

(2014) 04 GUJ CK 0061

In the Gujarat High Court

Case No : Letters Patent Appeal Nos. 1053-1054 of 2003 in Special Civil
Application Nos. 11079-11080 of 2000

Competent Authority and Admin. SAFEMA/NDPS

APPELLANT

Vs

Mithu Bawa Padhiyar

RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Constitution of India, 1950 — Article 22(5), 226
Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 —
Section 11, 11(1)(b), 2(2)(a), 2(2)(b), 6

Citation : (2014) 307 ELT 253

Hon'ble Judges : K.S. Jhaveri, J;Abdullah Gulamahmed Uraizee, J

Bench : Division Bench

Advocate : Anshin H. Desai, Advocate for the Appellant; Nisha Thakore, A.G.P.,
B.B. Naik, Sr. Advocate and Parthiv A. Bhatt, Advocate for the Respondent

Judgement

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K.S. Jhaveri, J.—Both these appeals arise out of the common judgment and order dated 25-7-2002 passed by the learned single Judge in Special Civil Applications No. 11079/2000 and 11080/2000. By the impugned judgment, the learned single Judge allowed the two petitions and set aside the Notices dated 8-8-2000 issued to the respondents herein, original petitioners, u/s. 6(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (for short, "the SAFEMA") by the competent authority under SAFEMA. The facts in brief are that the respondents herein, original petitioners, are husband and wife. The original petitioner of S.C.A. No. 11079/2000, respondent No. 1 in L.P.A. No. 1053/2003 (who shall hereinafter be referred to as "AP-1, Affected Party No. 1") was detained by the competent authority, vide order dated 21-7-1982 passed by the State Government, under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short, "the COFEPOSA"). The order of detention was revoked by the State Government on 18-10-1982. However, AP-1 was again detained by a fresh order of detention

under COFEPOSA passed on that very day, i.e. on 18-10-1982. Ultimately, he was released from detention on 23-7-1983 on completion of the detention period.

1.1 It appears that, subsequently, the competent authority under the SAFEMA issued notice to AP-1 for initiating proceedings for forfeiture of the property under the said Act on the alleged ground that he was holding properties purchased and/or developed by tainted money earned out of smuggling activities. The above Notice was, however, withdrawn. Thereafter, on 26-6-1986 and 7-8-1986, both AP-1 and his wife, i.e. original petitioner of S.C.A. No. 11080/2000, respondent No. 1 in L.P.A. No. 1054/2003 (who shall hereinafter be referred to as "AP-2, Affected Party No. 2") were served with Notices issued u/s. 6(1) of the SAFEMA.

1.2 In response to the above notice, both AP-1 and AP-2 submitted their replies. However, vide orders dated 30-6-1999 and 26-7-1999 respectively passed by the competent authority under the SAFEMA, the properties mentioned in the schedule to the show cause notices issued to both the original petitioners, were treated as illegally acquired properties and they were ordered to be forfeited. The properties were forfeited free from all encumbrances in view of the scheme of Section 7 of the SAFEMA.

2. The grievance of the original petitioners before the learned single Judge was that though the properties mentioned in the schedule to the show cause notices issued u/s. 6(1) of the SAFEMA were confiscated and proceedings were over, the competent authority issued another show cause notice dated 8-8-2000 on the same grounds for confiscating the properties held by AP-2. The learned single Judge allowed the writ petitions by passing the impugned judgment and order. Being aggrieved by the same, the present Letters Patent Appeals have been preferred.

3. Learned counsel Mr. Anshin H. Desai appearing on behalf of the appellant-competent authority submitted that the impugned judgment and order passed by the learned single Judge is bad in law and erroneous. He drew our attention to the relevant provisions of the SAFEMA and submitted that alternative remedies are available to the original petitioners under the provisions of the SAFEMA and that by initiating proceedings before this Court, the original petitioners have circumvented the opportunity available to them of filing appeal before the Appellate Tribunal under the SAFEMA. He submitted that the original petitioners could avail the remedy of challenging the order passed u/s. 7 of the SAFEMA by filing appeal before the Appellate Tribunal constituted under the said Act. He submitted that in a catena of decisions, the Apex Court has held that when a statutory forum is created by law for redressal of grievances, writ petition should not be entertained ignoring said statutory dispensation.

3.1 Learned counsel Mr. Desai submitted that the High Court should not entertain a petition under Article 226 of the Constitution of India if an effective alternative action complained of has been taken. He submitted that when a statutory forum

has been created by law for redressal of grievance, writ petition should not be entertained, ignoring the statutory dispensation. He submitted that the High Court generally does not enter into a question which demands an elaborate examination of evidence to establish the right, to enforce which, the writ is claimed. The High Court, therefore, does not act as a Court of Record against the decision of a Court or a Tribunal to correct errors of fact and does not, by assuming the jurisdiction under Article 226 of the Constitution of India, trench upon an alternative remedy provided by the Statute for obtaining relief. Where it is open to the aggrieved petitioner to move another Tribunal or another jurisdiction for obtaining redress in a manner provided by the Statute, the High Court, normally, will not permit by entertaining a petition under Article 226 of the Constitution of India, the machinery created under the Statute to be by-passed and will leave the party applying to it to seek report to the machinery so set-up.

3.2 In support of the above submissions, Mr. Desai has placed reliance upon the following decisions:

- a. Union of India (UOI) and Another Vs. Guwahati Carbon Ltd., .
- b. Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal, .

4. Learned counsel Mr. Desai contended that the writ petitions filed by the original petitioners was manifestly premature as the competent authority had not taken any final decision regarding forfeiture that could have been challenged by the original petitioners nor was the writ petition, according to the learned counsel, maintainable against a mere notice.

4.1 In support of the above submission, learned counsel Mr. Desai placed reliance upon the following decisions:

- a. State of Orissa and Others Vs. MESCO Steels Ltd. and Another, .
- b. Union of India (UOI) Vs. Bajaj Tempo Limited and Others, .
- c. Union of India (UOI) Vs. Hindustan Development Corpn. Ltd., .
- d. The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, .
- e. Bellary Steels and Alloys Limited v. Deputy Commissioner, Commercial Taxes (Assessments) and Others, (2009) 17 SCC 547.
- f. Union of India (UOI) and Another Vs. Guwahati Carbon Ltd., .
- g. State of Uttar Pradesh and Others Vs. Vam Organic Chemicals Limited, .
- h. Mahanagar Telephone Nigam Ltd. Vs. Chairman, Central Board, Direct Taxes and Another, .
- i. Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, .
- j. State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, .

k. Atul Romeshchandra Desai Vs. Bank of Baroda and Another, .

l. The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha, .

m. Trade Tax Officer, Saharanpur v. Royal Trading Company, (2005) 11 SCC 518.

n. Jalaram Corporation v. State of Gujarat and Others, 1996 (3) GCD 445 (Gujarat).

5. Learned counsel Mr. Desai further submitted that the decision in The State of Gujarat Vs. Patil Raghav Natha and Others, , relied upon by learned senior counsel Mr. B.B. Naik appearing on behalf of respondent, original petitioner, wherein, the view has been taken that proceedings have to be initiated within a reasonable time, would not apply to the case on hand since the said judgment is in respect of the provisions of Section 65 of the Bombay Land Revenue Code.

5.1 Learned counsel Mr. Desai drew our attention to the decisions rendered in Yashkamal Builders Vs. State of Gujarat and Another, and Nirajanbhai Bhagwanbhai Patel Vs. State of Gujarat, wherein, the view has been taken that powers u/s. 65 of the Bombay Land Revenue Code are administrative in nature and that they are not even quasi-judicial. He, therefore, submitted that the principle of "unreasonable time" would not apply in the facts of the present case.

6. Learned counsel Mr. Desai submitted that there is no delay in initiating proceedings against the original petitioners under the SAFEMA. In cases under SAFEMA, it is difficult to locate the properties and assets as persons engaged in smuggling activities do not keep regular and proper accounts and the properties are "benami" in nature and therefore, delay is not a material ground as far as initiation of proceedings is concerned.

6.1 In support of the above submission, he placed reliance upon the following decisions:

a. Attorney General for India and Others Vs. Amratlal Prajivandas and Others, .

b. The judgment of Bombay High Court in Criminal Writ Petition No. 1260/2002 in the case of Smt. Gulabi M. Shetty v. Competent Authority, SAFEMA & NDPS.

7. Learned counsel Mr. Desai further submitted that a detinue can be proceeded against SAFEMA even though a detention order passed under the COFEPOSA might have been revoked by the Government in exercise of powers u/s. 11(1)(B) thereof.

7.1 In support of the above submission, he has placed reliance upon the following decisions:

a. Union of India (UOI) and Others Vs. Mohanlal Likumal Punjabi and Others, .

b. Union of India (UOI) and Another Vs. Harish Kumar, .

8. Learned counsel Mr. Desai drew our attention to relevant provisions of the

SAFEMA, particularly, Section 2(2)(a) to (e), Sections 6(1) and 11. To highlight the significance of the said provisions, he placed reliance upon the following decisions;

- a. Winston Tan and Another Vs. Union of India (UOI) and Another, .
- b. Smt. Kesar Devi Vs. Union of India (UOI) and Others, .
- c. Bipinchandra G. Chockshi and Others Vs. State of Gujarat and Others, .

9. Learned counsel Mr. Desai submitted that the original petitioners are having alternative remedy of filing statutory appeal before the Appellate Tribunal constituted under the SAFEMA and therefore, writ petitions were not maintainable.

9.1 In support of the above submission, he placed reliance upon the following decisions:

- a. Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes, .
- b. Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, .
- c. Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal, .

10. Learned counsel Mr. Desai lastly submitted that the records available with the competent authority showed that the original petitioner had entered into a cash transaction regarding a property which was not registered. Therefore, notice as contemplated under the SAFEMA was issued to the original petitioner. However, the learned single Judge set aside the notice without appreciating the fact that it was the duty of the purchaser to disclose the source of income behind the cash transaction. The learned single Judge lost sight of the provisions of the Finance Act, 1973 where the tax limit has been fixed at Rs. 15,000/-. The property was purchased for more than Rs. 30,000/- through the power of attorney, who was the original petitioner-husband, which has subsequently, gone in the hands of the other original petitioner-wife.

11. Learned counsel Mr. Desai, therefore, submitted that the learned single Judge committed serious error in entertaining the writ petitions filed by the original petitioners and in quashing and setting aside the notices issued u/s. 6(1) of the SAFEMA and hence, the impugned judgment and order deserves to be quashed and set aside.

12. Ms. Nisha Thakore learned AGP supported the arguments canvassed by learned counsel Mr. Anshin Desai appearing for the appellant-competent authority.

13. Mr. B.B. Naik learned Senior Advocate appearing with Mr. Parthiv Bhatt for respondents-original petitioners submitted that the second notice issued by the competent authority is a notice without application of mind and that the same is not based on formation of subjective satisfaction reasonably arrived at, if the same is considered in light of the facts stated in the second notice itself.

13.1 Learned Senior Advocate Mr. Naik submitted that the competent authority had no power to issue a fresh second show cause notice after a lapse of several years, namely 17 years. The first notice was issued in the year 1983 and the order for confiscation of property was passed in the year 1999. The fresh second show cause notice was issued in the year 2000, i.e. after a period of 17 years.

13.2 Learned Senior Advocate Mr. Naik further submitted that under the scheme of SAFEMA, the competent authority was empowered to enquire into various aspects of the properties owned, occupied or enjoyed by a person against whom there exists a valid order of detention under the COFEPOSA. He submitted that the properties mentioned in the schedule of second notice issued on 8-8-2000 were very well there when the first notice was issued in the year 1983. Therefore, the second notice could not have been issued and the principle of estoppel would apply especially when it is not the say of the competent authority that the day on which the first notice was issued in the year 1983, the competent authority was unaware about the facts that the original petitioners were holding or owing the properties in Kutch District itself. He submitted that in 1982 AP-1 was detained under the provisions of the COFEPOSA but, the order of detention was subsequently revoked by the competent authority and therefore, the second show cause notice was bad in law.

13.3 Learned Senior Advocate Mr. Naik drew our attention to the provisions of Section 6(1) of the SAFEMA and submitted that the competent authority is bound to record its subjective satisfaction and the reasons for such belief. However, in the present case, it is apparent that the action of issuance of notice itself is a malice in law and arbitrary. He, therefore, submitted that the learned single Judge was completely justified in setting aside the notices by exercising writ jurisdiction under Article 226 of the Constitution of India.

13.4 In support of his submissions, learned Senior Advocate Mr. Naik has placed reliance upon the following decisions:

- a. Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, .
- b. Chhanalal A. Patel, President, District Local Board, Mehsana Vs. State of Gujarat, .
- c. Ram Chand and Others Vs. Union of India (UOI) and Others, .
- d. Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, .
- e. Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, .
- f. Fatima Mohd. Amin (Dead) through LR. Vs. Union of India (UOI) and Another, .
- g. P.P. Abdulla and Another Vs. The Competent Authority and Others, .
- h. State of Punjab and Others Vs. Bhatinda District Coop. Milk P. Union Ltd., .
- i. Aslam Mohd. Merchant Vs. Competent Authority and Others, .

j. East Coast Railway and Another Vs. Mahadev Appa Rao and Others, .

k. Urban Improvement Trust, Kota v. Om Prakash Sharma and Others, (2010) 15 SCC 333.

l. Labhubhai Valjibhai Gajera Vs. Secretary (Appeals), Revenue Deptt. and Others, .

m. Rameshbhai Ambalal Shah Vs. State of Gujarat and Another, .

n. State of Orissa Vs. Kanhu Charan Majhi, .

14. We have heard learned counsel for both sides and have perused the impugned judgment and order passed by the learned single Judge, the records of the case and have also gone through the judgments relied upon by both sides.

15. The records of the case reveal that AP-1 was under the constant vigil of the revenue agencies of Central Government for amassing wealth disproportionate to his known sources of income right from the year 1982. AP-1 was also under the vigil of the Income-tax Department, Customs Department as also the Directorate of Revenue Intelligence. Way back in the year 1982, AP-1 was detained vide order dated 21-7-1982 issued by the Government of Gujarat under the provisions of COFEPOSA pursuant to the investigation carried out by the Customs Department. The said order was subsequently revoked. Thereafter, by fresh order dated 18-10-1982, AP-1 was again detained under the provisions of the COFEPOSA and was released on 23-7-1983. AP-1 was also found to be involved in a case of gold smuggling wherein, the Customs Department had recovered 7000 pieces of gold valued at Rs. 1.40 Crore, other items worth Rs. 54,000/- and unaccounted Indian currency of Rs. 72,766/-. He was also found to be involved in a case where 16 packages of contraband - Heroine, weighing 06 Kgs. valued at Rs. 12.80 Lacs, was seized from him on 2-11-1983.

16. Considering his antecedents and criminal record, AP-1 was served with the show cause notice dated 26-6-1986 issued u/s. 6(1) of the SAFEMA and necessary proceedings were initiated. Ultimately, vide order dated 30-6-1999, the properties mentioned in the Schedule to the show cause notice were held to be illegally acquired properties and they were ordered to be forfeited free from all encumbrances u/s. 7(3) of the SAFEMA. No appeal was filed by the aggrieved party within the stipulated period and therefore, possession of the immovable properties was taken over by the office of the competent authority 3-8-2000 and 6-8-2000.

17. It appears that, subsequently, the competent authority issued the impugned show cause notices dated 8-8-2000 u/s. 6(1) of the SAFEMA in respect of the following two properties:

A. Agricultural land bearing survey Nos. 646 & 870 (paikes), ad measuring 10 acres 34 gunthas and 7 acres 1 gunthas respectively, held by AP-2. The said lands were entered in the revenue records on 2-7-1983.

B. Residential property being House No. 3486B at City Survey Ward No. 3, Nr. Om Plaza Building, Opp. Shriram Petroleum, Lal Tekri, Jyesthanagar, Bhuj ad measuring 185.94 sq. metres, which was also purchased in the year 1983.

The said property stood in the name of Smt. Jayshree Mithu Bawa Padhiyar, who was also cited as wife of AP-1. However, subsequently, it was found that both AP-2 and said Smt. Jayshree Mithu Bawa Padhiyar are one and the same individual.

18. One of the main reasons that weighed with the learned single Judge was that the aforementioned two properties, which stood in the name of either AP-1 or AP-2, were in existence at the time when the earlier two notices u/s. 6(1) of the SAFEMA were issued and that if the competent authority was aware about the same, then what prevented it from bringing those properties under the purview of the SAFEMA. It was pointed out before us by the learned counsel appearing on behalf of the competent authority that the aforementioned two properties were acquired on dates subsequent to the notices dated 5-12-1983 and 7-8-1986. We are not impressed by the submission raised on behalf of the competent authority in view of the fact that, in any case, the property at Sr. No. 1 could have found place in the notice dated 7-8-1986 if not in the notice dated 5-12-1983.

19. However, in our considered opinion, the matter is required to be looked into in a much broader perspective rather than swaying away from the main object on account of some definite lapses. Smuggling activities and foreign exchange manipulations are having a deleterious effect on the national economy. These activities pose a serious threat to the economy and the security of the nation. Considering the larger effect of such activities, the Government took various steps for cleaning the social fabric and to revive the national economy.

20. It is well known that thousands of crores of Indian currency is stashed in banks of foreign countries causing severe damage to our economy. SAFEMA was framed to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators. The antecedents of the original petitioners are not clean. They were found to be involved in cases of smuggling of valuables and contraband substances worth crores of rupees. In this background, we believe that if there was a genuine lapse on the part of the competent authority in not bringing the aforementioned two properties under the purview of the SAFEMA, it is not so serious that the entire proceedings should be dropped since the stake involved has huge bearing on the national economy. All necessary steps for making applications seeking details of the properties held by the detinue and his relatives were made to the income tax authorities, Talaticummantri, all revenue authorities, local bodies and after making all such enquiries, the steps were sought to be taken but, the properties included in the notice impugned in the petitions was not disclosed even after enquiries by the competent authorities and once it came to the knowledge of the competent authority, the impugned notice was issued.

21. Apart from that the proceedings are at the notice stage only. If the said two properties are acquired out of white money, then the competent authority would pass appropriate orders in that regard. However, considering the past record and criminal antecedents of the original petitioners and when different immovable and movable properties of the original petitioner have already been forfeited in the earlier proceedings arising out of notice dated 26-6-1986, we believe that the original petitioners should be put to the test of scrutiny, as it would also grant them the opportunity to come out with clean hands.

22. Further, the proceedings are at notice stage only. The learned single Judge set aside the impugned notices mainly on the ground that it was issued at a very belated stage. In our opinion, once the show cause notice was issued, the learned single Judge could have directed the original petitioners to respond to the same and dispose of the writ petitions reserving liberty to them to take recourse to such remedy as may have been considered suitable by it depending upon the final order that the competent authority passed on the said notice. In cases where show cause notice is found to be totally non est in the eye of law for want of jurisdiction, it could be interfered with. However, when there is no jurisdictional error, then such notices should not be interfered with, more particularly, when they relate to investigation of facts. Without investigation and enquiry, it is difficult to adjudicate that the immovable properties mentioned in the impugned notices do not come within the purview of the SAFEMA. In the absence of factual foundation, it would be impossible to decide matters of this kind at notice stage. The SAFEMA law is a complete code in itself and hence, it was not appropriate for the writ Court to entertain the petitions under Article 226 of the Constitution of India and that to at the notice stage.

23. We do not agree with the view of the learned single Judge that an authority cannot issue notice or take action at any time and any number of times, if the statute does not prescribe the time limit for such action. It is true that there is delay in issuing the impugned notices. However, we believe that delay is to be considered inclusively, as it differs from case to case. In service matters, delay is an important aspect but, the same yardstick cannot be applied in matters involving smuggling and foreign exchange manipulations. Persons engaged in such activities do not keep regular and proper accounts with respect to such activities. Evasion of taxes is integral to such activity. It would be difficult for any authority to say, in the absence of any accounts or other relevant material, that among the properties acquired by a smuggler, which of them or portions thereof, are attributable to violation of law. It is probably for this reason that the burden of proving that the properties specified in the show cause notice are not illegally acquired properties is placed upon the person concerned. The intent of the Legislature is clear from the Statement of Objects and Reasons of the Act. For this reason also, the SAFEMA does not prescribe any time-limit for issuance of show cause notice u/s. 6(1).

24. The next question that requires consideration is whether the competent

authority had "reasons to believe" that the properties of the original petitioners are "illegally acquired properties" under the definition of SAFEMA. Section 6(1) of the SAFEMA provides that the competent authority is empowered to serve a notice of forfeiture upon such person whom it has reason to believe that all or any of the properties of such person is illegally acquired. The condition precedent for issuing a notice u/s. 6(1) is that the authority 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 between the detinue and property ostensibly standing in the name of the person to whom the notice has been issued. Section 8 of SAFEMA states that the burden of proving that any properties specified in the notice u/s. 6 is not illegally acquired property shall be on the person affected.

24.1 In order to examine whether the notice issued by the competent authority satisfies the requirement of Section 6, it is necessary to reproduce relevant portion of the same, which reads as under:

"...

5. Whereas investigation revealed that the AP-2 holds an agricultural land at Bhuj Khavda Highway, Mahila Ashram, Bhuj, Kutchch. The said agricultural land is at Survey Nos. 646 and 870 (paikees) ad measuring 10 acres 34 gunthas and 7 acres 1 gunthas respectively. The said agricultural land is at Survey Nos. 646 and 870 (paikees) had been purchased as per document No. 467, dated 4-3-1983 for Rs.... and the same was entered in the revenue records on 2-7-1983. As AP-2 had not individual sources of income, nor the AP-1 and AP-2 had disclosed the same before Income Tax Department. As AP-1 was involved in smuggling activities, I have reasons to believe that the said properties have been purchased by AP-1 from his illegal income and the name of AP-2 has been entered in the revenue records for name sake only.

6. Whereas investigation further revealed that AP-3 is holding a residential property at House No. 3486B at City Survey Ward No. 3, Near Om Plaza Building, Opp. Shriram Petroleum, Lal Tekri, Jyesthanagar, Bhuj ad measuring. 185.94 square metres which was also purchased during the year 1983. The purchase deed reveals that AP-3 had purchased an old house containing 3 rooms with tiles on the roof and had open space at front with one store and toilet. For this, AP-3 had paid Rs. 30,000/-. But presently, it is a big bungalow with grounds and first floor and the cost of the property would be around Rs. 10,00,000/-. As AP-3 has no ostensible source of income nor the details of the purchase of the property or its construction thereafter have been mentioned in the income tax returns filed by AP-1 although he held the property. The AP-1 had not disclosed the sources and investments made for its purchase and construction before the Income Tax Department for their scrutiny. I have reasons to believe that the said immovable property has been purchased and the construction thereafter had been made by AP-1 from his illegal sources of income and has got entered the name of AP-3 in

the revenue records for name sake only. It is further seen that AP-1 resides in the said house along with AP-3 and thus enjoys and controls the said property."

24.2 On a plain reading of the above notice, it is apparent that the authority had sufficient reasons to believe that the said two properties had been illegally acquired. The authority recorded the above satisfaction on the ground that neither AP-2 nor AP-3 had any ostensible source of income. They were not income tax assessees. In spite of that the properties stood in their name and also in the revenue records.

24.3 Considering the antecedents of AP-1 and his criminal record and when AP-2, who is the wife of AP-1, was found to be having no ostensible source of income and also not an income tax assessee, the impugned notice u/s. 6(1) cannot be said to have been issued without arriving at a subjective satisfaction regarding the alleged financial manipulation.

25. The learned single Judge, by placing heavy reliance upon the decision of Apex Court in Whirlpool Corporation case (supra), held that the proceedings were initiated in violation of the principles of natural justice and that the competent authority had assumed the jurisdiction again, though similar proceedings were already initiated by the very authority before several years, which had concluded much prior to the issuance of second/third show cause notice in the month of August, 2000. We disagree with the conclusion arrived at by the learned single Judge for the reason that we do not find the present case to be falling under any of the contingencies listed in Whirlpool Corporation's case (supra) warranting interference of the writ Court under Article 226 of the Constitution. In Whirlpool Corporation's case (supra), the existence of alternative statutory remedies was held not to be a constitutional bar to High Court's jurisdiction in at least three contingencies; (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is violation of the principles of natural justice; or (iii) where the order or the proceedings are wholly without jurisdiction or the vires of an Act is challenged. If we analyze the case on hand, we do not believe that it would fall under any of the three contingencies. Neither there is any breach of the fundamental rights of the affected party nor there is any violation of the principles of natural justice or that the proceedings are without jurisdiction. The impugned action is only a show cause notice issued under the SAFEMA. Mere issuance of a show cause notice by a statutory authority cannot be said to be infringing the fundamental rights of a person. In our opinion, it also cannot be said to be violative of the principles of natural justice since the impugned action is only the initiation of proceedings and not the final conclusion. The affected persons could avail the opportunities provided under the SAFEMA to defend themselves. The proceedings are ripe and at this stage, to say that there has been breach of the principles of natural justice, would be premature and improper.

26. In Commissioner of Income Tax v. Chhabil Dass Agarwal case (supra), the Apex Court had the occasion to consider the principle rendered in Whirlpool

Corporation's case (supra). In Paras. 15 & 16 of the said judgment, the following observations have been made:

"15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution, if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram and Shyam Co. v. State of Haryana*, this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility."

27. The SAFEMA provides a complete machinery for redressal of grievances. Therefore, we believe that the learned single Judge ought not to have entertained the writ petition under Article 226 of the Constitution. When there is an adequate efficacious remedy available to the affected parties and they have approached the High Court without availing the same unless they have made out an exceptional case warranting such interference or there existed sufficient grounds for invoking the extraordinary jurisdiction under Article 226. The learned single Judge ought to have refused to exercise its writ jurisdiction under Article 226 since the issue was totally premature.

28. A contention was raised that in the year 1982 AP-1 was detained under the provisions of the COFEPOSA, which order was, subsequently, revoked and therefore, the second show cause notice was illegal. However, we do not agree with the said submission of learned senior counsel Mr. Naik. In *Union of India (UOI) and Others Vs. Mohanlal Likumal Punjabi and Others*, , the Apex Court held that where detention order passed under the COFEPOSA is revoked by the Central Government in exercise of powers u/s. 11(1)(b) thereof and revocation is not based on report of Advisory Board, then proviso (i) to Section 2(2)(b) of the SAFEMA is not attracted and as such, operation of SAFEMA is not excluded.

Similarly, in *Union of India (UOI) and Another Vs. Harish Kumar*, it was held by the Apex Court that if after passing of the order of detention under the COFEPOSA, the constitutional right of detenu under Article 22(5) is violated because of belated consideration and disposal of his representation by the Central Government, then that would not render the detention order itself void ab initio but, would render further detention of detenu illegal and in such case, the detenu can be proceeded against under the SAFEMA. Considering the principle rendered in the above cases, we do find any illegality in the action of the competent authority in issuing the impugned notices.

29. An endeavour has been made by learned senior counsel Mr. Naik to show that the impugned judgment has been issued without application of mind inasmuch as the impugned notice does not specify the category under which the affected party is covered and it does not mention the earlier orders passed against the person concerned. However, learned senior counsel Mr. Naik submitted that the above points were not argued before the learned single Judge and that additional documents are sought to be produced for the first time before this Bench, which should not be permitted.

29.1 In response to the same, Mr. Desai has submitted that what is submitted by way of an additional affidavit are mere dates and details along with documents of the very case and as such is a detailed list of dates and events and therefore, there is no bar to look into the same at the appellate stage as, ultimately, what is brought to the notice of this Court is the details regarding the proceedings and that no prejudice can be said to have been caused to the original petitioners, instead, it ought to have been pointed out by the original petitioners.

29.2 The decision rendered in *Aslam Mohammad Merchant's* case (supra), relied upon by learned senior counsel Mr. Naik, would not apply to the case on hand since we do not find the impugned show cause notice dated 8-8-2000 to be illegal or without jurisdiction.

In view of the above discussion, both the appeals are allowed. The impugned judgment and order passed by the learned single Judge is quashed and set aside. Both the original petitioners-affected parties are directed to remain present before the competent authority along with their individual replies to the impugned show cause notices dated 8-8-2000, within a period of two months from today during office hours. The competent authority shall consider their reply in accordance with law being uninfluenced by the observations made by the learned single Judge in the impugned judgment and also by the observations made by us in this judgment and shall render its decision within reasonable time.