(2008) 09 GUJ CK 0043

In the Gujarat High Court

Case No : Special Civil Application No. 2945 of 1984

Mohmedbhai I. Bilimora APPELLANT

Vs

Competent Authority and Others RESPONDENT

Date of Decision : 02-09-2008

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)
Constitution of India, 1950 — Article 226
Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 — Section 2(2), 3(1), 5, 6(1)

Citation : (2008) 09 GUJ CK 0043

Hon'ble Judges : M.D. Shah, J

Bench : Single Bench

Advocate : S.H. Sanjanwala, for the Appellant; U.R. Bhatt, AGP for Respondent Nos. 1 and 3 and Dhaval G. Nanavati, for the Respondent

Final Decision : Dismissed

Judgement

M.D. Shah, J.—The petitioner abovenamed has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction quashing and setting aside the impugned notice dated 24-10-1977 produced at Annexure ''A'', the impugned order dated 28-2-1983 passed by the Competent Authority produced at Annexure ''C'' as also the order dated 7-3-1984 passed by the appellate authority produced at Annexure ''D'' to the petition. The petitioner has also prayed for a direction to the respondent-authority to place on record the order of detention dated 25th February, 1975 together with the grounds of detention passed against his brother-Umerbhai Ibrahim Bilimora.

2. The facts leading to the institution of the present petition, briefly stated are that the present petitioner is the brother of one Umerbhai Ibrahimbhai who came to be detained under the provisions of Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (''COFEPOSA'' for short) by the Secretary to the Government of Gujarat (Food & Civil Supplies

Department) Sachivalay, Gandhinagar by order dated 25-2-1975 during emergency. A notice of forfeiture of the property of the petitioner''s brother was also issued. However, after the emergency the petitioner''s brother was released and his properties were also not forfeited. The case against the present petitioner''s brother was that he was involved in following two cases - (i) Seizure of certain articles from truck bearing No. CTC 3293 on the 17th of February, 1972 which constituted the subject matter of two proceedings; (a)Criminal Case No. 334 of 1974 and (b) Departmental Proceeding No. VIII/10-92/Collr./72 and (ii) Seizure of certain articles said to be smuggled goods from a truck bearing registration No. CTD 5341 on 21st June, 1973 which constituted the subject matter of a departmental proceeding No. VIII/10-162/Collr/73. Out of these cases, the present petitioner''s brother was found to have transported smuggled goods, namely, Synthetic Fabrics of Japanese and German make valued at Rs. 7,45,467/- vide truck No. CTD 5341 which were seized by the customs officials on 21-6-1973. On the basis of a notice dated 5-12-1973, after holding necessary inquiry it was found that the present petitioner''s brother and present petitioner''s brother''s wife were involved, and therefore, by an order dated 12-6-1973, the Collector of Central Excise and Customs imposed fine of Rs. 5000/- on the wife of the petitioner''s brother and a personal penalty of Rs. 35,000/- on the petitioner''s brother. The petitioner''s brother then preferred an appeal before the Board of Central Excise and Customs which is pending. However, the Competent Authority passed the aforesaid order of detention dated 25-2-1975 against the petitioner''s brother against which the petitioner''s brother Umerbhai Ibrahimbhai Bilimora preferred Special Civil Application No. 75 of 1975 before this Court which came to be dismissed with a liberty to file fresh application after the ban on account of emergency is lifted.

3. The case against the present petitioner-Mohammedbhai Ibrahimbhai is that he being the brother of Umerbhai Ibrahimbhai Bilimora who was detained under COFEPOSA, his case falls under Explanation2 to Sub-section (2) of Section 2 of the Smugglers & Foregin Exchange Manipulators (Forfeiture of Property) Act, 1976, (''SAFEMA'' for short) and therefore, on 24-10-1977 a notice u/s 6(1) of the SAFEMA bearing No. CA/BOM/AHD/2(c)/M-20-77-78 was issued to the present petitioner calling upon him to indicate the sources of income, the earnings or assets out of which or by means of which the present petitioner has acquired the following properties:

House property being House No. 3272/2, ''Amina Manzil'' situated at Badekha Chakla, Surat.

Capital and 50% share in the firm of M/s. Ruhana Trading Company, Bhaga Talav, Sindi Wad, Surat.

It was alleged in the said notice that the present petitioner had no ostensible sources of income and in view of the active involvement of his brother in smuggling activities there is a reasonable presumption that the property has been acquired out of the illegally acquired income and is, therefore, liable to be forfeited under SAFEMA. It was also alleged in the notice that the present petitioner''s share interest in the firm is also illegally acquired asset as there is no evidence to show how the investment in the firm was initially made which is also liable to be forfeited under the Act.

4. On receipt of the said show cause notice, the present petitioner replied on 22-1-1979 and against that reply the competent authority vide letter dated 27-1-1979 supplied a copy of the reasons recorded by him. Thereafter, the competent authority passed the order directing forfeiture of the immovable property of the present petitioner known as ''Amina Manzil'' vide order dated 26-9-1979. The present petitioner then went in appeal before the Appellate Tribunal who set aside the order of the competent authority so as to afford opportunity to the present petitioner to file further reply and remanded the matter to the competent authority by order dated 29-8-1980. The petitioner filed further replies dated 24-9-1980 and 21-10-1980 denying all the allegations made therein and produced accounts kept by various cloth dealers regarding his cloth business. According to him, he is assessed to Income Tax and his explanation towards the purchase of house property known as ''Amina Manzil'' is to the effect that Rs. 13,000/-for agreement has been paid out of savings from cloth business income, Rs. 10,000/- paid directly to Peoples Co-op. Bank, Rs. 20,000/- out of which Rs. 15,000/- taken as loan from three cousin brothers i.e. Rs. 5000/- by each of them and the remaining Rs. 5000/- from the income from cloth business. The present petition has also produced documents like sale-deed and affidavits of the three brothers who have given loans of Rs. 5000/- each to show that the properties have been legally acquired. Again the competent authority passed order dated 11-12-19809 to forfeit the property in question and the present petitioner preferred appeal for the second time before the appellate authority who again remanded the matter to the competent authority for fresh decision vide order dt.29-9-1982 for want of copies of assessment orders etc. However, the competent authority passed an order dated 28-2-1983 produced at Annexure ''C'' to the petition forfeiting the house property bearing No. 3277/22, known as ''Amina Manzil'' and holding that the other asset is not liable to be forfeited. Again for the third time, the present petitioner moved appeal before the Appellate Tribunal which came to be dismissed vide order dated 7-3-1984, giving rise to the present appeal.

5. I have heard the learned Counsel for the parties and perused all the relevant papers including the show cause notice and the reasons recorded by the competent authority,

6. The learned Counsel Mr. R.S. Sanjanwala for the present petitioner has made four-fold submissions - (i) that though the present petitioner''s Advocate/present petitioner by notice dated 11-10-1998 demanded for the copy of the order of detention, the grounds of detention and other documents connected therewith he or his Advocate had not been supplied with the same by the competent authority, (ii) that the show cause notice is not in consonance with Section 6(1) of SAFEMA

as the reasons for belief has not been properly recorded as provided u/s 6(1) of the Act. (iii) that there is absence of live link between the property sought to be forfeited and the money of the detenu i.e. the present petitioner''s brother Umerbhai''s, (iv) that there is nothing on record to show that the property in question has been acquired from the proceeds of carrying on prohibited activities and as such Section 3(1)(c) of SAFEMA does not apply, (v) that the present petitioner''s brother was detained under COFEPOSA by order dated 25-2-1975 in connection with an incident which took place on 21-6-1973 while the proceedings under SAFEMA came to be initiated on 24-10-1977 i.e. after a long delay of 2 years and 8 months which has remained unexplained, and therefore, the order passed by the competent authority as also the appellate authority is null and void and requires to be quashed and set aside., (vi) that the present petitioner has produced sufficient material in the form of account books, affidavits etc. to prove that out of his legal income the properties sought to be forfeited were acquired and (vii) that no person from the Income Tax department was examined by the competent authority for the production of documents which were submitted alongwith the Income Tax returns filed by the petitioner though request was made by the petitioner as his Advocate Mr. Shaikh conveyed to him that all the files of the Income Tax were handed over by him to the detenu i.e. the brother of the present petitioner.

7. The learned Central Govt. Standing Counsel Mr. Dhaval G. Nanavaty on the other hand has supported the impugned orders passed by the competent authority as well as the appellate authority as also the issuance of the show cause notice to be in order. He placed reliance of the affidavits filed on behalf of the Central Government.

8. In order to resolve the controversies involved in this petition, firstly, I shall deal with the issue regarding non supply of the copy of the order of detention as well as the ground of detention to the present petitioner. In this connection, it is significant to note that the detenu when challenged his order of detention by way of Special Civil Application No. 75/1975, that petition came to be dismissed with liberty to file a fresh petition on account of the emergency and the detenu thereafter had not chosen to file any fresh petition while the detention order against him was in force. In that view of the matter, it will not be open for the present petitioner to challenge the detention order passed against his brother when SAFEMA proceedings are initiated against the present petitioner. In other words, the detenu or his relative(in the instant case his brother) cannot attack or question the legality or validity of the detention order under COFEPOSA, when it is made the basis for applying SAFEMA, and hence, this ground having no legs to stand does not merit acceptance. Now to examine whether the show cause notice issued by the competent authority is in consonance with Section 6(1) of SAFEMA or not all that is required to be stated is that the present petitioner is undoubtedly the brother of the detenu Umerbhai Ibrahimbhai Bilimora who was detained under the provisions of and was later on released, and therefore, he is a personal falling u/s 2(2)(c) of the Act. The detention order against him was

neither revoked nor quashed by any competent Court. To consider the aspect whether reasons for belief has been properly recorded by the competent authority as provided u/s 6(1) of the Act or not, at this juncture, it would be appropriate to reproduce the relevant portions of the notice/notice for reasons which reads as under:

Whereas, I, A.J. D''Souza, being the Competent Authority u/s 5 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (13 of 1976) have on the basis of the relevant information and/or relevant material available to me, reason to believe that the properties described in the schedule enclosed hereto which are held by you are illegally acquired properties within the meaning of Clause (c) of Sub-section (1) of Section 3 of the Act. From the details available, it is found that Shri Mohmedbhai Ibrahimbhai owns the following properties:

Immovable property

Property No. 3272, ''Amina Manzil'', Badaka Chakla Surat, valued at Rs. 50,000/-

Movable property

Share interest in the firm of M/s. Ruhani Trading Company, Bhaga Talav, Sindhivad, Surat.

The immovable property was purchased in July, 1974, Shri Mohmedbhai is not assessed to tax and he is not having any ostensible sources of income. His brother Shri Umarbhai Ibrahimbhai is involved in Custom''s Seizure case in October, 1973 of the goods of the value of Rs. 5,31,209/- when a personal penalty of Rs. 30,000/- was imposed upon him. He was again involved in another Custom''s seizure case of the goods of value of Rs. 7,45,000/- when a personal penalty of Rs. 35,000/- was imposed upon him in June, 1974 Shri Umarbhai is also not maintaining any books of accounts and has filed returns of income from the A.Y. 1968-69 to 1972-73 showing net income of Rs. 10,000/- for each year in December,1972. Even the nature of business has not been mentioned by him in the returns filed. Since Shri Mohmedbhai has no ostensible sources of income and in view of the active involvement of his brother in smuggling activities, there is a reasonable presumption that the property has been acquired out of illegally acquired income and is, therefore, liable to be forfeited under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property)Act, 1976. Shri Mohmedbhai introduced a capital of Rs. 1786 in the firm of M/s Ruhani Trading Company which is carrying on business of cloth. In the absence of any evidence to show how the investment was initially made in this firm his share interest in the firm being in the nature of illegally acquired asset is also liable to be forfeited under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.

9. Considering these prima facie observations in the notice, there is no doubt that reasons for belief have been explicitly recorded by the competent authority,

and therefore, the notice complies with the requirement of law. I, therefore, do not find any infirmity in the same.

10. It is not in dispute that the aforesaid two properties are held by the present petitioner who is the brother of the detenu. In the instant case, the competent authority while passing the impugned order arrived at a finding that the legal source of income has not been explained by the present petitioner and rightly so as it is the duty of the affected person or the person to whom the notice has been issued to prove that the properties had not been acquired illegally. The competent authority has dealt with all the issues in great details and has observed as follows at paragraphs 6 to11 thereof:

6. ...The detailed information regarding the investment in property has been narrated by the A.P. As under:

-- Date Amount Explanation

3-4-74 Rs. 13,000/- Amount paid is on agreement and the same has been paid by me out of savings of my cloth business.

15-3-74 Rs. 5,000/- Both these amounts have been paid by me

10-4-74 Rs. 5,000/- directly to Peoples Co-op. Bank Ltd. Surat, for payment of instalments to be payable by the sellers.

27-4-74 Rs. 20,000/- Rs. 15,000/- has been received from my three cousins for which necessary affidavits are enclosed herewith and balance of Rs. 5,000/- was paid out of savings of my cloth business. The very amount of Rs. 20,000/- was paid directly to the Surat People''s Co. op. Bank Ltd., Surat for payment of instalment of loan to be payable by seller.

20-6-74 Rs. 6,499/- Paid on the date of Registration of the sale deed and the said amount is paid out of savings of my cloth business.
-- To ascertain the truth about the savings made by the A.P. He is examined on 23-2-1983 and his statement was recorded. He stated that he started cloth business (rags) on retail basis since last 20 years. He stated that he has not kept any books of accounts or bank account. He had no shop premises and at present his is serving with Shri Fashion Cut Piece, Chauta Bazar, Surat. His average approximate turnover in his business was about Rs. 8000/- to Rs. 10,000/-. During the earlier years of the starting of the business the yearly profit amounted to Rs. 5,000/- to Rs. 6000/-. He was assessed to tax from the assessment year 196869 to 1972/73. But he does not remember the amount of tax paid by him as the challans are not available There are six members in his family and his household expenses per month is about Rs. 600/-. He had no

other source of income except the cloth business.

It is pertinent to note here that all the returns of income are filed by the A.P. much after the due date of filing these returns. In the absence of books of accounts and bank account, it is not possible to ascertain the savings from his business income. It is also significant to note that the A.P. Had no regular shop for carrying on the business and on his own admission the total turnover of his business was about Rs. 30,000/-per year and the annual profits in earlier years was Rs. 5,000/- to Rs. 6000/- and in subsequent years round about Rs. 8,000/- to Rs. 10,000/-. His monthly expenses are about Rs. 600/-per month. Considering the total turn over of Rs. 30,000/per year his net business profit can be estimated at the rate of Rs. 12.5%. Thus, his annual income would not exceed Rs. 4,000/- per annum. Considering his monthly household expenses at Rs. 600/-per month it is clear that the A.P. Could hardly save anything out of his business income. Considering all these aspects, I hold the A.P. Could not have saved a sum of Rs. 13,000/- for making initial payment towards Banakhat for the purchase of the house property. It is also significant that A.P filed his returns of income for assessment years 1968-69 to 1972-73 all on one date., just a few months before the property under consideration was purchased by him. Thus, the returns of income for the assessment years 1967-68 to 1972-73 appear to have been filed only in order to show the savings so that the same can be taken advantage of for explaining the source of investment. It is worth noting that subsequent to the assessment year 1972-73, the A.P. did not file the returns of income for the assessment year 1973-74 on wards on the ground that he had no taxable income. If the A.P. Had business income of Rs. 8000/- to Rs. 10,000/-per year as stated by him in the statement on oath, he should have atleast filed the returns for the assessment years 1973-74 and 1974-75 as the minimum taxable limit in those years did not exceed a sum of Rs. 6000/- In normal times, in the case of any retail business, the turnover and profit increase from year to year or at the most would remain the same for subsequent years. However, the A.P. Explains that soon before the purchase of the property he had taxable income but thereafter his income declined considerably not for one or two years but for all the subsequent years. I, therefore, hold that the conduct of the A.P. In filing his returns of income for some years, under the circumstances mentioned above, was only motivated to explain the investment in the house proper under consideration. Taking all these facts, I hold that the A.P. could not have saved a sum of Rs. 13,000/- from the profits earned by him prior to 3-4-1973. The A.P. has paid further sums of Rs. 5,000/-, Rs. 5,000/- and Rs. 5000/- on 15-3-74, 10-4-1974 and 27-4-1974 respectively and a sum of Rs. 6,499/- on 20-5-1974. All these amounts are stated to have been out of his savings of cloth business. For reasons stated above, I have no hesitation in holding that the A.P. Could not have saved a further sum of Rs. 21,499/- from cloth business for making the payment towards the purchase of the house. On 27-4-1974, the A.P. has paid Rs. 20,000/-. It is explained that Rs. 15,000/- was received by him from his three cousins and the balance of Rs. 5,000/-was paid out of savings of his cloth business. As regards loans of Rs. 15,000/- allegedly borrowed from his three cousines the same are not accepted in view of the reasons given below.

The A.P. Was asked to produce his three cousin brothers whose affidavits were produced by the A.P. Before my predecessor stating therein that each of them had advanced a sum of Rs. 5,000/- to the A.P. The statement on oath of his three cousin S/s Mohmed Iqbal Dawoodbhai Memon, Hasambhai Dawoodbhai Memon and Mohmed Shafi Dawoodbhai Memon were recorded on 23-2-1983.

Said Mohmed Iqbalbhai Dawoodbahi Memon stated that the total turnover of his business was about Rs. 18,000/- to Rs. 20,000/- and his household expenses amounted to Rs. 300/-p.m. Shri Hasambhai Dawoodbhai Memon has stated that the turnover of his business was round about Rs. 15,000/- to Rs. 17,000/-per year and his household expenses amounted to Rs. 300/-per month. Shri Mohmed Shafi Dawoodbhai Memon has stated that his turnover did not exceed Rs. 16,000/-per year and his household expenses were about Rs. 300/- to Rs. 400/-per month. Shri Mohmed Iqbalbhai Dawoodbhai and Shri Hassabhai Dawoodbhai have stated in their statement on oath that they have advanced a sum of Rs. 5000/-to the affected person and that the said amount was adjusted against the rent payable by them to the affected person. On the date when the statement of Shri Mohmed Safi Dawoodbhai was recorded he denied to have given any advances to anybody. However, subsequently, Shri Mohmed Shafi Dawoodbhai Memon in his letter dated 23-3-1983 has stated that his reply to the question, Have you given any loan to any person? should not be misunderstood as the very amount was given by way of deposit for the occupation of the building on rent. The amount was given with a view to not earning interest and hence it was stated that no loan was given to any person. Under the circumstances for clarification he has written this letter and the affidavit filed by him earlier may please be considered as good. Though all the three cousin brothers have stated that they had advanced a sum of Rs. 5,000/- each to the A.P. there is no supporting evidence forthcoming to show that they could have that much amount in cash available with them in order to make an advance to the A.P. As stated above, the turnover of the business of each cousin brother hardly exceeded Rs. 18,000/- to Rs. 20,000/- per year. Looking to the nature of the business the profit earned by each of them could be reasonably estimated at Rs. 12.5% net of the total turnover. Thus, the business income of each cousin could have hardly exceeded a sum of Rs. 2,500/- to Rs. 3,000/-and considering their household expenses which are stated to be Rs. 300/-per month, no savings could actually be left with each of them and therefore, it was not possible for any of them to give advance of Rs. 5,000/- to the A.P. Thus, the affidavits made by S/s. Mohmed Iqbalbhai Dawoodbhai Memon, Hasambhai Dawoodbhai Memon and Mohmed Shafi Dawoodbhai Memon are not much of evidential value. In the absence of any supporting evidence the contention put forward by the A.P. That his three cousin brothers had advanced a sum of Rs. 5,000/-each which was utilized by him towards purchase consideration of the house property in question cannot be accepted. Thus, the advance of Rs. 15,000/- alleged to have been made by his three cousin brothers are considered to be not genuine and as such the source of a sum of Rs. 15,00/- has not been proved by the A.P.

In view of the reasons given in the preceding paragraphs, I hold that the source of investment of Rs. 49,499/- made in the property ''Amina Manzil'' by the A.P. has not been proved to be out of legal sources of income or earnings. I, therefore, hold that the entire purchase consideration of Rs. 49,499/- has been paid by the A.P. Out of his illegal income. The house property bearing No. 3277/22 known s Amina Manzil ad situated at Badekha Chakla, Surat, which has been purchased for a sum of Rs. 49,400/-, is therefore, treated as illegally acquired property in the hands of A.P. The other asset was not held liable for forfeiture as the A.P''s investment in the firm Ms/Ruhani Trading Company was very small and he had ceased to be a partner.

11. Considering the reasoning adopted by the competent authority, in my opinion, it is amply established that the house property known as ''Amina Manzil'' has been illegally acquired by the present petitioner. Suffice it to say, that the learned Counsel for the petitioner has also failed to point out any error having been committed by the competent authority.

11.1. Even the appellate authority after having perused all the relevant material and considering the submissions put forward on behalf of the present petitioner came to the conclusion that the findings of the Competent Authority are factually correct and held that the appellant (present petitioner) has failed to prove his legal source of income for acquisition of the house property known as ''Amina Manzil''. The appellate authority while dealing with the sum of Rs. 15,000/- which formed part of the consideration for the purchase of house property known as ''Amina Manzil'' has in clear terms stated that even on the assumption that the three cousin brothers of the present petitioner did carry on business, having regard to their turnover and the likely income thereon, it is unlikely that consdering their living expenses, they would have been in a position to advance Rs. 5,000/- free of interest to the appellant(present petitioner). The appellate authority has also arrived at a finding that in any event whether it is on the basis of the entries in the demand and collection register or the appellant''s own estimates of his income, it is not possible to accept the submission that out of the funds which represented his only earnings, he could have incurred a monthly expenditure of Rs. 600/- as stated by him before the competent authority, and also be able to save over Rs. 30,000/- by 1974 to enable him to purchase the house. In short, the appellate authority by a well reasoned order has agreed with the findings given by the competent authority on all material aspects and came to the conclusion that the property known as ''Amina Manzil'' has been illegally acquired by the present petitioner. In that view of the matter, the contentions raised by the learned Counsel for the petitioner at point Nos. (ii) and (iv) cannot be accepted.

12. Coming now to the point canvassed by the learned Counsel for the present petitioner that there is absence of live link between the property sought to be

forfeited and the money of the detenu i.e. the present petitioner''s brother Umerbhai''s, reference may beneficially be had to the decision rendered by the Apex Court in the case of Smt. Kesar Devi Vs. Union of India (UOI) and Others, wherein at paragraphs 12 and 13 of the judgment , it has been observed as under:

In cases were relationship is close and direct no link or nexus has to be indicated in the reasons for believe between the convict or detenu and the property as such an inference can easily be drawn. 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.

13. As regards the delay aspect pointed out by the learned Counsel for the petitioner is concerned, it may be noted that there was ample opportunity with the detenu to file fresh petition as directed in Special Civil Application No. 75/1975 where he could have raised such contention, and now after the initiation of SAFEMA proceedings the present petitioner is not entitled take up the aspect of delay. Even assuming that there is delay the authorities cannot be blamed for any procedural delay in making inquiries, calling for income tax records, registers, books of accounts etc. as in the present case. In this connection, it would be advisable to refer to the decision rendered in the case of Attorney General for India v. Amratlal Prajivandas wherein the Supreme Court has observed that persons engaged in smuggling do not keep regular and proper accounts with respect to such activities and very often such persons screen the properties acquired so that they may not be traced. In the nature of things the authorities require time to trace the properties, and therefore they cannot be found fault with for the delay in issuance of show cause notice.

14. The stand taken by the learned Counsel for the petitioner that the present petitioner has produced sufficient material in the form of account books, affidavits etc. to prove that out of his legal income the properties sought to be forfeited were acquired has no substance for the reason that the competent authority has made a specific statement that the present petitioner has avoided to file income tax returns of certain years and that the returns of income for the assessment years 1967-68 to 1972-73 appear to have been filed only in order to show the savings so that the same can be taken advantage of for explaining the source of investment. The competent authority after taking into consideration all the material on record held that the appellants have failed to prove their legal source of income for acquisition of the forfeited properties as can be seen from the paragraphs 6 to 11 of the order of the competent authority extracted herein above. Indisputably, the detenu who is the brother of the present petitioner has been involved in smuggling activities and when the investments in the properties

in question by the present petitioner is proved to be disproportionate to the known source of income, earnings and assets, it can safely be concluded that the property in question is an illegally acquired property.

15. The submission that no person from the Income Tax department was examined by the authority for production of documents submitted alongwith the return filed by the present petitioner is also devoid of any merit. The present petitioner has categorically stated before the competent authority that Mr. Shaikh who is his Income Tax Practitioner had handed over the income tax returns of the present petitioner to the detenu i.e. brother of the present petitioner. The appellate authority has clearly stated in the order that it was open to the appellant to request the competent authority to issue a summons to Shri Shaikh, the Income Tax Practitioner of the petitioner for producing these documents and that the petitioner had not taken such a step. It has also been stated by the competent authority that no material has been produced to show that the appellant had in fact requested Shri Shaikh for the production of these documents and that his Income Tax Practititoner had refused to do so. It is also reflected in the order of the competent authority that despite all the efforts made by his office the Income Tax records of the present petitioner could not be traced out. In fact there is nothing on record to show that the present petitioner had made any effort for examining the person from the Income Tax Department and when that is not done, now the petitioner cannot contend that for want of examining the person from the Income Tax Department for production of documents, he did not have the opportunity to represent his case properly. Even otherwise, it was the duty of the present petitioner to make all efforts to obtain the certified copies of the relevant Income Tax papers and produce the same before the authorities in time. It goes without saying that a party cannot be made to take advantage of his own wrong.

16. The learned Counsel for the petitioner has pressed into service the decisions in the case of:

Karimaben K. Bagad v. State of Gujarat reported in G.L.R 38(2) 1595.

Competent Authority, Ahmedabad Vs. Amritlal Chandmal Jain and Others,

Ghelubhai R. Madam through heirs & LRS v. A.K. Mehta or his successor Competent Authority and SFEMA/NDPS, Mumbai and Ors. Reported in 2004 (2) G.L.R. 1431.

Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others,

16.1 I have gone through these authorities. There is no dispute to the proposition laid down in these authorities, however, since the facts in these cases are on an entirely different footing than the facts of the present case, cannot be made applicable and would be of no assistance to the petitioner.

17. Viewed in the light of the aforesaid discussion, I am of the view that there

does not exist any ground which would justify this Court to interfere. No evidence whatsoever has been produced to show that the property in question was purchased out of licit source of income by the petitioner, and therefore, the impugned orders as well as the notice cannot be quashed and set aside.

18. The result is that the petition fails and is rejected.

