referred to in notice dated 09.02.1977 issued to Mohammed Daha Ummal are:

Schedule

S.No. Description of the property Name of the present holder of property

1	2				3	
Agriucltural lands. Name of village	*G.R. Patta No.*	*S.No*	*Extent*	*Asst.*	*Classification*	
Kooriyur	*57*	*86/4*	*2.06*	*13.91*	*Wet land*	*Smt.*
	57	*86/38*	*0.37*	*2.50*	*-do-*	*“*
Mayakulam	*139*	*195/3*	*25.62*	*9.42*	*Dry land*	*“*
Erwadi	*857*	*486/1*	*1.68.5*	*3.37*	*-do-*	*“*
	611	*509/1*	*0.12.0*	*7.68*	*Dry lands (with building & rest*	

house – No.6/10

Value of the above Rs.25,000

19. Hence, for the purposes of the Act, and bearing in mind the scheme of Section 6, we are unable to conclude that those properties set out in annexure to notice issued to the detenu should be telescoped or considered to be included as part of the notice issued under Section 6(1) to Mohammed Daha Ummal.

20. Section 6(2) of the Act requires that, where the notice issued under Section 6(1) specifies that any property referred to therein was being held by any other person, then the copy of Section 6(1) notice shall be sent to such other person as well.

21. There is a difference between a '*person affected*' under Section 6(1) of the Act, and *'any other person'* referred to in Section 6(2). A *person affected* in Section 6(1) is a person to whom the provisions of the Act will apply, being the detenu and those persons demarcated under Explanation (2) to Section 2(c) of the Act, whereas, '*any other person*' referred to in Section 6(2), is a person who has been identified to be holding property on behalf of a person affected.

22. While the latter category of person is entitled to a notice and a hearing prior to a decision by the authorities, the order of forfeiture would, essentially be of a property of the detenu held by the third party as a benamidhar. In the case of a person affected, the forfeiture would be of the property of that person itself.

23. In the present case, notice has been issued to Mohammed Daha Ummal under Section 6(1) of the Act treating her as a 'person affected'. Thus, the forfeiture is to be confined only to those properties referred to in notice dated 09.02.1977 issued to Mohammed Daha Ummal in her individual capacity as 'person affected' under the provisions of the Act, and those properties not included in the aforesaid notice, would, in our considered view, stand outside the ambit of forfeiture under the provisions of the SAFEMA.

24. As a sequitur, mere reference to the subject property in the annexure to notice under Section 6(1) issued to the detenu, is of no assistance to the respondents. Equally so, the tentative defence of Mr.Sundaresan, that the non-inclusion of the subject property in the Section 6(1) notice to Mohammed Daha Ummal must be taken to be a ministerial error, does not appeal to us, as it is contrary to the statutory mandate and the very scheme of Section 6.

25. Though several decisions have been cited before us, it would suffice that we make reference to the judgment of the Supreme Court in the case of *Income-tax Officer Circle 1 (2) Kumbakonam and another V. V. Mohan*[27]. That too was a matter that dealt with preventive detention and we draw support from the interpretation accorded to the phrases '*person affected*' and '*such other person*' in Section 6(1) of the Act. Section 6 reads thus:

6. Notice of forfeiture.-

[27] Foot Note Supra (5)

(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.

26. At paragraph 64 of the SCC Online report, the Court dilates on the phrase '*such other person*' as referring to the person other than the person to whom the Act applies, being merely a holder of illegally acquired property on behalf of the person to whom the Act applies. In the present case, had the respondents stopped with the issuance of the copy of the Section 6(1) notice, it would have had the connotation and impact, that they canvas.

27. However, the respondents have proceeded to issue a notice under Section 6(1) to Mohammed Daha Ummal directly holding her as a 'person affected' under the Act. With the issuance of the notice under Section 6(1) to Mohammed Daha Ummal as a 'person affected', the issuance of copy of detenu's Section 6(1) notice to her is of no consequence. In fact, read together,

the two notices would illustrate and emphasize the position that the Competent Authority meant only to proceed against the properties set out in the notice issued to her directly.

28. Section 11 states that *where after the issue of a notice under section 6 or under section 10, any property referred to in the said notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently forfeited to the Central Government under section 7, then, the transfer of such property shall be deemed to be null and void.* This provision will have no application in the present case as the property that was transferred by Mohammed Daha Ummal to the petitioners stood outside the ambit of the Act even to begin with.

29. In light of the discussion as aforesaid, W.P.Nos.7196 and 7478 of 2001 are allowed and the impugned order of the Tribunal to the extent to which it relates to the Petitioners in W.P.Nos.7196 and 7478 of 2001 is quashed. No costs.

(A.S.M.,J.) (S.M.,J.)
13-03-2026

sl
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

To

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