

(2011) 04 MAD CK 0500
In the Madras High Court
Case No : W.A. No. 782 of 2009

The Competent Authority

APPELLANT

Vs

Hameed Abdul Kader and Appellate Tribunal for Forfeited
Property

RESPONDENT

Date of Decision : 09-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 31B
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 68C, 68E,
68F, 68H, 68I
Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 —
Section 12, 18, 18(2), 2, 2(2)

Citation : (2011) 3 CTC 345 : (2011) WritLR 445

Hon'ble Judges : K.K. Sasidharan, J;D. Murugesan, J

Bench : Division Bench

Advocate : Haja Mohideen Gisthi, Central Government Standing, for the
Appellant; K.C. Rajappa for V. Ramakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.—This Writ Appeal, at the instance of the Competent Authority under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, challenges the order dated 31 March 2009 in W.P. No. 7944/1999, quashing the proceedings initiated by the said Authority and culminated in passing an order of forfeiture of the property which was later confirmed by the Appellate Tribunal.

The conspectus of facts:

2. The First Respondent along with his brother T.S.A. Omar Farooq purchased the immovable property at No. 4, Vanniar Street, Chennai by a registered Sale Deed dated 21 March 1966. The First Respondent purchased only half share and the document pertaining to the remaining half share was executed in favour of his brother. The said T.S.A. Omar Farooq was involved in smuggling activities and as

such, proceedings were taken against him under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act ["for short, COFEPOSA"], which resulted in his detention. Thereafter, the Appellant issued a notice to the First Respondent on 16 July 1977 to show cause as to why the properties shown in the notice should not be declared to be illegally acquired properties and forfeited to the Central Government. The notice was accompanied by a statement of reasons as provided u/s 6(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 [for short, SAFEMA].

3. The First Respondent in his explanation before the Competent Authority contended that the immovable property was purchased out of his own funds as well as loan amount obtained from his brother and remittance from a relative. Similar justification was made with respect to movable properties mentioned in the notice. The said explanation was considered by the Competent Authority. The Competent Authority was of the view that the immovable property was purchased with tainted money and as such, the same should be forfeited to the Central Government. Accordingly, the Appellant issued an order dated 24 November 1995 u/s 7(1) of SAFEMA whereby and whereunder, the properties shown in the show cause notice were forfeited to the Central Government.

4. The order passed by the Competent Authority was taken up in Appeal before the Appellate Tribunal. The Appellate Authority confirmed the order with respect to the immovable property as well as the amount lying in joint account of the First Respondent and the detenu. In respect of the forfeiture of cash in the proprietary business of the firm and the amount of Rs. 1,000/- due from T.S.A. Ameer Hamza, the Tribunal found that the genuineness of the claim was not established and as such, the Appeal was allowed in part. Dissatisfied with the said order, the First Respondent filed Writ Petition in W.P. No. 7944/1999.

5. The Appellant, in their Counter Affidavit filed before the learned Single Judge, justified the action taken against the First Respondent. According to the Appellant, proceedings were taken strictly in accordance with SAFEMA and as such, no interference is called for in the said order. It was further contended that burden of proof is on the First Respondent and he miserably failed to prove that the immovable property was purchased with his own funds and the purchase has nothing to do with the assets or income of the detenu.

The impugned order:

6. The learned Single Judge after extracting the pleadings and the relevant judgments on the point, allowed the Writ Petition. Reasoning given by the learned Single Judge reads thus:

23. However, it has to be seen that in the present case, the Petitioner had produced the income tax assessment for the relevant year and in the return for the year 1969-70, the loan received for the purchase of the property has been mentioned. This has been scrutinised by the Auditor and it has been countersigned by the income tax Officer for the relevant year. To label such a

transaction as unbelievable " "as the Department of income tax had been utilised by the Appellant for creating evidence in support of his claim" as quoted by the Tribunal is not only uncalled for in the absence of any evidence to that effect. Neither the Competent Authority nor the Appellate Tribunal made use of the officers of the I.T. Department as contemplated u/s 6(1) read with Section 18(2) of the SAFEMA. If they had utilised the service of the I.T. Department, which is another wing of the Government of India, there would have been no necessity to come up with such a sweeping conclusions thereby casting a slur on the another wing of the Central Government. The remarks made by the Appellate Tribunal is uncalled for and not borne out by records. It must be stated that these entries which are found in the I.T. Returns were made long before the show cause notice was prepared u/s 6(1).

26. Therefore, inasmuch as the Respondents have not utilized their power vested u/s 6(1) read with Section 18 of the SAFEMA in order to impeach the claim made by the Petitioner by producing the contemporaneous evidence in the form of income tax returns for the relevant year. The finding recorded by the Respondents that the properties which are sought to be forfeited are illegally acquired properties within the meaning of Section 3(c) cannot be upheld.

7. In short, the learned Single Judge allowed the Writ Petition solely on the ground that the Competent Authority has not referred the matter to the Income Tax Department as provided u/s 18 of SAFEMA in order to impeach the claim made by the First Respondent. Feeling aggrieved, the Competent Authority is before this Court.

Submissions on this Appeal:

8. The learned Additional Central Government Standing Counsel reiterated the submissions made before the learned Single Judge. According to the learned Standing Counsel, the materials produced by the First Respondent clearly gives an indication that half right in the immovable property was purchased with unaccounted money. The Competent Authority was expected only to record its reasons and thereafter, the responsibility lies only on the concerned person to demonstrate that the property was purchased out of his own income and he has not used the income of the detenu. According to the learned Standing Counsel, Section 18 is only optional and it is for the Competent Authority to decide as to whether reference should be made to the Income Tax Authorities. The learned Judge proceeded on the basis that reference to the Income Tax Department is a mandatory requirement, as otherwise, it would vitiate the proceedings. Therefore, the learned Judge was not justified in allowing the Writ Petition.

9. The learned Senior Counsel for the First Respondent supported the order passed by the learned Judge. The learned Senior Counsel has taken us through the pleadings, including the reasons recorded by the Competent Authority u/s 6(1) of SAFEMA. According to the learned Senior Counsel, the question of burden of proof comes only in case the Show Cause Notice contains a statement that the

property was purchased with the money provided by the detenu. The Appellant proceeded as if the property was purchased with undisclosed money. Therefore, there is nothing like burden of proof on the part of the First Respondent to discharge the burden that the property was not purchased with the funds provided by the detenu. It was further contended that the transactions were reflected in the Income Tax Returns filed before the Income Tax Department and in case the Competent Authority disputes the said returns, necessarily, they have to approach the Income Tax Department u/s 18 of the Act. Therefore, the learned Single Judge was correct in quashing the proceedings.

The issue:

10. The core issue which arises for consideration in this Writ Appeal is whether the Competent Authority was having basic materials to pass an order u/s 7(1) of SAFEMA.

Discussion:

11. There is no dispute that proceedings under COFEPOSA was initiated against Thiru T.S.A. Omer Farook, who is none other than the younger brother of the First Respondent. He was detained under COFEPOSA. Thereafter, proceedings were initiated against the First Respondent under SAFEMA. Show cause notice dated 16 July 2007 was accompanied by the reasons recorded by the authority.

12. The Competent Authority found that the First Respondent had the following properties as on 31 March 1974:

Immovable Property: House property bearing D. No. 4, Vaniar St. Madras

Movable Property:

(i) Amount due from Sultan and Company, 12, State Bank Street, Madras -2

(ii) Amount due from T.S.A. Hamid Abdul Kader and T.S.A. Omar Farook (joint rent account)

(iii) Right, title and interest in his proprietary business carried on under the name and style of Hameed Abdul Kader (firm)

(iv) Amount due from T.S.A. Ameer Hamsa, West Street, Kilakarai

(v) Cash balance

(vi) Income tax refund for 1973-74.

13. The details of the properties were taken from the Wealth Returns submitted by the First Respondent.

14. The principal challenge of the First Respondent was against the forfeiture of immovable property. The reasons recorded by the Competent Authority indicates that the First Respondent has not drawn any money from the firm for the purchase of immovable property. The half right of the property bearing No. 4,

Vaniyar Street, Madras was purchased on 18 March 1966. The First Respondent has paid a sum of Rs. 36,000/- for such purchase. The remaining half share was purchased by his brother T.S.A. Omar Farook, the detenu. The First Respondent in his returns showed the amount received under National Defence Remittance Scheme [Rs. 8,652]; the amount received under National Defence Remittance Scheme by his brother T.S.A. Ameer Hamza [Rs. 9,000]; amount received under National Defence Remittance Scheme by S.A.K. Shahul Hameed [Rs. 10,000]; and another sum of Rs. 8,500/- as loan from T.S.A. Omar Farook. The Competent Authority recorded detailed reasons in support of the prima facie conclusion that the immovable property was acquired with unexplained funds. It was also indicated that since the First Respondent purchased the property out of the loan obtained from his brother T.S.A. Omar Farook, the property comes under the category "illegally acquired property". The Competent Authority disputed the credit worthiness of the people from whom the First Respondent has taken loan. Therefore, the Show Cause Notice contains enough details for the purpose of arriving at a prima facie finding to proceed against the First Respondent under SAFEMA.

15. The First Respondent in his detailed explanation contended that the loans taken by him were genuine and bona fide. Those transactions were reflected in the income tax statements and it was accepted by the income tax Officer. Subsequently, loans have been repaid, out of his income and the same was also indicated in the income tax returns. Even though a sum of Rs. 8,500/- was obtained from the detenu, it was repaid subsequently. The loan amount cannot be treated as tainted money. According to the First Respondent, the loan is not income earned from assets and it is nothing but a liability. Therefore, the property acquired by means of loan is not illegally acquired property.

16. The Competent Authority considered the explanation submitted by the First Respondent point by point. It was found that the source as indicated in the show cause notice had been disclosed to the Income Tax Officer in the statement of income for the year 1996-97 and those returns were accepted. It was also found that the remittance under National Defence Scheme was received as a gift from one of the relatives based at Singapore by telegraphic transfer on 25 January 1966. Even though sufficient opportunity was given to the First Respondent, he was not in a position to disclose even the name of his relative from whom he received the said amount by way of telegraphic transfer.

17. The details regarding the source furnished by the First Respondent shows that the detenu also contributed for purchasing the half right in the immovable property. Subsequently, the old house was demolished and a new building was constructed by spending an amount of Rs. 74,250/- as his share. The First Respondent in his explanation submitted that for the purpose of reconstruction he obtained a sum of Rs. 13,500/- as loan from the detenu. The old building materials were sold and he received a sum of Rs. 6,500/-. He has also taken loan from T.S.S. Abdul Majeed, Syed Abubucker and T.S.A. Omar Farook. Therefore,

he obtained a sum of Rs. 25,000/- by way of loan. The remaining amount of Rs. 26,500/- was withdrawn from the firm Hameed Abdul Kader (Firm), Madras.

18. The Competent Authority rejected the contention of the First Respondent after giving adequate reasons:

(a) The loan stated to have been received by the First Respondent from Singapore was not supported by documents. It was received by way of telegraphic transfer. The Department repeatedly asked the First Respondent to produce details about the person who sent the amount by telegraphic transfer. The proceeding commenced on 16 July 1977. The Competent Authority as per letter dated 13 September 1995 i.e. 18 years after initiation of the proceedings called upon the First Respondent at least to furnish the identity of the person from whom the said amount was received along with corroborative documents. The First Respondent in his reply through counsel stated that due to lapse of time, he was not able to remember any details. Therefore, even the name of the person from whom he received the sum of Rs. 8,500/- was not known to him. Accordingly, the said stand of the First Respondent was negated.

(b) The detenu in his explanation also indicated that he has received a sum of Rs. 15,000/- under National Defence Remittance Scheme. The said plea was rejected by the Competent Authority on the ground that remittance under the National Defence Remittance Scheme was not the source from which investment has been made, but it was merely a mode of transfer of funds.

19. Though sufficient opportunities were given, the First Respondent was not in a position to prove the credit worthiness of the creditors. Payments were made only by cash. The only explanation of the First Respondent was the factum of disclosure in the income tax returns. The said plea was rejected by the Competent Authority for lack of proper documents. The Competent Authority concluded that the source indicated for purchasing the half share in the house property remained unexplained.

20. The old building situated in the immovable property was demolished and it was reconstructed and the cost of construction was evenly shared by the First Respondent and the detenu. The total cost of the construction was equally contributed and the First Respondent paid a sum of Rs. 74,250/- and the same was spread over three assessment years. The First Respondent has shown accounts as if he has received a sum of Rs. 21,000/- from the detenu as a loan. The Competent Authority in the proceedings initiated against the detenu found that he was not doing any business so as to enable him to pay the cost of the property or grant loan to his brother. The First Respondent miserably failed to prove his business and as such, the alleged withdrawal from the business income was disbelieved.

21. The other source was a loan of Rs. 10,000/- received from his father T.S.S. Abdul Majid. The First Respondent claimed that another sum of Rs. 10,000/- was received from his brother S.K.J. Syed Aboobacker. However, there were no

documents to substantiate either their income or to show that it was actually given to the First Respondent.

22. Similar proceedings were initiated against the detenu under SAFEMA. The Competent Authority disbelieved the entire transaction between T.S.S. Abdul Majid and the detenu and accordingly arrived at a finding that the loan stated to have been given by T.S.S. Abdul Majid was not a real one and it was made only for the purpose of showing the source. However, very strangely, the First Respondent has produced the trial balance sheet of T.S.A. Abdul Majid for the year ending 31 March 1969 as a supporting document. Since the said document was not produced earlier during the pendency of SAFEMA proceedings against the detenu, the Competent Authority suspected the very genuineness of the document.

23. The First Respondent was directed to produce the books of accounts to substantiate the alleged transaction as well as drawings made from the firm account. However, no such book of accounts were produced. The other source indicated was the amount received by the sale of building materials. The First Respondent failed to give even the name of the person who purchased the building materials. The Competent Authority rightly disbelieved the source indicated by the First Respondent. According to the Authority, nobody could believe that the old building was sold for a sum of Rs. 13,000/- even in 1966, so as to enable the First Respondent to claim 50% of the sale proceeds.

24. The income from the alleged business was also disbelieved on the ground that there was no evidence to show any kind of business conducted by First Respondent. Accordingly, a factual finding was arrived at that the purchase was made only out of the tainted money provided by the detenu. The Competent Authority ultimately passed order u/s 7(1) of the SAFEMA and forfeited the properties to the Central Government.

25. The Appellate Authority constituted u/s 12 of SAFEMA once again considered the factual matrix and independently arrived at a finding that the immovable property was purchased only with the unexplained income. However, with respect to two items of movable property, the Tribunal agreed with the contention raised on behalf of the First Respondent. The finding with regard to acquisition of immovable property as "illegally acquired property" was sustained.

26. The learned Judge appears to have not considered the factual findings rendered by the Statutory Authority and the Tribunal. The learned Judge was of the view that the First Respondent has shown all these transactions in his income tax returns and as such, the authorities should have taken recourse to Section 18 of SAFEMA. Therefore, the learned Single Judge opined that the authorities have not utilized their power vested u/s 6(1) read with Section 18 of the SAFEMA in order to impeach the claim made by the First Respondent by producing the contemporaneous evidence in the form of income tax returns for the relevant year. In short, the findings arrived at by the authorities were disbelieved purely

on the ground that reference was not made to the Statutory Authorities as indicated u/s 18 of SAFEMA.

27. Therefore, the other question is whether failure on the part of the Competent Authority to invoke Section 18 of SAFEMA would render the order passed u/s 7(1) unsustainable in law.

Legislative background:

28. SAFEMA was enacted by the Parliament in larger national interest to confiscate the tainted properties purchased by the smugglers and manipulators as these persons have been augmenting their ill-gotten money either in their name or in the name of their benami and there was a need to curb the menace of such people. It was found that these anti-social elements were purchasing properties in the name of their relatives or associates. They were in a position to get name lenders and properties were purchased in their name. The Government was not in a position to proceed against those properties with the aid of the prevailing laws. There were no enactments operating in the field for the purpose of proceeding against the properties purchased by the smugglers and other kinds of anti-social elements in the name of their benami.

29. When the smugglers have invented novel device to smuggle goods to India and to build up a financial empire in our country, endangering the security and safety of the very nation, Parliament was constrained to enact this stringent legislation. The provisions of SAFEMA were intended to cover all types of transactions involving the detenu. The nature of ownership of the property is immaterial. It is common knowledge that ill-gotten monies are invested in assets and not in the names of the smugglers and foreign exchange manipulators but in the name of their accomplices. Therefore, the Parliament in its wisdom incorporated Section 8 and shifted the burden on the property holder to prove that it was not purchased with tainted money.

30. The legislation and the order passed by the Statutory Authorities by invoking the provisions of such acts must be construed in the context of the mischief intended to be remedied.

31. SAFEMA is a self-contained code. The code contains provisions regarding initiation of proceedings, recording of reasons and forfeiture of property. The Act also provides for filing appeal before the Tribunal. It is true that stringent provisions should receive strict interpretation. Notice issued by the Competent Authority to a person to show cause against forfeiture should contain primary materials indicating application of mind. Section 2 of SAFEMA contains list of persons who would come under the purview of the Act. Section 2(2) (c) to 2(2) (d) shows that every person who is a relative, referred to in Clause (a) or Clause (b); and every associate of a person referred to in Clause (a) or Clause (b); and any holder of any property which was at any time previously held by a person referred to in Clause (a) or Clause (b) also comes under the Act.

32. Section 3(c) defines illegally acquired property in relation to any person to whom the Act applies thus:

(c) illegally acquired property", in relation to any person to whom this Act applies, means--

(i) 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 derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force relating to any matter in respect of which Parliament has power to make laws; or

(ii) 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 in respect of which any such law has been contravened; or

(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 such-clauses (i) to (iii) or the income or earnings from such property; and includes--

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) 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 falling under item (A), or the income or earnings therefrom.

33. Definition given to the term "illegally acquired property" shows that even a property purchased partly out of the funds provided by the detenu would come under the said definition so as to enable the Competent Authority to proceed against those properties.

34. The constitutional validity of the provisions of COFEPOSA and SAFEMA were challenged before the Supreme Court on various grounds including the wide nature of the definition "relative".

The Precedent:

35. In Attorney General for India and Others Vs. Amratlal Prajivandas and Others, , the Supreme Court found that the class of smugglers and foreign exchange manipulators who were out to frustrate the regulations and restrictions - profit being their sole motive, and success in life the sole earthly judge of right and wrong, caused serious threat to the financial stability of the country. The Supreme Court observed that this is a dangerous disease requiring radical treatment and bitter medicine is not a bad medicine. The Supreme Court while upholding the validity of the Act, observed thus:

43. ... SAFEMA is directed towards forfeiture of "illegally acquired properties" of a person falling under Clause (a) or Clause (b) of Section 2(2). The relatives and associates are brought in only for the purpose of ensuring that the illegally acquired properties of the convict or detenu, acquired or kept in their names, do not escape the net of the Act. It is a well-known fact that persons indulging in illegal activities screen the properties acquired from such illegal activity in the names of their relatives and associates. Sometimes they transfer such properties to them, may be, with an intent to transfer the ownership and title. In fact, it is immaterial how such relative or associate holds the properties of convict/detenu whether as a benami or as a mere name-lender or as a bona fide transferee for value or in any other manner. He cannot claim those properties and must surrender them to the State under the Act. Since he is a relative or associate, as defined by the Act, he cannot put forward any defence once it is proved that that property was acquired by the detenu-whether in his own name or in the name of his relatives and associates. It is to counter-act the several devices that are or may be adopted by persons mentioned in Clauses (a) and (b) of Section 2(2) that their relatives and associates mentioned in Clauses (c) and (d) of the said Sub-section are also brought within the purview of the Act. The fact of their holding or possessing the properties of convict/detenu furnishes the link between the convict/detenu and his relatives and associates. Only the properties of the convict/detenu are sought to be forfeited, wherever they are. The idea is to reach his properties in whosever's name they are kept or by whosoever they are held.

...

The idea is not to forfeit the independent properties of such relatives or associates which they may have acquired illegally but only to reach the properties of the convict/detenu or properties traceable to him, wherever they are, ignoring all the transactions with respect to those properties. By way of illustration, take a case where a convict/detenu purchases a property in the name of his relative or associate but does not matter whether he intends such a person to be a mere name-lender or whether he really intends that such person shall be the real owner and/or possessor thereof-or gifts away or otherwise transfers his properties in favour of any of his relatives or associates, or purports to sell them to any of his relatives or associates-in all such cases, all the said transactions will be ignored and the properties forfeited unless the convict/

detenue or his relative/associate, as the case may be, establishes that such property or properties are not "illegally acquired properties" within the meaning of Section 3(c). In this view of the matter, there is no basis for the apprehension that the independently acquired properties of such relatives and associates will also be forfeited even if they are in no way connected with the convict/detenue. So far as the holders (not being relatives and associates) mentioned in Section 2(2)(e) are concerned, they are dealt with on a separate footing. If such person proves that he is "a" transferee in good faith for consideration, his property-even though purchased from a convict/detenu is not liable to be forfeited. It is equally necessary to reiterate that the burden of establishing that the properties mentioned in the show cause notice issued u/s 6, and which are held on that date by a relative or an associate of the convict/detenu, are not the illegally acquired properties of the convict/detenu, lies upon such relative/associate. He must establish that the said property has not been acquired with the monies or assets provided by the detenu/convict or that they in fact did not or do not belong to such detenu/convict. We do not think that the Parliament ever intended to say that the properties of all the relatives and associates may be illegally acquired, will be forfeited just because they happen to be the relatives or associates of the convict/detenu. There ought to be the connecting link between those properties and the convict/detenu, the burden of disproving which, as mentioned above, is upon the relative/associate. In this view" of the matter, the apprehension and contention of the Petitioners in this behalf must be held to be based upon a mistaken premise. The bringing in of the relatives and associates or of the persons mentioned in Clause (e) of Section 2(2) is thus neither discriminatory nor incompetent apart from the protection of Article 31-B.

36. The legality of notice issued u/s 6 of SAFEMA was considered by the Supreme Court in Smt. Kesar Devi Vs. Union of India (UOI) and Others, . The Supreme Court held that notice issued u/s 6 need not show any link or nexus between the illegally acquired money of the detenu and the property sought to be forfeited for passing order of forfeiture u/s 7. The relevant observation is as under:

10. ... The condition precedent for issuing a notice by the Competent Authority u/s 6(1) is that he should have reason to believe that all or any of such properties are illegally acquired properties and the reasons for such belief have to be recorded in writing. The language of the Section does not show that there is any requirement of mentioning any link or nexus between the convict or detenu and the property ostensibly standing in the name of the person to whom the notice has been issued. Section 8 of the Act which deals with burden of proof is very important. It lays down that in any proceedings under the Act, the burden of proving that any property specified in the notice served u/s 6 is not illegally acquired property, shall be on the person affected. The combined effect of Section 6(1) and Section 8 is that the Competent Authority should have reason to believe (which reasons have to be recorded in writing) that properties ostensibly standing in the name of a person to whom the Act applies are illegally acquired property will be upon the person to whom notice has been issued. The

statutory provisions do not show that the Competent Authority, in addition to recording reasons for his belief, has to further mention any nexus or link between the convict or detenu (as described in Sub-section (2) of Section 2) and the property which is sought to be forfeited in the sense that money or consideration for the same was provided by such convict or detenu. If a further requirement regarding establishing any link or nexus is imposed upon the Competent Authority, the provision of Section 8 regarding burden of proof will become otiose and the very purpose of enacting such a Section would be defeated.

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.

37. The learned Counsel for the First Respondent by placing reliance on the judgment of the Supreme Court in P.P. Abdulla and Another Vs. The Competent Authority and Others, , contended that the order of confiscation is a very stringent order and as such, it has to be construed strictly.

38. The issue before the Supreme Court in P.P. Abdulla (supra) was regarding the failure on the part of the Competent Authority to indicate the actual reasons which made them to believe that the property was purchased with tainted money. The Supreme Court found that Section 6(1) contains a mandatory requirement to indicate reasons and as such, the failure on the part of the Competent Authority to record reasons would vitiate the subsequent proceedings. However, in the instant case, reasons recorded by the Competent Authority clearly gives an indication about the actual reasons which weighed with the authority to arrive at a prima facie conclusion that the immovable property was purchased only out of the income provided by the detenu.

39. The learned Senior Counsel placed reliance on the judgment of Supreme Court in Aslam Mohd. Merchant Vs. Competent Authority and Others, . In the said case, the Supreme Court was considering Sections 68-I, 68-C, 68-H, 68-E and 68-F under Chapter V-A of Narcotic Drugs and Psychotropic Substances Act. The Supreme Court found that the show cause notice does not contain the statutory requirements which are condition precedent for initiating the proceeding. Therefore, the Supreme Court observed that when stringent laws become applicable as a result whereof some persons are to be deprived of his/her right in property, scrupulous compliance of the statutory requirements is imperative.

40. The basic issue is whether there were materials before the Competent Authority to arrive at a conclusion that the immovable properties mentioned in the order were illegally acquired properties, within the meaning of Section 3(c) of

SAFEMA.

41. The immovable property situated at Madras was purchased on 18 March 1966. The First Respondent contributed a sum of Rs. 36,000/- and a similar sum was contributed by the detenu T.S.A. Omar Farook. Source details furnished by the First Respondent shows that a sum of Rs. 8,500/- was borrowed from the detenu. This itself would attract Section 3(c)(i) of SAFEMA. This provision clearly says that any property acquired by such person, whether wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by law, thereby indicating part payment of the amount at the instance of the detenu would suffice to term the property as "illegally acquired property".

42. It is true that the First Respondent has shown the amount received from the detenu as loan. Merely because it was shown as loan, it would not change the character of money. The indication in the Income Tax Returns that a sum of Rs. 8,500/- was taken as a loan from the detenu for the purpose of purchasing the loan and another sum of Rs. 13,500 for the purpose of reconstruction of the house alone would not convert the tainted money into one of legal tender. In whatever name it was called, the fact remains that part of the money was taken only from the detenu for purchasing the property as well as for the purpose of construction of a building. Therefore, even from the admitted case, it is clear that part of the money was contributed only by the detenu and as such, the transaction would come within the meaning of Section 3(c)(1) of SAFEMA.

43. The Competent Authority in its show cause notice, very clearly stated that the property was purchased with the unexplained money. The relationship of the second Respondent with the detenu was also indicated in the show cause notice. Therefore, the word "unaccounted money", as indicated in the show cause notice, was used only with reference to the money contributed by the detenu under COFEPOSA. Since the Competent Authority clearly indicated the reasons for taking action under SAFEMA, naturally burden of proof shifted on the First Respondent to prove that the property was not illegally acquired property.

44. Section 8 of SAFEMA deals with burden of proof. The said provision reads thus:

In any proceedings under this Act, the burden of proving that any property specified in the notice served u/s 6 is not illegally acquired property shall be on the person affected.

45. The learned Counsel for the First Respondent challenged the order u/s 6(1) on the ground that sufficient reasons were not indicated and in the absence of the same, question of burden of proof loses significance. The First Respondent has no case before the Statutory Authorities that the Show Cause Notice was defective. The First Respondent in his explanation attempted to justify the purchase by showing the persons from whom he received money. The explanation gives a clear indication that his contribution was nil. He raised the

money through gift and loans. Though he has stated that a sum of Rs. 8,500/- was received from a relative in Singapore, very strangely, he was not in a position even to name the relative. Therefore, the Competent Authority was fully justified in rejecting the said source. A sum of Rs. 10,000/- was received from Mr. S.A.K. Shahul Hameed. There were no documents produced by the First Respondent either to show that the amount was given by him or that he was having the necessary resources to give the amount. Similar was the case of loan received from his brother T.S.A. Abdul Hameed. Therefore, the Competent Authority was right in its observation that it was only with the tainted money, he has purchased the property.

46. The First Respondent has spent a sum of Rs. 74,250/- for the purpose of reconstruction. He obtained Rs. 22,000/- as loan from the detenu. A sum of Rs. 13,000 was shown as the total amount received by the sale of old house materials. It is to be remembered that the purchase was in the year 1966 and the immovable property itself was purchased for a sum of Rs. 72,000/-. Therefore, it was too strange on the part of the First Respondent to contend that the old building materials fetched a sum of Rs. 13,000/-. Similar was the case with the explanation regarding other amounts received from various persons for the purpose of reconstruction.

47. The First Respondent contended that he has declared a sum of Rs. 20,000/- under Voluntary Disclosure Scheme and with the said money, he has done business and ultimately, earned huge profits. However, accounts were not produced before the Competent Authority to justify the said contention. Similarly, the loan received from T.S.S. Abdul Majid and S.K.J., Syed Abubakar were also not supported by documents. In fact, the financial capacity of those two persons to mobilize the amount itself was in dispute. Therefore, the First Respondent has miserably failed to prove that he has received substantial amount by way of loan from third parties.

48. There is no dispute that in the income tax Return submitted by the First Respondent, all these transactions were referred to. There is also an indication that the Income Tax Authorities have accepted the returns.

49. Therefore, the question is whether the authorities under SAFEMA are bound by the Income Tax Returns and the assessment orders passed by the Income Tax Officer.

50. The First Respondent has shown the loan amount in his income tax returns and that was accepted by the Income Tax Department. Mere acceptance of the said return would not absolve the First Respondent from his liability to prove the acquisition of property inasmuch as the burden is on him to demonstrate that the property was not illegally acquired. SAFEMA nowhere provides that the Competent Authority is bound by the income tax returns submitted by the person against whom action was taken. These two enactments operate in two different fields. The authorities under SAFEMA are at liberty to take the assistance of the

Customs Department, Central Excise Department, Income Tax Department, Police Department and all offices of Central or State Government for the purpose of deciding the proceedings initiated under the said Act. Section 18 gives an option to the Competent Authority to conduct enquiry or survey in respect of any person, place, property or any other relevant matters through the authorities under the income tax Act. However, that does not mean that a duty is cast upon the Competent Authority to refer the matter at all time to the Income tax Department. The learned Single Judge proceeded on the basis that the failure on the part of the Competent Authority to invoke Section 18 vitiated the ultimate order passed by him. With respect, we are not in agreement with the said view. The provisions of SAFEMA does not contain any indication that assessment orders passed by the income authorities would constitute sufficient proof regarding the legal nature of the acquisition of property. When the burden is on the concerned person to prove that the property was not acquired with the tainted income, necessarily, he should produce materials to prove his source of money.

51. The First Respondent projected a case of loan, as according to him, loan is a liability and as such, property acquired by raising loans cannot be characterized as illegally acquired property. The said contention has absolutely no basis. It may be a loan or a gift for the First Respondent. He can call it by any name or term. However, the fact remains that money was provided only by the detenu. Admittedly, the First Respondent is the brother of the detenu. Therefore, it is all the more necessary to scrutinize the source.

52. The satisfaction recorded by the Competent Authority was on the basis of materials. The explanation submitted by the First Respondent was considered threadbare and detailed reasons were given. The Tribunal in its well considered and reasoned order, concurred with the findings recorded by the Competent Authority.

53. The question is whether it is open to this Court exercising jurisdiction under Article 226 of the Constitution of India to re-appreciate the materials and arrive at a different conclusion. The power of judicial review is concerned only with the decision making process. Under the guise of judicial review, it is not permissible to consider the facts once again. Limited power of judicial review does not enable the Court to scan the materials considered by the Statutory Authorities and to arrive at an independent conclusion. Therefore, we are of the view that the learned Single Judge was not justified in upsetting the orders passed by the Statutory Authorities.

54. The exercise of power of judicial review to interfere with a finding of fact arrived at by the Designated Authority was considered by the Supreme Court in *Tulip Star Hotels and Ors. v. Union of Centaur Tulip Employees and Ors.* 2007 (15) SCC 255 and it was observed thus:

9. ... At this juncture, we may now consider as to when the High Court could

interfere with a finding of fact arrived at by the Special Court, in the exercise of its jurisdiction under Article 226 of the Constitution. It is now well settled that the High Court, in its Writ jurisdiction under Article 226 of the Constitution, may interfere with the findings of fact arrived at by the Special Court only if the findings are based on no evidence or based on conjectures or surmises and if no reasonable man would on given facts and circumstances come to the conclusion reached by the Special Court. Therefore, it is pellucid that it is only in these special circumstances that it would be open to the High Court to interfere with the findings of fact arrived at by the Special Court.

Result:

55. In the upshot, we allow the Writ Appeal. It follows that the Writ Petition must be dismissed. No costs. Consequently, M.P. No. 1/2009 is closed.