

(2013) 07 CAL CK 0022

In the Calcutta High Court

Case No : A.P.O. No. 107 of 2013, G.A. No. 1852 of 2010 and A.P.O. No. 297 of 2009, W.P. No. 229 of 2003

The Competent Authority and Administrator and Another

APPELLANT

Vs

Manilal Jalan and Another
 Sobha Devi Jalan and
Others Vs The Competent Authority and Administrator and
Others

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Citation : (2013) 3 CALLT 572 : (2013) 4 CHN 643 : (2013) 3 WBLR 757

Hon'ble Judges : Arun Mishra, C.J.;Joymalya Bagchi, J

Bench : Division Bench

Advocate : S. Tarafder in APO 107/2013, Mr. Tarun Kumar Roy, Mr. P.C. Pal Chowdhury and Mr. Biplab Ranjan Bose in APO 297/2009, for the Appellant; S. Tarafder in APO 297/2009, Mr. Tarun Kumar Roy Mr. P.C. Pal Chowdhury and Mr. Biplab Ranjan Bose in APO 107/2013, for the Respondent

Judgement

Joymalya Bagchi, J.—These two appeals being directed against the same judgment and order dated 23.09.2009 passed by the learned Judge in W.P. No. 229 of 2003 were taken up for hearing analogously. In the writ petition, the petitioner had challenged the order dated 11th December, 2002 passed by the Appellate Tribunal under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as SAFEMA) affirming the order dated 18th February, 1999 passed by the Competent Authority under SAFEMA, declaring that the properties and assets of late Sarbani Devi Jalan (mother of the writ petitioner) as described in the notice u/s 6(1) of SAFEMA, including property lying and situated at 10, Digambar Jain Temple Road, Kolkata 700 007 (hereinafter referred to as the said house at Calcutta) are illegally acquired properties and forfeited to the Central Government free from all encumbrances.

2. At the outset, Mr. Roy, learned senior counsel appearing for the respondents in A.P.O. No. 107 of 2013 submitted that the said appeal preferred on behalf of the

Union of India had abated due to non substitution of the legal heirs of respondent No. 1/writ petitioner, Manilal Jalan, since deceased. He relied on State of Gujarat Vs. Sayed Mohd. Baquir El Edross, in support of his submission.

3. Mr. Tarafder, learned counsel, appearing for the appellant/Union of India, admitted that no steps had been taken to substitute the heirs of respondent No. 1. He, however, submitted that the department would be at liberty to agitate its case in the appeal preferred by the writ petitioner. Accordingly, A.P.O. No. 107 of 2013 having abated is dismissed.

4. Other appeal being A.P.O. No. 297 of 2009 which was preferred by the writ petitioner and is presently being prosecuted by his legal heirs is taken up for hearing.

5. The facts giving rise to the instant proceeding are as follows:

One Sarbani Devi Jalan, since deceased, was the wife of late Nathmal Jalan. Amongst other assets, Sarbani Devi Jalan had purchased a house property situated at 10, Digambar Jain Temple Road, Kolkata - 700 007 on 11th December, 1958 for Rs. 1,20,000/- and had expended a sum of Rs. 5,933/- only for registration purposes. It appears that Nathmal Jalan had been detained pursuant to an order of detention dated 10th December, 1974 under The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as COFEPOSA).

6. Such order of detention was neither set aside nor revoked by the Central Government.

7. Sarbani Devi Jalan being the wife of a detenu under COFEPOSA whose order of detention had not been set aside and/or revoked by the Central Government was subject to the provisions of SAFEMA by operation of section (2)(ii)(c) of the Act. A show cause notice u/s 6(1) of SAFEMA dated 17th July, 1976 was issued from the office of the Competent Authority upon Sarbani Devi Jalan calling upon her to indicate the source of her income, earnings or assets from which she had acquired the properties and/or assets described in the said notice and to show cause as to why the said properties and/or assets be not declared as "illegally acquired property" u/s 3(1)(c)(iii) and 3(1)(c)(iv) of SAFEMA and be not forfeited to the Central Government.

8. Sarbani Devi Jalan replied to the said show cause notice by letter dated 17th August, 1976, inter alia, claiming that the said notice was devoid of material particulars and that some of the properties mentioned therein were non existent. She also requested for inspection of the reasons recorded by the Competent Authority in writing before initiating the proceeding against her.

9. Thereafter, the Competent Authority issued another notice dated 17th November, 1976 u/s 6(1) of SAFEMA upon the said Sarbani Devi Jalan in respect of the self same properties and/or assets.

10. Sarbani Devi Jalan by letter dated 23rd December, 1976 gave an elaborate reply to the said notice. She relied on her income tax returns and/or assessment orders to establish that each and every item covered under the said notice was self acquired property and none of the said items, including the house at Calcutta, ought to have been held to be "illegally acquired property" under SAFEMA and that the proceedings against her was liable to be dropped.

11. After consideration of such reply, the Competent Authority issued notice u/s 7(1) of SAFEMA calling upon Sarbani Devi Jalan for an oral hearing at Calcutta.

12. Sarbani Devi Jalan by letter dated 29th April, 1977 again called upon the Competent Authority to disclose the reasons in writing for arriving at a reasonable belief as contemplated u/s 6(1) of the Act. The Competent Authority, however, declined to do so.

13. Under such circumstances, Sarbani Devi Jalan moved a writ petition before this Court challenging the constitutional validity of the provisions of SAFEMA. In the course of hearing of the said writ petition, His Lordship the Hon"ble Mr. Justice T.K. Bose (as His Lordship then was) directed the Competent Authority to disclose materials/reasons on the basis of which notice dated 7th March, 1977 was issued u/s 6(1) of the said Act.

14. Pursuant to such order, the Competent Authority under cover of letter No. CA/Cal(36)SAFEM(FOP)A/661 dated 15th November, 1977 disclosed the resume materials and/or reasons recorded by the said Authority culminating in the issuance of the aforesaid show cause notice.

15. The writ petition preferred by Sarbani Devi Jalan and other similar writ petitions were transferred to the Supreme Court of India wherein the constitutional validity of the Act was under considered.

16. Finally, by judgment and order dated 12.05.1994, the Apex Court dismissed the challenge to constitutional validity of the Act in the case of Attorney General for India and Others Vs. Amratlal Prajivandas and Others,

17. In the meantime, Sarbani Devi Jalan died on 23rd April, 1994. Her husband, Nathmal Jalan, also expired on 4th January, 1996.

18. After the dismissal of the proceedings challenging the constitutional validity of the legislation, as aforesaid, the Competent Authority issued fresh notices on 14th December, 1995 and 8th April, 1996 u/s 7(1) of the said Act upon the writ petitioner and his brother as the legal heirs of Nathmal Jalan and Sarbani Devi Jalan for oral hearing.

19. Notices were received by the writ petitioner and his brother. In spite of receipt of such notices, they merely forwarded the income tax returns of their deceased mother but chose not to appear personally in the course of oral hearing. Finally, by order dated 18.02.1999, the Competent Authority after analysis of the entire materials on record came to a finding that the assets,

including the house at Calcutta covered under notice u/s 6(1) of SAFEMA, were illegally acquired property and stood forfeited to the Central Government free from all encumbrances.

20. The writ petitioner appealed before the Appellate Tribunal but by order dated 11.12.2002 the Appellate Tribunal dismissed the appeal and upheld the finding of the Competent Authority that the said properties were illegally acquired properties and had been rightly forfeited to the Central Government. The aforesaid order passed by the Appellate Authority affirming the order of the Competent Authority was challenged in the writ petition.

21. Learned Single Judge dismissed the challenge thrown to the findings of the Appellate Tribunal and the Competent Authority to the effect that the properties covered by the notice u/s 6(1) of the Act are illegally acquired properties and were liable to forfeiture to the Central Government. Learned Single Judge further held that as the Competent Authority had recorded that Sarbani Devi had made an independent investment of Rs. 19,853/- for purchase of the house at Calcutta the writ petitioner ought to be permitted to redeem the said property on payment of fine in lieu of forfeiture in terms of section 9 of SAFEMA and granted such relief to him.

22. The writ petitioner preferred appeal being APO No. 297 of 2009 against the order of the learned Single Judge to the extent the order of the learned Single Judge dismissed his writ petition challenging the finding of the Appellate Tribunal and the Competent Authority that the properties and/or assets were illegally acquired properties and liable to be forfeited to the Central Government. The writ petitioner having died during the pendency of the appeal, the present appellants being his legal heirs have been substituted and are prosecuting the said appeal.

23. The department had, on the other hand, challenged the order of the learned Single Judge to the extent it permitted the house at Calcutta to redeem on payment of fine in lieu of forfeiture in terms of section 9 in APO No. 297 of 2009. The said appeal has abated due to non substitution of the legal heirs of the respondent No. 1/writ petitioner.

24. Mr. Roy, learned senior counsel, appearing for the appellants submitted that no proceeding under SAFEMA had been initiated against the detenu Nathmal Jalan, during his lifetime although he was alive till 1996, whereas proceeding had been initiated against his wife Sarbani Devi Jalan in 1976 by issuance of show cause notice u/s 6(1) of SAFEMA. He submitted that the failure to initiate proceeding against Nathmal Jalan, the detenu himself, denuded the authorities of requisite jurisdiction to proceed against his wife Sarbani Devi Jalan. Drawing our attention to the finding of the Competent Authority that assets were nothing but assets acquired by Nathmal Jalan in the name of his wife out of illegal and undisclosed source of income, he further submitted that notice of hearing upon Nathmal Jalan was a condition precedent for initiating such proceeding against his wife, Sarbani Devi Jalan. Secondly, he submitted that in the resume of

materials and/or reasons no reasonable nexus is disclosed connecting properties proceeded against with the illegal income of the detenu, Nathmal Jalan. Thirdly, he submitted that Sarbani Devi Jalan having expired in the midst of the proceeding prior to issuance of notice u/s 7(1) of SAFEMA the said proceeding ought to be abated upon her death and could not have been proceeded with against the writ petitioner and/or his brother as the legal heirs of Nathmal Jalan and Sarbani Devi Jalan. He strenuously argued that the provisions of SAFEMA being penal in nature ought to receive the strict construction and there was no scope of enlarging the scope of persons affected in section 7 of the Act to include legal heirs of such person. He supplemented such submission by emphasising that oral hearing in the case ought to have been given to Sarbani Devi Jalan herself and an offer of such hearing to writ petitioner and his brother was not in accordance with the procedure laid down in SAFEMA and amounted to violation of principles of natural justice.

25. He further submitted that undue protraction of the proceedings which was initiated in 1976 had severely prejudiced the writ petitioner in effectively defending himself as the facts relating to the acquisition of the properties in question were in the personal knowledge of the parents of the writ petitioner who had already died at the time of the oral hearing.

26. Mr. Tarafdar, learned Advocate, appearing for the department submitted that Sarbani Devi Jalan was a person covered under SAFEMA in terms of section 2(2) (c) thereof being the wife of the detenu, Nathmal Jalan. Drawing our attention to the notice u/s 6(1) of the Act he submitted that Sarbani Devi Jalan was proceeded under the Act for being in possession of "illegally acquired property" in view of section 3(c)(iii) and (iv) of SAFEMA.

27. He further submitted that in terms of the order passed by this Court in the earlier writ petition resume of materials and/or reasons recorded in writing by the Competent Authority had been supplied to Sarbani Devi Jalan. It cannot be argued by the appellants or their predecessor-in-interest that the principles of natural justice had been violated in the instant case. He further submitted that delay in completion of the proceeding was due to factors beyond the control of the authorities as the constitutional validity of the Act was under consideration in numerous proceedings, including one initiated at the behest of Sarbani Devi Jalan herself which finally stood concluded by the judgment of the Apex Court delivered on 12.05.1994 in the case of Attorney General for India v. Amratlal Prajivandas (supra). He submitted that after the demise of Sarbani Devi Jalan the writ petitioner and his brother as legal heirs of Nathmal Jalan and Sarbani Devi Jalan were given notice inasmuch as they had an interest in the property sought to be forfeited by way of succession. That apart, the writ petitioner being the son of Nathmal Jalan, the detenu, was in his independent capacity a person covered by the Act in terms of section 2(2)(c) thereof.

28. He further submitted that the writ petitioner and his brother had chosen not to appear in the course of oral hearing in spite of notice. The defense taken by

Sarbani Devi Jalan and thereafter the writ petitioners were essentially based on records and/or assessment order passed therein and no defense relatable to the personal knowledge of deceased Sarbani Devi Jalan was even alluded to in her reply to the show cause notice which was admittedly filed during her lifetime. He, therefore, submitted that no case of violation of principles of natural justice has been made out in the facts of the instant case.

29. The first issue raised by the senior counsel of the appellant is that whether Sarbani Devi Jalan could have been proceeded under SAFEMA without initiating proceeding under the said Act against her husband, Nathmal Jalan, the detenu, during his life time.

30. Section 2 of SAFEMA enumerate the persons against whom said Act applies.

Relevant portions of section 2 are as follows:

2. Application: (1) The provisions of this Act shall apply only to the persons specified in sub section (2).

(2) The persons referred to in sub section (1) are the following, namely:-

(a) every person-

.....

(b) every person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):

Provided that-

(i) such order of detention, being an order which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board u/s 8 of the said Act or before the receipt of the report of the Advisory Board or before making a reference to the Advisory Board; or

(ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9 or on the report of the Advisory board u/s 8, read with sub-section (2) of section 9, of the said Act; or

(iii) such order of detention, being an order to which the provisions of section 12A of the said Act Apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board u/s 8, read with sub-section (6) of section 12A, of that Act; or

(iv) such order of detention has not been set aside by a Court of competent jurisdiction;

(c) every person who is a relative of person referred to in clause (a) or clause

(b);

.....

Explanation 2:-For the purposes of clause (c), "relative", in relation to a person, means-

(i) spouse of the person;

(ii) brother or sister of the person;

(iii) brother or sister of the spouse of the person;

(iv) any lineal ascendant or descendant of the person;

(v) any lineal ascendant or descendant of the spouse of the person;

(vi) spouse of a person referred to in clause (ii), clause (iii), clause (iv) or clause (v);

(vii) any lineal descendant of a person referred to in clause (ii) or clause (iii).

31. A bare perusal of section 2 of the Act would show that the Act not only applies to the detenu but also to the relations and/or associates of such detenu. Nowhere the said provision of law mandates that a proceeding against a relative of a detenu can be initiated only if such detenu is proceeded against under SAFEMA. Such right to proceed against the relative/associate is independent of any action taken against the detenu under SAFEMA. It is wholly fallacious to argue that the detenu must be proceeded against under SAFEMA as a condition precedent for any action against a relative of such detenu. The properties and/or assets which were sought to be forfeited were standing in the name of Sarbani Devi Jalan herself and therefore respondent authorities rightly issued a notice u/s 6 of the Act upon her as "person affected" for the purpose of initiating a proceeding of forfeiture of such property. There is nothing in the law that the property standing in the name of a relation of a detenu which is sought to be proceeded against must require a notice to be issued upon the detenu also. To infer such a requirement when the same is not provided in law would amount to rewriting the statutory provision which is unwarranted. This submission of the appellants being unfounded must therefore fail.

32. The second issue, which has been argued on behalf of the appellants, is that the resume of materials and/or reasons do not establish a nexus between the properties sought to be forfeited and the illegally acquired money of the detenu.

33. Mr. Roy, learned senior counsel, relied on *Fatima Mohd. Amin (Dead) through LR. Vs. Union of India (UOI) and Another*, and *P.P. Abdulla and Another Vs. The Competent Authority and Others*, in support of his contention.

34. The aforesaid resume of facts/reasons were supplied to Sarbani Devi pursuant to direction given to this Court in the earlier writ proceeding. Hence it cannot be said that the notice u/s 6(1) of SAFEMA was bereft of reasons or that

the same had not been supplied to Sarbani Devi Jalan resulting in infraction of the principles of natural justice.

35. We have perused the resume of materials and/or reasons in the instant case. In the said resume of materials/reasons, the Competent Authority has recorded as thus:

She purchased house property at 10, Digambar Jain Temple Road, Calcutta (formerly, 10, Dayahatta Road, Calcutta) on 15.12.1958 for a cost of Rs. 120000/- and incurred registration charges of Rs. 5933/- (total Rs. 125933/-). She declared income of Rs. 89,500/- in respect of the income tax assessment years 1951-52 to 1959-60 against which taxes paid amount to Rs. 9647/- leaving a balance of Rs. 79853/-. Besides, she declared initial capital in the business at Rs. 5000/- and a gift of Rs. 15000/- from her mother Smt. Sarawati Devi which were stated to be utilized in the purchase of property. The maximum amount which she could have for investment had been made out to be Rs. 99853/- against the aggregate investment made of Rs. 125933/-. This leaves an unexplained and unproved investment of Rs. 26018/-.

There is also evidence to show that Sarbani Devi had been made further construction, renovation and alternation to the house in the years subsequent to its purchase. It is noticed that on the details furnished in a Valuation Certificate by her in the Wealth-tax proceedings, the I.T.O. estimated that Rs. 50000/- was spent on such further construction, renovation and alternation during the financial years 1960-61 and treated this amount as her income from undisclosed sources for the income tax assessment year 1961-62. This assessment has been set aside by the A.A.C. with the direction to reexamine the question of renovation, alternation afresh. It is thus evident that not only substantial investment in the purchase of house but also in further construction, renovation and alternation has come out of earnings, income or assets the validity of which has not been proved. The house property at 10, Digambar Jain Temple Road, Calcutta, thus, constitute proportion covered by sec. 3(1)(c)(iv) of the SAFEM (FOP)A.

Smt. Sarbani Devi Jain purchased another house property No. K-17/12 (Old No. K-40/45) at Shital Lane, near Bharrawanath Benaras (Varanasi) on 26.07.1962 for Rs. 16,000/- from Shri Madhav Sahu, son of Madhu Sahu. This property is shown to have been purchased by debiting the capital account with Rs. 16000/- for the cost of the property, since this property has to be purchased entirely out of accumulation of income from 10, Digambar Jain Temple Road, Calcutta property and the said property has been held as property covered by section 3(1)(c)(iii) of the SAFEM (FOP)A, the Benaras (Varanasi) property is hit by the provisions of section 3(1)(c)(iii) and 3(1)(c)(iv) of the SAFEM (FOP)A.

36. Section 3 of the Act defines "illegally acquired property" which is as follows:

3. "illegally acquired property", in relation to any person to whom this Act applies, means-

.....
(iii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved and which cannot be shown to be attributable to any act or thing done in respect of any matter in relation to which Parliament has no power to make laws; or

(iv) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property referred to in sub-clauses (i) to (iii) or the income or earnings from such property;

37. Section 3(i)(c)(iii) of SAFEMA, inter alia, provides that any property acquired by a person to whom the Act applies is liable to be forfeited if it cannot be proved that the said property was acquired from known sources of income, earnings or assets of such person is attributable to any act to which legislative competence of the Parliament does not extend.

38. Section 3(i)(c)(iv), inter alia, provides that any property acquired by such person for a consideration or by any means wholly or partly traceable to any property referred to in section 3(i)(c)(iii) (supra) is also illegally acquired property. Section 8 of SAFEMA puts the burden of proof upon such person to establish that the properties proceeded against are not illegally acquired properties.

39. Resume of materials/reasons in the instant case shows that the house property at Calcutta of Sarbani Devi Jalan was valued at Rs. 1,25,933/-. The maximum amount she could have invested from her known sources of income was 99,853/-. Therefore, a part of the value of the said property standing in the name of Sarbani Devi Jalan could not be proved to be from any known source of income or assets and hence, prima facie, such property was reasonably believed to be illegally acquired property in terms of section 3(i)(c)(iii) of SAFEMA.

40. Similarly, the other house property at Varanasi was shown to have been purchased from the income of house property at Calcutta which was covered u/s 3(i)(c)(iii) and accordingly the Varanasi property was also liable to forfeiture in terms of section 3(i)(c)(iv) of the said Act.

41. The aforesaid facts clearly demonstrate that Sarbani Devi Jalan, the wife of the detenu, Nathmal Jalan, did not have known sources of income, assets or earning to acquire the properties standing in her name. These facts give rise to an irresistible inference that the said properties were acquired from the ill gotten gains of detenu Nathmal Jalan. The foundation of such belief can neither be said to be arbitrary or unreasonable. It is trite law that a reasonable belief can be derived on the basis of either primary facts inferential or facts deducible from such primary facts.

42. In a similar situation, the Apex Court in Smt. Kesar Devi Vs. Union of India

(UOI) and Others, held as follows:

12As mentioned earlier, Explanation (2) appended to Clause (c) of sub-section (2) of section 2 gives a very long list of relations. The combined effect of Clauses (iii) and (vii) of the Explanation is that a convict or detenu's wife's sister's lineal descendant whether male or female and howsoever low is also included even though the relationship is quite remote. In those cases where the relationship is a very remote one, the competent authority may have to indicate some link or nexus while recording reasons for belief that the property is an illegally acquired property. But cases where relationship is close and direct like spouse, son or daughter or parents stand on an altogether different footing. Here no link or nexus has to be indicated in the reasons for belief between the convict or detenu and the property as such an inference can easily be drawn.

13. We are, therefore, clearly of the opinion that 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 case it would be almost impossible to show that the property was purchased or acquired from the money provided by the convict or detenu. In the present case, the appellant is the wife of the detenu and she has failed to establish that she had any income of her own to acquire the three properties. In such circumstances, no other inference was possible except that it was done so with the money provided by her husband.

43. In the said judgment the Apex Court considered the case of Fatima Mohd. Amin v. Union of India, (supra) and distinguished the said judgment in the following manner:

16. The judgment in Fatima Mohd. Amin relied upon by the learned counsel for the appellant can be of no assistance to him. On facts, the Court found that the notice issued by the competent authority did not disclose any reasons and thus the same did not meet the requirement of sub-section (1) of section 6 of the Act. As shown above, this is not the case here as the reasons for belief have been clearly recorded by the competent authority.

44. The facts of this case are exactly the same as in Kesar Devi (Smt.) v. Union of India & Ors. wherein properties in the name of the wife, Kesar Devi were sought to be forfeited on the premise that her husband was detained under COFEPOSA. Applying the ratio in Kesar Devi (Smt.) v. Union of India & Ors. to the facts of the instant case, we hold the resume of facts and/or reasons accompanying the notice give rise to an irresistible inference of reasonable nexus between the properties acquired by Sarbani Devi and the illegitimate income of her husband.

45. The decision in Fatima Mohd. Amin (supra) does not apply in the facts of this

case as no reasons had been given in the notice of section 6(1) of SAFEMA in the said case as held in Para - 8 of Kesar Devi (supra) as foundational facts/reasons in support of such notice.

46. In P.P. Abdulla & Anr, (supra) the apex Court followed Fatima Mohd. Amin (supra) as the facts of that case were covered by Fatima Mohd. Amin v. Union of India (Para - 9).

47. We are of the opinion that factual foundation/reasons disclosing the requisite reasonable nexus has been disclosed in the instant case. Thus the decisions in Fatima Mohd. Amin (supra) and P.P. Abdulla & Anr. (supra) are distinguishable on facts from this case whereas the ratio of Kesar Devi applies with full force to the same. We are therefore unable to accept the argument of learned Senior Counsel of the Appellant that there was no reasonable belief as required under law for issuing notice u/s 6(1) of SAFEMA or that the same was not communicated to the other.

48. Thirdly it has been argued that the proceeding under SAFEMA ought to have abated upon the demise of Sarbani Devi Jalan and the same could not have been proceeded against the writ petitioner who was the son and legal heir of Sarbani Devi Jalan and the detenu, Nathmal Jalan. It was strenuously argued that the proceeding under SAFEMA being penal in nature must receive strict construction and the expression "person affected" cannot include legal heirs of such person. Learned senior counsel relied on Tolaram Relumal and Another Vs. The State of Bombay, in support of his contention.

49. SAFEMA was enacted in 25th January, 1976. The Preamble of the Act reads as follows:

An Act to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matter connected therewith or incidental thereto.

Whereas for the effective prevention of smuggling activities and foreign exchange manipulations which are having a deleterious effect on the national economy it is necessary to deprive persons engaged in such activities and manipulations of their ill-gotten gains;

And whereas such persons have been augmenting such gains by violations of wealth tax, income tax or other laws or by other means and have been increasing their resources for operating in a clandestine manner;

And whereas such persons have in many cases been holding the properties acquired by them through such gains in the names of their relatives, associates and confidants;

50. From the statements and objects of the aforesaid legislation it is clear that the law was enacted to deprive persons, their relations, associate and/or confidantes from enjoying illegal gains of smuggling and foreign exchange

manipulations by forfeiting illegally acquired properties standing in their names. Under the scheme of the Act, forfeiture of "illegally acquired property" was therefore speedier means of recovering such property in favour of the Government and denying the wrongdoer, his relatives, associates or confidants from enjoying such property. The act of forfeiture in the scheme of this legislation, though undoubtedly an act of grave civil consequence against the person affected, is not in the nature of punishment for commission of a crime. Or in other words "forfeiture" contemplated under the Act is not in the nature of punishment as understood in criminal law. It is reparative in nature and seeks to recover in favour of the State the illegal gains of smuggling and foreign exchange manipulations. Judged from this angle it cannot be said that the forfeiture under the Act is a punishment and the proceedings in relation thereto must be in personam and must abate upon the death of the notice.

51. In *State of West Bengal Vs. S.K. Ghosh*, the apex Court had the occasion of dealing with the question as to whether forfeiture u/s 13(3) of Criminal Law Ordinance, 1944, amounted to "punishment" under Penal Code. The said section provided for forfeiture of property of a convicted person which had been procured by means of such offence. The apex Court held as follows:

This forfeiture by the District Judge u/s 13(3) cannot be equated to forfeiture of property which is provided in section 53 of the Penal Code. (para 14)

Forfeiture provided in section 13(3) in case of offences which involved the embezzlement etc. of government money or property is really a speedier method of realizing government money or property as compared to a suit which the Government could bring for realizing the money or property and is not punishment or penalty within the meaning of Article 20(1). (para 15)

52. Order of forfeiture of under SAFEMA is of the same species as in section 13(3) of the Criminal Law Ordinance, 1944. Accordingly, such order of forfeiture cannot be said to be held to be a "punishment" u/s 53 of the Penal Code and the proceedings cannot be said to in personam as in a criminal trial so as to abate upon the death of the initial notice, but can be proceeded against his legal heirs who have an interest in the property sought to be forfeited, more particularly, when such legal heir is also a person covered under SAFEMA being the son of the detenu, as in the present case. Hence the continuation of the proceeding against the writ petitioner being the son of the detenu, Nathmal Jalan and the legal heir of Sarbani Devi, the notice u/s 6 of SAFEMA cannot be said to be illegal in law.

53. The other argument advance by the learned Senior Counsel that the writ petitioner was prejudiced in the course of oral hearing u/s 7 of SAFEMA inasmuch as he and his brothers were minors at the time of acquisition of the properties by their late mother in 1958 is also wholly without substance. The writ petitioner in the instant case did not participate in the oral hearing before the competent authority in spite of notice and therefore cannot be heard on the score of denial of effective opportunity to defend himself in violation of principles of natural

justice. Notice u/s 6(1) of the Act was served upon the mother Sarbani Devi Jalan. During her lifetime, she submitted an elaborate reply to such notice. There was no reference to any fact pertaining to her personal knowledge in the said reply relating to the acquisition of the properties in question. Her defence was wholly based upon income tax returns and the assessment orders passed by the income tax authorities. In view of the nature of her defence as disclosed in her reply which was wholly based on record, we are of the view that her death prior to the opportunity of oral hearing given to her son i.e. the writ petitioner could not have prejudiced the latter in his defence. Delay in the said proceeding therefore did not prejudice the defence of the writ petitioner in any manner inasmuch as their defence was entirely based on income tax returns and other documentary evidence which had already been brought on record and considered by the authorities. The delay caused in the SAFEMA proceeding was primarily due to the challenge thrown by Sarbani Devi Jalan and others to the constitutionality of the law which was finally decided by the apex Court in Attorney General for India v. Amratlal Prajivandas (supra) on 12.05.1994. It was not attributable to the authorities in any manner whatsoever. Therefore the manner of conducting the proceeding in the instant case cannot be said to be unfair, unjust or contrary to the principles of natural justice. The principles of natural justice are not a strait jacketed formula. Whether a procedure followed in a particular case achieves the benchmark of fair play and just opportunity must be judged on the touchstone of prejudice of the factual matrix of the said case. The bogey of denial of natural justice ought not to be permitted to scuttle legitimate and just proceedings when no prejudice can be demonstrated to have been caused to the person proceeded against. Krishna Iyar, J. (as His Lordship then was) in his inimitable style summarized the philosophy of natural justice as follows:

13. Natural justice is no unruly horse, no lurking land mine, nor a judicial cure all. If fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual property being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt - that is the conscience of the matter.

We also find no illegality in the direction given by the learned Single Judge in permitting the writ petitioner to redeem the house property at Calcutta on payment of fine in lieu of forfeiture in terms of section 9(a) of SAFEMA. Competent Authority shall pass appropriate order in that regard within two months from date.

The order of the learned Single Judge is upheld. The appeal (APO No. 297 of 2009) and other connected applications are accordingly dismissed.

Arun Mishra, J.

I agree.