WP 21633/2011

Mr.Abdul Azeez and Muthu Beevi are husband and wife. The said Abdul Azeez was detained under COFEPOSAand subsequently died. Being the wife of the deceased detenu, certain properties held by Muthu Beevi was believed to be acquired through illegal sources. Hence notice u/s 6(1) of the SAFEMA dated 21/05/1979 was issued to Muthu Beevi and called for explanation about the source for purchase of those properties. Mrs. Muthu Beevi participated in the enquiry and gave her explanation. Not being satisfied with the explanation, order of forfeiting the following properties was passed on 29/10/2002:-

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The order of forfeiture passed by the Competent Authority was challenged by Muthu Beevi before the Appellate Tribunal for Forfeited Property, New Delhi in FPA No 93/MDS/02 on the ground that no reason was disclosed linking the properties to the detenue's illegal money and that no allegation of nexus has been established between the properties sought to be forfeited and the illegally acquired money of the detenu. For initiating proceedings under Section 6(1) of the SAFEMA , there must be reasons to form an opinion that the properties are acquired illegally and such reason should be recorded in writing. Such reason must be part of the notice issued under Section 6(1) of the SAFEMA. The notice issued to Smt. Muthu Beebi u/s 6(1) on 21/05/1979 lack the reasons to believe that the said properties acquired illegally. The parameters which should guide the Competent Authority in forming the opinion about the properties are tainted and acquired from illegal money are:

i) the value of the property and

ii) the known source of of the income, earning and the assets held by the person who is sought to be proceeded.

The affected person, though placed enough material before the Competent Authority to dispel this erroneous opinion, same not considered.

The Appeallate Tribunal on considering the grounds of appeal, material records adduced by the affected person. Concluded that Smt. Muthu Beevi is wife of the COFEPOSA detenue. Thus she falls within the definition of relative covered under section 2 (2) (c) of the Act. She has failed to satisfactorily explain the source for acquiring the properties forfeited. The properties are acquired wholly or partly from the source attributable to the activity prohibited under law. The first property at Gurunathn Pillai Lane acquired on 29/04/1961 for Rs. 4000/- from the withdrawal of money from " M/s Haq Handloom Centre" a proprietory concern of her husband the detenue. The second property at Samaspiran Street acquired on 22/09/1964 for a consideration of Rs 3,320/-. The books of account maintained by the appellant showns a credit of Rs. 4,625/- from M/s Haq handlooms Centre on 03/09/2964. This is the source for purchase of the second property.

The explanation by the appellant that she deposited the cash gifts received at the time of the birthdays of her daughters. On verification of the brith certificate produced showing that her daughter S.A.S. Arifa born on 4.3.1955 at Vijaya Hospital, Chennai and same registered at Chennai Corporation. it was found that Vijaya Hospital was established only in the year 1972 and the birth certificate is a fack certificate, not issued by the Corporation of Chennai. No records relating to the shop pertaining to the years 1956 to 1964 were produced to corroborate various amounts shown as the birthday gifts and invested in the detenue's shop earning interest at the rate of 18% pa. Hence the explanation for the source of purchase of this property was rejected.

The third property at Beerangi Street acquired 22/11/11964. The appellant explanation that she purchased this property with the rental income from the second item property at Samapiran Street (Rs.1600) and by borrowing Rs 5000/- from one Mustafa and Rs 4,500/ from Tajudeen. Whereas the accounts produced it is found that the loans were repaid from the rent and advance received from the Samapiran Street property which itself a property acquired from illegal money.

The fourth property at Sngalamman Koil Street, found to be purchased on 10/10/1973 for Rs 11,012/- from the sale proceeds of the property in Gurunathan Pillai Lane. This property being purchased from the illegal money of the detenue same was also held to be property acquired through illegal money as defined under section 3 (1) (c) of the Act.

The fifth property at Kilakarai purchased as vacant site on 17/05/1968 jointly with one S.T.M.Ammath Jaffar Fathima. The share of the appellant was Rs 5,572/-. Construction made on this vacant site at the cost of Rs 41,3662/-. As per the books of account maintained by the appellant, the source for this investment is her rental income from the other properties which are found to acquired through illegal money. Her claim that she had business income of Rs 59,100/- from M/s Muthu Medicals during the relevant period of construction rejected by the tribunal since no details furnished by the appellant regarding her investment in M/s Muthu Medicals or income from it. No details about the status of the said Firm furnished by the appellant.

For the reasons stated above, the Tribunal dismissed the appeal on 27/09/2010 confirming the order of forfeiture issued by the competent authority.

Muthu Beebi who is the person affected by the order of forfeiture died after the order passed by the Tribunal. The legal heirs of Smt. Muthu Beebi are before this court challenging the declaration that the subject properties are illegally acquired properties and forfeited to the Government free from encumbrance.

According to the Learned Counsel for the writ petitioners, no reason disclosed by the Competent Authority as how the properties could be linked to the detenue's so called illegally acquired money. In the absence of nexus between the property sought to be forfeited and illegal acquired money of the detenue under the COFEPOSA, the order impugned legally not sustainable as decided by the Supreme Court in Aslam Merchant –vs- Competent Authority : 2008 (14) SCC 186 followed by the Division Bench of this court in Competent authority –vs- Khader Moideen and another order dated 19/07/2016.

The properties are self acquired properties of Late Muthu Beevi. She had adequately explained the source for the purchase of these properties. She was an income tax assessee. Her income been declared to Tax and accepted by the Income Tax Department. The wrong birth certificate produced due to inadvertence does not affect the case of the affected person, since the birth of two daughters to the affected person is not disputed neither their age is in serious dispute. Therefore for producing a wrong birth certificate due to inadvertence, no adverse inference can be drawn against the affected person to take away her right in the subject property. The Competent Authority as well as the Tribunal erred in not properly considering the evidence produced by the affected person to prove the source for acquiring these properties were from legal earning.

Per contra, the respondent in the counter filed had stated that, there is no substance in the writ petition challenging the order of the Tribunal. High Court in exercise of its power under Article 226 of the Constitution are not expected to sit on appeal over the decision of tribunal and re-appreciate the evidence or test the question of facts. Regarding the validity of the show cause notice issued under section 6(1) of the Act and the 'nexus theory' canvassed by the writ petitioner, same was considered by the Appellate Authority and after detail discussion has held that there is no infraction of law or facts. The dictum of the Constitution Bench in Attorney General of India –vs- Amratlal Prajivandas (1994 (5) SCC 54 and the dictum of Hon'ble Supreme Court rendered in Kesar Devi –vs- Union of Inida [2003(7) SCC 427 squarely applies to the case in hand. Therefore, the writ petition deserve to be dismissed.

Heard the Learned Counsels representing the writ petitioners and the State.

The Constitutional Bench of the Supreme Court while testing the vires of COFEPOSA and SAFEMA in Attorney General of India –vs- Amratal Parjivandas (1994 (5) SCC 54) framed 6 questions for consideration and two of them are :-
.... page 12 .. typed set .... (b)...... question No: (4) and question No: (5) ....

Question 4:
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Type (c). at pages 35,36 ....

Question 5:
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Type ... (d) at pages 37 and 38........