

(2010) 03 DEL CK 0263

In the Delhi High Court

Case No : Writ Petition (C) No. 1212 of 1995

Thanesar Singh Sodhi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 10, 11, 11(1), 12A, 2
Constitution of India, 1950 — Article 14, 19, 21, 22, 22(5)
General Clauses Act, 1897 — Section 21
Maintenance of Internal Security Act, 1971 — Section 10
Preventive Detention Act, 1950 — Section 9
Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 —
Section 2, 2(2), 3, 6, 6(1)

Citation : (2010) 03 DEL CK 0263

Hon'ble Judges : Ajit Bharihoke, J;A.K. Sikri, J

Bench : Division Bench

Advocate : R.M. Bagai, for the Appellant; A.S. Chandhiok, ASG, Baldev Malik and Vikas Pahwa, ASC for State, for the Respondent

Final Decision : Dismissed

Judgement

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A.K. Sikri, J.—The detention order u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (hereinafter referred to as "COFEPOSA") was passed detaining the petitioner herein on 2nd January, 1978. This detention order had been the subject of litigation, as would be noted at the relevant stage. Subsequently, a notice u/s 6(1) of Smugglers And Foreign Exchange Manipulators (Forfeiture Of Property) Act, 1976 (hereinafter referred to as "SAFEMA") was issued to the petitioner on 10.02.1981 calling upon him to indicate the source of his earnings and assets out of which or by means of which he had acquired certain properties therein. After receiving the reply, the orders dated 16.09.1983 were passed by the respondents forfeiting the properties of

the petitioner. Appeal against this order preferred by the petitioner was dismissed by the Appellate Tribunal on 02.03.1995. Challenging the aforesaid orders of the Competent Authority and Appellate Tribunal under SAFEMA, present writ petition is preferred by the petitioner. At the same time, the petitioner is also challenging the detention order passed under COFEPOSA.

2. Now, facts in detail:

3. Following the detention order dated 2nd January, 1978 (pursuant to which the petitioner was taken into custody on 3rd January, 1978 from his residence) the grounds of detention were served upon the petitioner wherein various acts of smuggling, primarily in gold, were attributed to the petitioner as well as his father Sh. Jagat Singh Sodhi. The petitioner submitted his representation against the said detention order which was rejected on 15th February, 1978. Thereafter, he filed the Crl. W.P. No. 06/1978 in this Court challenging the detention order. This writ petition was heard and dismissed vide a detailed speaking order/judgment dated 25th September, 1978.

4. Though in the writ petition the petitioner has alleged that challenging the judgment of this Court dismissing his writ petition, he had filed Writ Petition No. 4446/1978 in the Supreme Court under Article 32 of the Constitution, this is factually incorrect assertion. Infact, the aforesaid writ petition in the Supreme Court was filed by the wife of the petitioner invoking original jurisdiction of the Supreme Court under Article 32 of the Constitution even when Writ Petition 06/1978 was still pending in this Court. In the aforesaid writ petition filed in the Supreme Court, Rule was issued on 4th October, 1978. It was dismissed as withdrawn on October 27th, 1978.

5. Two years and four months thereafter, the petitioner was served with notice u/s 6 of SAFEMA calling upon him to indicate, within thirty days of the service of the said notice, the source of his income, earnings, and assets out of which or by means of which he has acquired the following assets:

1. House No. 2/32-A Punjabi Bagh, New Delhi
2. M/s Apsara Hotel, Arya Samaj Road, New Delhi; and
3. Deposit with New Bank of India, Karol Bagh.

6. The petitioner submitted his reply to the said show-cause notice on 24th March, 1981, inter alia, stating that he was being assessed to Income Tax and all the sources regarding income, earnings or assets were duly mentioned in the Income Tax Returns and these assets were lawfully acquired properties. Thereafter, notice u/s 7(1) of SAFEMA was issued, posting the case for hearing on 22nd April, 1983. Hearing took place on that day and on various dates thereafter when certain affidavits and documents were filed by the petitioner. After considering the reply, material placed by the petitioner as well as oral submissions of his counsel, the Competent Authority passed the orders dated 16th September, 1983 thereby forfeiting the aforesaid properties of the petitioner.

7. The petitioner challenged this order by preferring appeal before the Appellate Tribunal for Forfeitted Properties (Appellate Tribunal short). Almost simultaneously, the petitioner also filed Civil Writ Petition No. 12547/1983 challenging the vires of SAFEMA as well as validity of the notices issued to him under the said Act. We may mention here that spate of writ petitions came to be filed in various High Courts challenging the Constitutional validity of SAFEMA. All these writ petitions were ultimately transferred to the Supreme Court in the Transfer Petition No. 17/1978 titled Attorney General of India v. Amritlal Parvejanddas and Ors. The petition filed by the petitioner was also clubbed with these petitions and entire batch of petitions was decided by the Supreme Court, rejecting the challenge to the validity of the aforesaid Act. Judgment of the Supreme Court is reported as Attorney General for India and Others Vs. Amratlal Prajivandas and Others,

8. During the pendency of the Civil Writ Petition No. 12457/83 filed by the petitioner, proceedings before the Appellate Tribunal were stayed by the Supreme Court vide orders dated 25th November, 1983. In its judgment, the Supreme Court passed the following directions in respect of all such appeals pending before the Appellate Tribunal:

49. The other case brought to our notice is in Union of India (UOI) and Others Vs. Manoharlal Narang, a decision rendered by a Bench comprising Khalid and Oza, JJ. The facts of this case are rather involved. Respondent, Manohar Lal Narang and one Ram Lal Narang were brothers. An order of detention u/s 3(1) of COFEPOSA was made against Ram Lal Narang on December 19, 1974, He challenged the same before the Delhi High Court in Writ Petition No. 10 of 1975 which was allowed on April 30, 1975 and the order of detention quashed. The Union of India preferred an appeal against the said Order of the High Court to this Court alongwith an application for stay. On May 1, 1975, this Court declined stay but imposed certain conditions on the movement of Ram Lai Narang (Later, the said appeal was dismissed for non-prosecution). After the proclamation of emergency on the ground of internal disturbance on June 25, 1975, a fresh order of detention was made on July 1, 1975 against Ram Lai on the very same facts and grounds on which he was detained earlier. The said order of detention was challenged in Delhi High Court in Writ Petition No. 115 of 1975 filed by a relative of Ram Lai but was dismissed on November 25, 1975. An appeal was preferred against the said order to this Court being Appeal No. 399 of 1977. At this stage, notice under Sections 6 and 7 of SAFEMA was issued against Ram Lai which he questioned in Delhi High Court in Writ Petition No. 720 of 1975. While the said writ petition was pending in Delhi High Court, Appeal No. 399 of 1975 pending in this Court came up for hearing and was disposed of saying that it would be open to Ram Lai to raise all such contentions as are available to him in Writ Petition No. 720 of 1975, notwithstanding the fact that those grounds were raised in Writ Petition No. 115 of 1975 (from which the said appeal No. 399 of 1975 arose). Writ Petition No. 720 of 1975 was heard and dismissed by the Delhi High Court against which Ram Lai filed SLP No. 9361 of 1982 wherein leave was granted and

the appeal was numbered as C.A. 2790 of 1985 which was said to be pending on the date of the said judgment. An order of detention u/s 3 of COFEPOSA was made against the respondent, Manohar Lal Narang, as well on January 31, 1975. He was then in England. He was brought to India and detained. He challenged the same by way of W.P. 2752 of 1975 in the Bombay High Court which was allowed and the detention quashed on July 8, 1980. An appeal preferred to this Court against the said order was also dismissed. Thereafter, a show cause notice was issued to Manohar Lal Narang on the ground that he is the brother (relative) of Ram Lal Narang, who was detained u/s 3(1) of COFEPOSA. It may be remembered that a writ petition questioning Ram Lal's detention under the order dated July 1, 1975 (evidently, an order of detention to which Section 12A of COFEPOSA applied) was dismissed by the Delhi High Court (W.P. No. 115 of 1975) and even Writ Petition No. 720 of 1975 (in which he was allowed to raise all the available grounds against his detention) was also dismissed. From the facts stated above, it is clear that the basis of action under SAFEMA against Manohar Lal Narang was his brother Ram Lal's detention during the period of emergency, which detention was governed by Section 12A of COFEPOSA. According to our opinion indicated hereinbefore, such an order can constitute a basis for taking action under SAFEMA. So far as the reasoning of the said decision is concerned, it is to the effect that the validity of such an order of detention can be questioned by the detinue or his relative, as and when such an order is sought to be made the foundation for taking action against them under SAFEMA. On that basis, the court proceeded to examine the validity of the order of detention of Ram Lal and found that the said order is bad for non-application of mind to certain highly relevant and material circumstances. We must, however, say that the validity of an order of detention to which Section 12A of COFEPOSA applied, could yet be examined even during the emergency on the touchstone of the law as it obtained during the operation of the Presidential Order under Article 359(1) - say on the ground that the provisions of Section 12A were not complied with, or on other grounds, as may not have barred during the said period. But a person who could have so challenged the order of detention and yet chose not to do, cannot be allowed to do so when such an order of detention is made the basis for applying SAFEMA to him-this is for the reason that even if he is allowed to challenge the said order when he is served with the notice u/s 6 of SAFEMA, the challenge has to be examined with reference to the position of law as was obtaining at the time the said order was made and the law in force during the period the said order of detention was in operation. Same would be the position in the case of a person who challenged the order but failed in his challenge. Even in the case of a normal order of detention under COFEPOSA, the position would be the same. A person who did not challenge (either by himself or through his next friend) the order of detention or challenged it but failed, cannot be allowed to challenge the order of detention when action is taken against him under SAFEMA.

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63. To summaries:

(1) the Parliament was perfectly competent to enact both the COFEPOSA and the SAFEMA.

(2) for the reasons given in the body of this judgment, we do not express any opinion on the validity of the 38th and 40th Amendment Acts to the Constitution of India placing COFEPOSA and SAFEMA in the IXth Schedule. We assume them to be good and valid. No arguments have also been addressed with respect to the validity of 42nd Amendment Act to the Constitution either.

(3a) An order of detention made u/s 3 of COFEPOSA, which was governed by Section 12A thereof is yet an order of detention for the purpose of and within the meaning of Section 2(2)(b) of SAFEMA. Since the President had issued an order under Article 359(1) suspending Articles 14, 21 and 22, it became competent for the Parliament, by virtue of Clause (1A) of Article 359 to enact Section 12A of COFEPOSA for the duration of and limited to the period for which the Presidential Order was in force. It was meant to achieve the purposes of emergency. Once Section 12A is held to be a competent piece of legislation, orders of detention made thereunder (i.e., orders of detention to which the said provision applied) cannot be held to be not amounting to orders of detention for the purpose of and within the meaning of Section 2(2)(b) of SAFEMA, particularly in view of the express language of Section 2(2)(b) (including proviso (iii) thereto)-and the protection enjoyed by both the enactments by virtue of their inclusion in the IXth Schedule to the Constitution.

(b) An order of detention to which Section 12A is applicable as well as an order of detention to which Section 12A was not applicable can serve as the foundation, as the basis, for applying SAFEMA to such detainee and to his relatives and associates provided such order of detention does not attract any of the sub-clauses in the proviso to Section 2(2)(b). If such detainee did not choose to question the said detention (either by himself or through his next friend) before the Court during the period when such order of detention was in force,-or is unsuccessful in his attack thereon he, or his relatives and associates cannot attack or question its validity when it is made the basis for applying SAFEMA to him or to his relatives or associates.

(4) The definition of "illegally acquired properties" in Clause (c) of Section 3 of SAFEMA is not invalid or ineffective.

(5) The application of SAFEMA to the relatives and associates [in Clauses (c) and (d) of Section 2(2)] is equally valid and effective inasmuch as the purpose and object of bringing such persons within the net of SAFEMA is to reach the properties of the detainee or convict, as the case may be, wherever they are, howsoever they are held and by whomsoever they are held. They are not conceived with a view to forfeit the independent properties of such relatives and associates as explained in this judgment. The position of "holders" dealt with by Clause (e) of Section 2(2) is different as explained in the body of the judgment.

(6) Section 5A of COFEPOSA is not invalid or void. It is not violative of Clause (5) of Article 22.

(7) Petitioners have failed to establish that any of the provisions of SAFEMA are violative of Articles 14, 19 or 21-apart from the protection they enjoy by virtue of the inclusion of the Act in the IXth Schedule to the Constitution.

9. After the aforesaid judgment and vacation of stay by the Supreme Court, the appeal was taken up for hearing by the Appellate Tribunal and dismissed vide orders dated 2nd March, 1995. Challenging this order as well as the detention order dated 2nd January, 1978 the petitioner has filed this writ petition.

10. It is not in dispute that proceedings under SAFEMA were initiated on the basis of detention order passed. That is the position of law and would be discussed in detail at the relevant stage hereafter. In cases where detention order is declared invalid, proceedings under SAFEMA would be impermissible. It is for this reason that the petitioner has challenged the detention order as well. However, as noted above, writ petition filed by the petitioner in this Court, challenging the detention order, was dismissed on 25th September, 1978. At the same time, Writ Petition No. 4446/78 filed in the Supreme Court was dismissed as withdrawn on 27th October, 1978 because of the reason that the respondent had agreed to withdraw the detention order. There was another interesting development which took place in the mean time. Though, no appeal was filed against the judgment dated 25th September, 1978 rendered by this Court upholding the detention order, in another matter i.e Narendra Purshotam Umrao Vs. B.B. Gujral and Others, the Supreme Court commented on the aforesaid judgment dated 25th September, 1978 of this Court. Taking note of these development following order was passed on 25th January, 2010 by this Court taking note of the issues which needed determination. Relevant portion of order dated 25th January, 2010 is extracted below:

The petitioner was served with notice u/s 6(1) of SAFEMA on 10.2.1981, pursuant to which orders were passed by the competent authority forfeiting certain properties of the petitioner. This order passed on 16.9.1983 has been upheld by the Appellate Authority on 28.2.1995. Challenging these orders, the present writ petition is filed.

Learned Counsel for the petitioner has, inter alia, submitted that since the judgment passed by this Court on 25.9.1978 upholding the detention order has been declared as not a good law, on the basis of such an order of preventive detention, no proceedings could be taken against the petitioner under SAFEMA.

The questions, in these circumstances, would be as under:

- i) Whether the order of detention between the parties interse became final?
- ii) If so, what is the effect of the aforesaid judgment by the Supreme Court overruling the law laid down by this Court in its judgment dated 25.9.1978 rendered in WP (Crl.) No. 6/1978.

Permissibility of this Court to venture into the merits of the detention order, earlier upheld by this Court vide its judgment dated 25th September, 1978 would depend upon the outcome of the aforesaid questions. Conscience of this fact, counsel for the parties have made elaborate submissions on these aspects and, therefore, we are supposed to first determine these issues.

RE: Finality of the Detention Order

11. Submissions of Mr. Bagai, learned Counsel appearing for the petitioner was that the order dated 25th September, 1978 passed by this Court, dismissing the Criminal Writ Petition No. 06/1978 whereunder the detention order was challenged, never became final. According to him, the reason is that this issue was seized of and taken up by the Supreme Court as well in Criminal Writ Petition No. 4446/1978 and the said writ petition was withdrawn on 27th October, 1978 only because the Government agreed to withdraw the detention order. Thereafter, on 9th September, 1978, the detention order was revoked. Learned Counsel also pointed out that as per the statement given by the Counsel for Union of India in Supreme Court on 27th October, 1978, the Government revoked the suspension order on 9th September, 1978 therefore, proceedings under SAFEMA could not be initiated on this ground as well. Matter was heard on 25th October, 1978 and following order was passed:

These petitions were called out at 11.15 a.m. At the out-set Mr. Lekhi raised a preliminary objections regarding the maintainability of these petitions and addressed the Court till 11.25 a.m. Then Mr. Ramjethmalani opened his arguments, prefaced by his reply to the preliminary objections raised by Mr. Lekhi. He concluded the arguments at 2.10 p.m. Mr. Lekhi made his submissions till 3.55 Hearing concluded and court reserved judgment with the directions to list these matters on 27-10-1978 for being mentioned.

When the matter was taken up on 27th October, 1978, regarding the statement of counsel for the State that complaint for prosecution of the detenu shall be filed and the detention order would be revoked forthwith, writ petitions were dismissed as withdrawn by passing following order:

Mr. Lekhi has made statement at the bar on behalf of the Union of India that the Collector, Central Excise and Customs, Delhi undertakes to file a complaint for prosecution of the detenues within a fortnight and upon filing of such complaint the detention orders will be revoked forthwith. In view of this undertaking both the writ petitions are dismissed as withdrawn.

12. It was also argued that since judgment dated 25th September, 1978 passed by this Court was overruled by the Supreme Court in Narender Purshotam Umrao (supra), the same had the retrospective effect and this would wipe-of the very legality of detention order. In support of this submission, learned Counsel relied upon the following judgments:

(i) AIR 1985 SC 697

(ii) AIR 1986 SC 1440

(iii) AIR 2003 AP 413

It was thus submitted that since the detention order had not become final, it was the right of the petitioner to challenge the same, even now at this stage, as per the law laid down in the following judgments:

(i) JT 1994 (3) SC 583 (para 49)

(ii) JT (1997) DLT 518

13. Mr. Chandhiok, learned Additional Solicitor General appearing for Union of India and Mr. Vikas Pahwa, learned Counsel appearing for Govt. of NCT of Delhi, countered the aforesaid submissions. Apart from pointing that no challenge was laid to the judgment dated 25th September, 1978 by filing any SLP and thus, the said decision had attained finality, it was also argued that the writ petition filed by the petitioner in the Supreme Court was ultimately dismissed as withdrawn. This would mean, argued the learned Counsel, that the decision of this Court was not interfered with. It was further submitted that judgment dated 25th September, 1978 was not overruled by the Supreme Court in Narender Purshotam Umrao (supra). Alternatively, it was submitted that even if it is presumed that judgment was overruled, it had happened in different proceedings and not in any appeal preferred against the said judgment. Therefore, it amounted to overruling the principle laid down in the said judgment and not the decision. In so far as decision is concerned, i.e. upholding the preventive detention, that had attained the finality between the parties inter se. Number of judgments were relied upon to back the aforesaid submissions.

14. It was also the argument of the learned Counsel for the respondents that revocation of detention order on 9th September, 1978 u/s 11 of the COFEPOSA, had no bearing on the validity of the detention order and, therefore, proceedings under SAFEMA could still be initiated as provided u/s 2 of SAFEMA. It was additionally pointed out that Writ Petition No. 12547/1983, filed by the petitioner in the Supreme Court, wherein vires of SAFEMA were challenged, the petitioner had raised identical grounds which are now taken up in the present writ petition. Even detention order was challenged again. However, the Supreme Court did not grant any relief thereupon and thus the principles of constructive res judicata shall be attracted, precluding the petitioner from challenging the detention order.

15. We have given your thoughtful consideration to the aforesaid submissions and have also minutely gone through the various judgments cited by counsel on either side.

16. Following facts are undisputed:

(i) In Criminal Writ Petition No. 6/1978 order dated 2nd January, 1978 was challenged. This writ petition was heard on merits by a Division Bench of this Court on 25th September, 1978. No appeal was filed against this order.

(ii) Even during the pendency of Criminal Writ Petition No. 6/1978, wife of the petitioner had filed Criminal Writ Petition No. 4446/1978 which was dismissed as withdrawn on 27th October, 1978 and was thus not decided on merits.

(iii) Detention order was revoked on 9th September, 1978 u/s 11 of the COFEPOSA.

Based on this factual premise, we would now consider various facets of the issue.

(a) Effect of the order dated October 27th, 1978 passed by the Supreme Court

17. Much emphasis was laid by learned Counsel for the petitioner on the circumstances in which order dated 27th October, 1978 came to be passed. His submission was that the matter was argued at length on 25th October, 1978 which was clear from the proceeding-sheet of that day, disclosing that it was heard for more than three hours. He submitted that even when the arguments were concluded on that day and the judgment was reserved, matter was listed for "direction" on 27th October, 1978 as the Court was convinced that the detention order was illegal and had to be set aside. Time was given to the respondents to consider as to whether they would like to withdraw the detention order themselves. It was in the light of this development that Union of India agreed to revoke the detention order and statement was made to this effect on 27th October, 1978. Under these circumstances, the writ petition was dismissed as withdrawn. From this, he wants us to infer that detention order was patently illegal and the validity thereof could not be determined simply because it was revoked by the respondents themselves knowing hollowness of their case.

18. This argument of learned Counsel for the petitioner is too presumptuous. Facts disclosed above would show that Writ Petition No. 06/1978 filed by the petitioner in this Court had already been dismissed when writ petition No. 4446/1978 came up for hearing in the Supreme Court on 25th October, 1978. Order-sheet of 25th October, 1978 discloses that the respondents had taken preliminary objections regarding the maintainability of the said petition which was filed at the time when writ petition already filed in the High Court was pending adjudication. Whether second petition would be maintainable was the question. Whether such petition could be pressed after the dismissal of writ petition filed in the High Court and without challenging the order of this Court was also the question. Order dated 25th October, 1978 clearly demonstrates that counsel for Union of India has raised preliminary objections regarding the maintainability of the petitions. He had argued on the maintainability in the first instance to which counsel for the petitioner had replied and, thereafter, counsel for Union of India had submitted his rejoinder. This order, thus, shows that arguments were heard only on the maintainability of the petition. No doubt, even when the Court reserved the judgment, it listed the matter for being mentioned on 27th October, 1978. What transpired in the court at the time of hearing which prompted the Court to pass that order, cannot be fathomed. We can not indulge into conjectures and are supposed to go by the record. Therefore, it would be too

presumptuous for learned Counsel for the petitioner to argue that the Supreme Court had decided to quash the detention order and, therefore, some time was taken by counsel for the respondent to pound over the matter.

19. No doubt, on 27th October, 1978 statement was made that the Union of India was willing to revoke the detention order forthwith. However, revocation of suspension order will have different connotation and different consequences than those which are attached to the quashing of such an order. SAFEMA had come into force w.e.f. 25th January, 1976. Even if Union of India decided to revoke the detention order, Counsel for the petitioner could still insist upon the decision on merits if the petitioner wanted a declaration to the effect that such an order was bad in law. In that eventuality, the Supreme Court would have decided about the maintainability of the writ petition and in the event, decision was that said writ petition was maintainable, it would have gone to the merits of the detention order. That has not happened. We are faced with a situation where writ petition filed by the petitioner is simply dismissed as withdrawn. In view thereof, it cannot be said that detention order was illegal or void ab initio. No doubt, this detention order has been revoked. In these circumstances only the effect of revocation order can be seen.

(b) Effect of the judgment of Supreme Court in *Narender Purshotam Umrao* (supra).

20. The next aspect to be dealt with is: what is the effect of the judgment of Supreme Court in *Narender Purshotam Umrao* (supra) on the detention order, in view of the observation of the Supreme Court in the said case on the decision dated 25th September, 1978 rendered in CrI.WP No. 06/1978?

21. We have to first consider as to whether judgment dated 25th September, 1978 stands overruled. In *Narender Purshotam Umrao* case (supra), the Supreme Court held that the constitutional safeguards embodied in Article 22(5) of the Constitution must be read into the provisions of Section 8(b) of the COFEPOSA to prevent any arbitrary executive action which would mean that it would be the obligation of the authorities to forward the representation made by the detenu along with the reference to the Advisory Board, even when there was no express provision in this behalf in Section 8(b) of COFEPOSA. In this backdrop, following comments were made on the decision dated 25th September, 1978 in Criminal Writ Petition No. 6/1978:

The High Court in this case, and the Delhi High Court in *Thaneshwar Singh v. The Union of India* and Ors. Cr.W. No 6 of 1978 decided on September 25, 1978 (Delhi High Court) appear to be labouring under misconception that merely because there is no express provision in Section 8(b) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act placing an obligation to forward the representation made by the detenu along with the reference to the Advisory Board, unlike those contained in Section 9 of the Preventive Detention Act, 1950 and Section 10 of the Maintenance of Internal

Security Act, 1971 there is no obligation cast on the Government to consider the representation made by the detenu before forwarding it to the Advisory Board.

22. The Supreme Court thereafter dealt with the provision of Article 22(5) of the Constitution in detail and also extracted passage from its earlier judgment *Khudiram Das Vs. The State of West Bengal and Others*, holding that this constitutional imperatives in article were twofold, viz., (1) communicating to the detenu the grounds on which the order of detention order was passed, as soon as practicable after the detention; and (2) affording earliest possible opportunities to the detenu of making a representation against the order of detention. Immediately thereafter, following comments appear in respect of orders dated 25th September, 1978 in Crimination Writ Petition No. 6/1978:

This has always been the view consistently taken by this Court in a series of decisions. It is not necessary to burden this judgment with citations of these decisions. The view to the contrary taken by the Bombay and the Delhi High Courts that these procedural safe-guards are not available to a person detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act is clearly wrong.

The remarks of the Supreme Court are that this Court was not correct in holding that procedural safeguards are not available to a person detained under COFEPOSA and merely because there was no express provision u/s 8(b) of COFEPOSA. Thus, obligation was cast on the authority to consider the representation made by the detenu before forwarding it to the Advisory Board, notwithstanding the fact that Section 8(b) of COFEPOSA was silent on this aspect. It is this aspect of the matter on which Delhi High Court in the aforesaid case purportedly took different view and that view is not approved. So far so good. However, we make two comments at this stage:

(1) The Supreme Court has not overruled the judgment of the Delhi High Court dated 25th September 1978 specifically.

(2) More importantly, it was rightly pointed out by the learned ASG that in the judgment dated 25th September, 1978 such an issue was never raised and, therefore, did not even come up for consideration. We have gone through the entire judgment and find that learned ASG is right in his submissions. The question which came up for consideration qua Article 22(5) was as to "How Section 5A of the COFEPOSA is related to Article 21 & 22(5) and (6)?"

Section 5A was inserted by an amendment to COFEPOSA and the said amendment put the Act in the Ninth Schedule of the Constitution thereby making it beyond challenge. Contention raised was that it was contrary to the provisions of Part-III (Fundamental Rights) of the Constitution. This Court considered this argument in the constitutional background with reference to various judgments of the Supreme Court and opined that subjective satisfaction required u/s 3(1) of the Act does not act as a barrier to an object seeking of the some ground under Article 22(5) even though certain matters may have been withheld in the

communication made to the detenu in view of Article 22(6). Argument that detention cannot be judicially reviewed was, rather specifically rejected holding that the compliance with the requirement of Article 22(5) of the Constitution is to be determined objectively by the Courts.

23. This Court, thereafter specifically dealt with various grounds on which detention order was challenged but rejected those grounds on merits thereby upholding the detention order. Therefore, it cannot be said that the decision dated 25th September, 1978 rendered by this Court has been overruled in *Narender Purshotam Umrao* (supra).

24. We may refer to the judgment of Supreme Court in *Union of India (UOI) and Others Vs. Indian Jute Mills Associations and Others*, in this behalf wherein the Supreme Court categorically opined that observations of the Court on a point which was not the subject matter of the case, would not be either binding or taken as a precedent for any future reference. This was said in the following context:

13. Shri A. Sharan, learned Additional Solicitor General of India does not press the appeals on any point other than the setting aside of the above quoted observations of the High Court. It is contended by him that the observations made by the Division Bench quoted above are obiter in nature as the same did not arise either from the pleadings of the parties or the contentions raised before the Division Bench. The challenge in the writ petition was regarding the extent of power or jurisdiction of the Advisory Committee to make its recommendation to the Central Government. There was no challenge to the power of the Central Government regarding the progressive dilution of the protection of the jute packaging material for the purpose of ultimate repeal of the Act.

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15. After considering the respective submissions put forth by the learned senior counsels on behalf of the parties we are of the opinion that the contention raised by the learned Additional Solicitor General deserves to be accepted. On perusal of the writ petition, the prayers made therein, the contentions raised by the respective counsels for the parties before the Division Bench and the points formulated by the Division Bench for its consideration we are of the opinion that the question regarding power of the Central Government to pass any order regarding the progressive dilution or protection of the jute packaging material for its ultimate repeal was not under challenge. This point did not arise from the pleadings of the parties. The observations made are without there being any foundation of facts laid in the pleadings and the points formulated by the Division Bench for its consideration. We are not even sure as to whether the learned Counsels appearing for the parties before the High Court had addressed arguments on this point. We do not agree with the submissions made by Shri Nariman that the Central Government was acting in its capacity as a creature under the Act. The Standing Advisory Committee is constituted under the Act

and not the Central Government. The observations made by the High Court being contrary to the pleadings and obiter in nature are set aside. The same would not be either binding or taken as a precedent for any future reference.

25. Similarly, in *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*, the Supreme Court categorically held that scope and authority of a precedent should not be expanded unnecessarily beyond the needs of a given situation. Following observation in this behalf need to be reproduced:

23. So far as Nagesha's case (*supra*) relied upon by the claimant is concerned, it is only to be noted that the decision does not indicate the basis for fixing of the quantum as a lump sum was fixed by the Court. The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the Court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expended unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expression carry no weight at all. Nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority.

(c) Effect of overruling of a judgment in another case.

26. Even if we proceed on the presumption that the decision of this Court dated 25th September, 1978 was overruled in another case, it is difficult to accept the submission of learned Counsel for the petitioner that detention order in his case, though, upheld by the High Court, stand vitiated. It is stated at the cost of repetition that so far as judgment dated 25th September, 1978 of this Court is concerned, challenge to the detention order had been repelled upholding detention of the petitioner. No appeal was filed against this order. Though, during the pendency of the writ petition in the High Court, wife of the petitioner had filed civil Writ Petition 4446/78 in the Supreme Court, maintainability of the said writ petition was questioned by the respondents. This petition was ultimately dismissed as withdrawn. Thus, Supreme Court did not decide the validity of detention order. In this backdrop between the parties inter se, judgment dated 25th September, 1978 of this Court upholding the detention had attained finality. Even if this judgment was overruled in another case by the Supreme Court at a later date, it would only mean and amount to overruling the principle and not the decision inter se between the parties. If the contention of the learned Counsel for

the petitioner is accepted, then on overruling of a particular judgment which may have been rendered long ago, the parties to the said judgment would be entitled to reopen their cases. That is, however, not the legal position. The courts have gone to the extent that subsequent overruling does not even entitle parties to the case to seek review of the judgment which had attained finality. In so far as decision between the parties inter se is concerned, that had attained finality and would operate as *res judicata*.

(d) Outcome

27. To sum up, we are confronted with a situation where writ filed in the High Court challenging the detention order was dismissed and the Supreme Court did not pronounce on the detention order. When the respondent made the statement before the Supreme Court that Union of India had agreed to revoke the detention order, the petitioner could still press the petition as the High Court had already upheld the detention order. Had there been no such decision of the High Court, the petitioner could still file fresh petition afterwards when respondents decided to take actions under the SAFEMA (See *Union of India (UOI) and Others Vs. Mohanlal Likumal Punjabi and Others*,). However, at the time when writ petition in the Supreme Court was dismissed as withdrawn, the petitioner was aware that his writ petition filed in the High Court against the same detention order had already been dismissed on merits. However, he did not impress upon the Supreme Court to decide the matter on merits.

28. Since this Court has already taken a view sustaining the detention order, it is not permissible for the Bench of Co-ordinate Jurisdiction to sit in the judgment or find fault with the view taken by a Bench of Coordinate Jurisdiction and the judicial discipline required adherence to the doctrine of finality of decisions. In *Vikramajit Singh v. State of Madhya Pradesh* 1992 (3) SCC (Suppl.) 62, the Supreme Court laid down this very principle in the following terms:

No Bench can comment on the functioning of a co-ordinate Bench of the same Court, much less sit in judgment as an appellate Court over its decision. That which could not be done directly could also not be done indirectly. Otherwise, a party aggrieved by an order passed by one Bench of the High Court would be tempted to attempt to get the matter reopened before another Bench, and there would not be any end to such attempts. Besides, it was not consistent with the judicial discipline which must be maintained by Courts both in the interest of administration of justice by assuring the binding nature of an order which becomes final, and the faith of the people in the judiciary.

To similar facts are the following observations of the Supreme Court in *Harjeet Singh @ (SC) 2002 (1) SCC 64*:

It is trite that the matters that have been finally settled cannot be reopened in a subsequent proceeding for there can be no finality to judicial adjudications if legal proceedings could be instituted consecutively one after the other on the same subject matter and cause of action. The legal position in this regard is so

well settled that we need not refer to decisions to support the same. Reference to State of U.P. and another Vs. Labh Chand, should in our view suffice where the Court observed the principles of finality of decisions and the doctrine of res judicata apart. Judicial discipline requires the Court to respect the decision delivered by a Court of coordinate jurisdiction.

29. We may also, for our benefit, quote the following observations of this Court in Baij Nath Aggarwal Dharamarth Trust Society Regd. and Another Vs. Lt. Governor of Delhi and Another,

The relief prayed for on behalf of the petitioner in the present case is the same as he could have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the SLP before this Court was dismissed in limine without giving any reason, the order cannot be relied upon for a plea of res judicata. The answer is that it is not the order of this Court dismissing the SLP which is being relied upon; the plea of res judicata has been pressed on the basis of the High Court's judgment which become final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in Daryao and Others Vs. The State of U.P. and Others, held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the general principle of res judicata. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasized by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32. An attempted change in the form of the petition or the grounds cannot be allowed to defeat the plea as was observed as SCR p. 595 of the reported judgment, thus: (SCR p. 595):

We are satisfied that a change in the form of attack against the impugned statute would make no difference to the true legal position that the writ petition in the High Court and the present writ petition are directed against the same statute and the grounds raised by the petitioner in that behalf are substantially the same.

The decision in Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, , further clarified the position by holding that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the CPC was applied to writ case. We, accordingly hold that the writ case is fit to

be dismissed on the ground of res judicata.

30. Somewhat similar position arose in *Narender Kumar v. Union of India and Ors.* W.P. (C) 829/2007 (decided on 20th February, 2009 wherein it was, *inter alia* held as under:

Even if we presume on the basis that the view taken by the Division Bench of this Court, dismissing the first writ petition of the petitioner and thereafter review petition of the petitioner was wrong, that would not be a ground to challenge the same acquisition by filing fresh writ petition. It is trite law that even an erroneous decision operates as res judicata between parties to it. The correctness of decision has no bearing upon question whether it operates as res judicata. This principle was laid down by the Apex Court way back in the year 1953 in the case of *Mohanlal Goenka v. Benoy Kishan Mukherjee* AIR 1953 SC 62. The Court made following observations in that case:

There is ample authority for the proposition that even an erroneous decision on a question of law operates as "res judicata" between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as "res judicata". A decision in the previous execution case between the parties that the matter was not within the competence of the executing court even though erroneous is binding on the parties; see ? *Abhoy Kanta Gohain Vs. Gopinath Deb Goswami and Others*,

Likewise in *Satyadhyay Ghoshal v. Deoranjana Debi* AIR 14960 SC 941, the Apex Court held that the original Court as well as any higher court must in any further litigation proceed on the basis that the previous decision was correct. Further, in *Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others*, it was held that res judicata applies to a Court of concurrent jurisdiction, creates a bar between parties, in another matter in another Court, where plea sought to be raised. More importantly, another principle touching upon the doctrine of res judicata, which is recorded to be stated is that Res judicata debars a Court from exercising its jurisdiction to determine the lis if it has attained finality between the parties. If such an issue is decided against him, he would be stopped from raising the same in the latter proceeding. In this behalf, following observations from the judgment of Supreme Court in the case of *State of Karnataka and Another Vs. All India Manufacturers Organisation and Others*, are a worth quote:

32. Res judicata is a doctrine based on the larger public interest and is founded on two grounds: one being the maxim *nemo debet bis vexari pro una et eadem causa* (no one ought to be twice vexed for one and the same cause, P. Ramanath Aiyer : *Advanced Law Lexicon*, (Vol. 3, 3rd Edn., 2005) at p. 170) and second, public policy that there ought to be an end to the same litigation, Mulla: *Code of Civil Procedure*, (Vol. 1, 15th Edn., 1995) at p.94. It is well settled that Section 11 of the Civil Procedure Code, 1908 (hereinafter "CPC") is not the foundation of the principle of res judicata, but merely statutory recognition thereof and hence, the section is not to be considered exhaustive of the general principle of law, See

AIR 1930 22 (Privy Council) The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to reagitate the matter again and again. Section 11 CPC recognizes this principle and forbids a court from trying any suit or issue, which is *res judicata*, recognizing both "cause of action estoppels" and "issue estoppels". There are two issues that we need to consider, one, whether the doctrine of *res judicata*, as a matter of principle, can be applied to public interest litigations and second, whether the issues and findings in Somashekar Reddy, (Ibid., at KLD p. 517, para 29, per Ashok Bhan, J.) constitute *res judicata* for the present litigation.

xxx.... 48. The principle and philosophy behind Explanation IV, namely, to prevent "the abuse of the process of the court" (as stated in Greenhalgh (1947) 2 AII ER 255 (CA) through reagitation of settled issues, provides yet another ground to reject the appellants' contentions. For instance, the High Court specifically records (vide para 29) of the impugned judgment that:

It is common case of the parties that the validity of the FWA had earlier been challenged in Somashekar Reddy Case on all conceivable grounds including the one that land in excess of what is required for the Project had been acquired by the State Government.

31. We may point out at this stage that on the earlier occasion, the petitioner had challenged the detention order in Writ Petition No. 6/78 on various grounds including the delay in passing the detention order and that subjective satisfaction of the authorities were not passed of objective consideration etc. These grounds and other grounds were specifically dealt with and rejected. It is, therefore, not be permissible for the petitioner to challenge the detention order again by means of present writ petition. Petition would be barred on the principles of *res judicata* as well as constructive *res judicata*.

Re: Consequence of revocation of detention order

32. Insofar as revocation of detention order is concerned, this order was passed u/s 11 of the COFEPOSA.

33. Section 2(b) of COFEPOSA defines a "detention order" to mean an order made u/s 3 of COFEPOSA. Section 3 of the Act entrusts the power upon the Central Government or the State Government or any officer of the Central Government, not below the rank of a Joint Secretary of that Government, specially empowered for the purposes of that Section by that Government, or any Officer of the State Government, not below the rank of Secretary to that Government, specially empowered for the purposes of that Section to make an order directing a person to be detained in case the detaining authority is satisfied that detention order is required to be passed with a view of preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to prevent him from indulging in certain activities specified in that Section. Such an order is to be approved by the Advisory Board constituted u/s 8 of the Act within the specified time, if the detention is for more

than three months" duration on a reference made to it by the appropriate Government. If the Advisory Board after hearing the person detained gives the report that in its opinion there is sufficient cause for detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit. On the other hand, if it is of the opinion that there is no sufficient cause for the detention of the person concerned, the appropriate Government is supposed to revoke the detention order and cause the person to be released forthwith.

34. Section 9 of the Act stipulates the cases in which and circumstances under which the persons may be detained for periods longer than three months without obtaining the orders of Advisory Board.

35. Section 10 of the Act stipulates that the maximum period of detention shall be two years. Section 11, however, gives power to certain authorities to revoke or modify the detention order at any time, without prejudice to provisions of Section 21 of the General Clauses Act, 1897. It reads as under:

11. Revocation of detention orders.-(1) Without prejudice to provisions of section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified-

(a) Notwithstanding that the order has been made by an officer of a State Government, by that State Government or by the Central Government;

(b) Notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government.

(2) The revocation of a detention order shall not bar the making of another detention order u/s 3 against the same person.

36. The scheme of the Act, thus, postulates that the detention order can be passed by the detaining authority on its satisfaction about certain preconditions mentioned in Section 3 of the Act. If the detention order is to continue for a period of more than three months, it has to be confirmed by the Advisory Board. Advisory Board after looking into the record may form an opinion that satisfaction of the detaining authority was not appropriate and, therefore there was no sufficient cause for detention of a person. Or, it can report that there was sufficient cause for detention of a person. If the opinion of the Advisory Board is that there is sufficient cause for detention, effect of that order would be that detention order passed by the detaining authority was proper. Ofcourse, such an order still amenable to judicial review. However, in case the order is revoked or modified u/s 11 of the Act, that would not mean that detention order was bad from very beginning. The detention order can be revoked or modified for various reasons including the satisfaction of the concerned authority that continued detention order of the detenue is not proper and the period of detention needs to be curtailed or for certain reasons, the detenue should be released forthwith without being detained for the entire period originally stipulated.

37. In *Union of India and Anr. v. Harish Kumar* 2008 SCC 195 this aspect of the matter was abundantly clarified by the Supreme Court in the following manner:

8. It is so well settled and needs no re-statement that the right to make a representation against the order of detention is the most cherished and valuable right conferred upon a detenu under Article 22(5) of the Constitution of India and if there has been any infraction of such right the detenu is entitled to be released. Construing the provisions of Article 22(5) this Court in more than one decision explained that the right of a person detained to make a representation against the order of detention is a comprehensive one. It comprehends that the person detained has the right to make a representation not only to the officer who made the order of detention but as well as to the State Government and the Central Government who are competent to revoke the order of detention. u/s 3 of the COFEPOSA Act an order of detention can be made by: (i) the Central Government; or (ii) an officer specially empowered by the Central Government; or (iii) the State Government; or (iv) an officer specially empowered by the State Government. Section 11 of the COFEPOSA Act in clear terms provides for revocation of detention order by authorities other than the authority which has made the order. Under Clause (b) of Sub-section (1) an order made by an officer specially empowered by the Central Government or an order made by the State Government can be revoked by the Central Government. This means that the Central Government has the power to revoke the order made by an officer specially empowered by the Central Government. We do not find any difficulty whatsoever to hold that every person detained under the provisions of the COFEPOSA Act has a right to make a representation to the Central Government which is required to be considered and disposed of as expeditiously as possible. [See: *Kamlesh Kumar Ishwardas Patel v. Union of India*]. This Court in *Kamlesh Kumar Ishwardas Patel*'s case (*supra*) while considering the effect of non-consideration of a representation of the person detained by the officer making the order of detention observed thus: (SCC p. 71, para 46)

On that basis it has to be held that since there was a denial of the constitutional safeguard provided to the detenu under Article 22(5) of the Constitution on account of the failure on the part of the officer who had made the order of detention to independently consider the representation submitted by the detenu against his detention and to take a decision on the said representation the further detention of the detenu *Ishwardas Bechardas Patel* is rendered illegal.

9. In the same analogy it must be held that the failure on the part of the Central Government to independently consider the representation submitted by the detenu against his detention renders further detention of the detenu illegal. The initial order of detention passed u/s 3(1) of the COFEPOSA Act does not get vitiated. The very order of detention passed u/s 3(1) of the COFEPOSA Act cannot be declared void ab initio. It is unnecessary to multiply authorities in support of our conclusion. In *Meena Javendra Thakur v. Union of India* this Court relying on the judgment rendered by the Constitution Bench in *Kalesh Kumar*

Ishwardas Patel held: (SCC p. 185, para 10):

[The authority issuing a declaration u/s 9 of the COFEPOSA Act must intimate the detenu that he has the right of opportunity to represent to the declaring authority and non-intimation of the same infringes upon the constitutional right of the detenu to make a representation under Article 22(5) and, therefore, the notification issued u/s 9(1) becomes invalid and the continued detention pursuant to such declaration and the opinion of the Advisory Board within the extended period as well as the confirmation by the State Government are vitiated.

38. We may also refer to another judgment of the Apex Court in *Meena Jayendra Thakur Vs. Union of India and Others*, wherein following observations were made in the context of Section 9 of the said Act read with Article 22 of the Constitution:

8. There cannot be any dispute that the right to make a representation of a detenu is the most valuable right conferred upon him under Article 22 of the Constitution and if there has been any infraction of such right then certainly the detenu is entitled to be released. The question, therefore, arises as to whether when a declaration is made u/s 9(i) of the Act which in turn extends the period of detention without being confirmed whether the officer issuing the declaration u/s 9(i) is also required to inform the detenu that he has a right to make a representation to him. Under the constitutional scheme engrafted in Article 22, no law providing for preventing detention can authorise the detention of a person for a longer period than three months unless the Advisory Board reports before expiration of the said period of three months that there is, in its opinion, sufficient cause for such detention. When an authority issues a declaration u/s 9(i) of the Act, the said authority has the necessary powers to revoke the declaration on a representation being made by the detenu against such declaration. Consequently, if the detenu is not intimated of his right to make a representation to the authority issuing the declaration u/s 9(i) then certainly his valuable constitutional right gets infringed and the two decisions of the Full Bench relied upon by Mr. Kotwal fully support this contention. Mr. N.N. Goswami, learned senior counsel appearing for the Union of India fairly concedes this position.

39. In the present case, detention order was duly approved by the Advisory Board. The writ petition filed by the petitioner challenging the detention order was dismissed by this Court. In this backdrop, when the said order is revoked u/s 11 of the Act, it cannot be said that detention order was *per se* illegal or void *ab initio*. The contention of learned Counsel for the petitioner, therefore, that proceedings under SAFEMA would be barred, is clearly untenable. If any authorities for this proposition are required, reference to following two judgments would suffice:

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

2. *Union of India questions legality of the judgments rendered by the Division*

Bench of the Bombay High Court holding that order dated 31.8.1995 passed by the Competent Authority u/s 7 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (in short "the SAFEMA") against respondent Nos. 1 and 2 was not sustainable in law. For coming to such conclusion, reference was made to orders dated 19th December, 1994 passed u/s 11(1)(b) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (in short "the COFEPOSA") revoking the order of detention and order dated 11.1.1995 passed in earlier writ petitions filed by respondent Nos. 1 and 2. Reference was made to first proviso to Clause (b) of Sub-section (2) of Section 2 of SAFEMA for holding that proceedings initiated under the said statute became non est.

3. According to learned Counsel for the appellant-Union the view taken by the High Court is clearly untenable. On the facts of the case, first proviso to Clause (b) of Sub-section (2) had no application to the facts of the case. The revocation of the order of detention was in exercise of power conferred u/s 11(1)(b) of the COFEPOSA and not u/s 8 as stipulated in the said provision. It is further submitted that the proceedings were initiated by issuance of notice u/s 6(1) of the SAFEMA for forfeiture of property on 12.10.1994. The orders of detention u/s 3(1) of COFEPOSA were passed on 24.5.1994. The orders of detention were challenged by the respondents 1 and 2 in Writ petition Nos. 1071 and 1072 of 1994. After the show-cause notice was issued in exercise of power u/s 11(1)(b) of the COFEPOSA, the Central Government revoked the orders of detention on 19.12.1994 as indicated above. In view of the revocation of the orders of detention, the writ petitions were disposed of on 11.01.1995. By order dated 31.8.95, properties mentioned in the show-cause notice were directed to be forfeited u/s 7 of SAFEMA. The order directing forfeiture was challenged on merits before the Tribunal constituted under the SAFEMA. Thereafter writ petitions were filed on 23.11.1995 challenging the orders of detention and also challenging the order of forfeiture. The latter additional challenge was by way of amendment. By the impugned judgment dated 13.6.1996 the High Court passed the impugned order in each case.

(ii) Smt. Kesar Devi Vs. Union of India (UOI) and Others,

6. In support of the contention that it is open to a person to assail the validity of a determine order passed under COFEPOSA Act while challenging the proceedings initiated under SAFEMA regarding forfeiture of property, the appellant before the High Court had placed reliance on Union of India (UOI) and Others Vs. Haji Mastan Mirza, . However, this decision has been expressly overruled by a Bench of nine Judges in Attorney General for India and Others Vs. Amratlal Prajivandas and Others, wherein it has been held as under:

Thus the conclusion is that an order of detention to which Section 12A is applicable as well as an order of detention to which Section 12A was not applicable can serve as the foundation, as the basis, for applying SAFEMA to such detenu and to his relatives and associates provided such order of detention does

not attract any of the sub-clauses in the proviso to Section 2(2)(b). If such detenu did not choose to question the said detention (either by himself or through his next friend) before the Court during the period when such order of detention was in force, - or is unsuccessful in his attack thereon - he, or his relatives and associates cannot attack or question its validity when it is made the basis for applying SAFEMA to him or to his relatives or associates.

In view of this authoritative pronouncement by this Court, the main grounds of challenge raised before the High Court have no legs to stand.

40. We may also quote following principle of law laid down by the Supreme Court in *Amratlal Prajivandas and Ors.* (supra):

(b) An order of detention to which Section 12A is applicable as well as an order of detention to which Section 12A was not applicable can serve as the foundation, as the basis, for applying SAFEMA to such detenu and to his relatives and associates provided such order of detention does not attract any of the sub-clauses in the proviso to Section 2(2)(b). If such detenu did not choose to question the said detention (either by himself or through his next friend) before the Court during the period when such order of detention was in force, - or is unsuccessful in his attack thereon he, or his relatives and associates cannot attack or question its validity when it is made the basis for applying SAFEMA to him or to his relatives or associates.

41. Hence, we conclude that revocation of detention order would not preclude the respondent from initiating proceedings u/s SAFEMA.

42. In the present case, the Competent Authority under SAFEMA passed the order forfeiting certain properties of the petitioner. This order is upheld by the Appellate Tribunal. Validity of the order of the Appellate Tribunal is not challenged on merits but on the grounds which we have considered above but are constrained to reject. In these circumstances, we are of the opinion that this writ petition is devoid of any merit and accordingly, we dismiss the same.

No costs.