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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Date of Decision: 25.11.2011

% W.P.(C) 2276/1996

KAMAL KUMAR ..... Petitioner
Through: Mr. L.P. Dhir and Mr. Vikas Nautiyal, Advocates.

versus

UNION OF INDIA & OTHERS ..... Respondents
Through: Mr. Baldev Malik, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (Oral)

1. This petition has been preferred under Article 226 of the Constitution of India to assail the order dated 28.11.1994 passed under section 7(1) and 7(3) of Smugglers And Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA), passed by the competent authority; the appellate tribunal order dated 08.03.1996 in FPA No.4/DLI/95, and; the rectification order dated 08.05.1996 under section 20 of SAFEMA.

2. The petitioner, Piare Lal was served with a detention order dated 08.11.1976 issued in the name of Governor of Punjab, inter alia, stating that with a view to prevent him from dealing in smuggled goods, it is necessary that he be detained. A declaration was also

issued by the Governor of Punjab under section 12A(2) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ('COFEPOSA') declaring that the detention is necessary, and that it is not in public interest to disclose the facts or to give an opportunity of making a representation to the detenu.

3. Following the said detention, which was unsuccessfully challenged by the petitioner, a notice dated 10.05.1978 was issued by the competent authority under section 6 of SAFEMA stating that he had reason to believe that the properties mentioned in the schedule have been acquired by him illegally within the meaning of clause (c) of sub section (1) of section 3 of SAFEMA. The petitioner was required to indicate the sources of his income, earnings and assets out of which, or by means of which the petitioner had acquired the scheduled properties, and also to show cause as to why they should not be declared as illegally procured properties and forfeited under the Act. The said notice pertained to the following properties:

"THE SCHEDULE

	Description of the property	Name of the present holder of property
1)	Plot Nos.35 to 38, Chandrauli, Delhi	Shri Piara Lal
2)	Plot No.13/1, 14/15, bearing Khasra No.21-24 in village Karawal Nagar, llaqa Shahdra, Delhi	"
3)	Plot No.2, B-Block, Laxmi Industrial Enclave, V, Gharota, Pargna Loni, Tehsil Ghaziabad, Meerut	"

4)	1/2 share in plots bearing Khasra Nos.13 to 17 in Karawal Nagar, Ilaqa Shahdra, Delhi	“
5)	110 Tolas gold ornaments	“
6)	Cash in Hand	“

4. Section 6 of SAFEMA obliges the competent authority to record his reasons to believe that the properties in respect whereof the notice is issued are illegally acquired properties. The “reasons to believe” recorded by the competent authority in this case were to the effect that the Commissioner of Income Tax, vide letter dated 24.02.1977 had furnished certain information. The position of the petitioner’s income tax returns and assessment was disclosed as follows:

Asst. Years	Income returned	Income assessed
1967-68	11,300	P
1968-69	11,300	P
1969-70	11,300	P
1970-71	11,300	P
1971-72	11,300	11,500
1972-73	11,300	22,050
1973-74	11,300	12,500
1974-75	11,300	36,062
1975-76	11,300	25,000

5. The competent authority recorded :

> "*A perusal of the above chart bring out one striking feature. The income returned for all the years from 1967-68 to 1975-76 is the same viz. Rs.11,300, all the returns have been filed on one date viz. 21.1.76 and all the assessments have also been completed on a single date viz. 19.1.77. The source of this income is stated to be Dalali business, but no accounts are stated to have been maintained. Assessments have been completed for the assessment years 1971-72 to 1975-76. It will be noted that in each year additions have been made to the income returned, the heaviest being in assessment years 1972-73, 1974-75, 1975-76. The additions in these years are on account of various investments made and expenditure incurred by Piara Lal in these years. As a perusal of para 3 would indicate, Piara Lal's investments in real estate were made in the periods relevant to assessment years 1972-73 and 1974-75. In the period relevant to assessment year 1972-73, Piara Lal has made an investment of Rs.10,800 in the Chandrauli Plot in Delhi. In the course of assessment proceedings, being unable to explain the source of his investment, Piara Lal has surrendered the amount of investment for assessment. Similarly in the period relevant to assessment year 1974-75, Piara Lal has made investments in real estate listed at S. No.2,3 and 4 in para 2. The aggregate of these investments comes to about Rs.16,000. Here again, unable to explain the source of this investment, Piara Lal has surrendered the same for assessment. In this year an addition has also been made on account of inadequate marriage expenses and inadequate household expenses. It will thus be abundantly clear that although Piara Lal's various investments have been considered in the course of assessment proceedings, the source of these investments has at no stage, been proved. Since the source of investment in properties listed at S. No.1 to 4 of para 3, has not been explained and proved, those properties fall squarely within the purview of sec. 3(1)(c)(iii) of the SAFEMA. Similar is the position with regard to the assets listed at S. Nos.5 and 6 of para 3, whose source of acquisition has never been proved*".(emphasis supplied).

6. The competent authority further recorded that the aforesaid properties had been wholly or partially acquired out of, or by means of income, earnings or assets, the source of which has not been proved *"and which has not been proved and which has not been 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 and is thus hit by the provisions of section 3(1)(c)(iii) of SAFEMA*".

7. In para-6 of the reasons to believe, the competent authority recorded:

> "6. I have, therefore, reason to believe that the undermentioned properties held by Piara Lal are illegally acquired properties within the meaning of sec. 3(1) (c) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 and a notice under sec. 6(1) of the Act should be issued to him to indicate the sources of his income, earnings or assets, out of which or by means of which he acquired these properties, the evidence on which he relies and other relevant information and particulars and to show cause why these properties should not be declared to be illegally acquired properties and forfeited to the Central Government".

8. Following the initiation of the said proceedings under Section 6 of SAFEMA, the impugned orders came to be passed against the petitioner, first by the Competent Authority, and therafter by the Appellate Authority. Consequently, this petition was preferred by the petitioner, who has died during its pendency and the same is being

pursued by his legal representatives. The first submission of learned counsel for the petitioner, Sh. L.P. Dhir is that the “reasons to believe”, as aforesaid, did not show the existence of any nexus between the alleged smuggling activity of the petitioner and the acquisition of the aforesaid properties. He submits that the petitioner has never been convicted for any offence, and it has not been established that he was engaged in the activity of smuggling of goods. Even otherwise, without existence of source material to connect the alleged activity of smuggling to the source of funds from which the scheduled properties were acquired, the competent authority did not even derive the jurisdiction to issue the said notice under Section 6 of SAFEMA. He places reliance on the following decisions:

i) ***Fatima Mohd. Amin (Smt) (Dead) Through Lrs v. Union of India & Anr***., (2003) 7 SCC 436

ii) ***P.P. Abdulla & Anr. v. Competent Authority & Ors.***, (2007) 2 SCC 510

iii) ***Attorney General for India & Ors. v. Amratlal Prajivanda & Ors.***, (1994) 5 SCC 54

iv) ***Shri Gian Chand Garg v. Union of India & Ors***. in W.P.(C.) No. No.4581/1996 decided on 04.09.2007 by S. Ravindra Bhat, J.

9. On the other hand, the submission of learned counsel for the respondent, Mr. Malik is that the “reasons to believe” recorded by the competent authority are sufficient. He submits that nexus between the income derived from illegal activity and the acquisition of the property need not be established where the property concerned is that

of the detenu himself. The said nexus is required to be established only when the detenu's property is held benami in the name of any other person or relative. It is only in such cases that the nexus between the income derived from illegal activity, and the property is required to be established.

10. He has further placed reliance on section 8 of SAFEMA, which provides that in any proceedings under this Act, the burden of proving that any property specified in the notice served under section 6 is not illegally acquired property shall be on the person affected. He submits that the petitioner had not been able to explain the source of his income, wherefrom the aforesaid properties had been acquired by him. Even if the belatedly filed returns were to be accepted, the amount apparently spent on purchase of properties in a few years was far in excess of the income shown for those years, as noticed in the recorded "reasons to believe".

11. In ***Fatima Mohd***. ***Amin*** (supra), the Supreme Court held that the contents of the notice even if taken on their face value did not disclose any reason warranting action against the appellant. It was observed that no allegation whatsoever has been made to the effect that there exists any link or nexus between the property sought to be forfeited and the illegally acquired money of the detenu. I may note that in this case, the property that was sought to be forfeited belong to the mother, whereas the detenus were her two sons and it was the case of the respondent that the illegal activity was carried out by two sons,

and the property was acquired in the name of the mother from the illgotten monies.

12. In ***P.P. Abdulla*** (supra), which was a case pertaining to property of the detenu himself, the Supreme Court applied the decision in ***Fatima Mohd***. ***Amin*** (supra). In this case, the appellant had been convicted under the Customs Act in a case relating to seizure of 700 bars of foreign gold recovered from him. The detenu himself was issued a notice under section 6(1) of SAFEMA for forfeiture of his property. The property was forfeited by the order of the competent authority and the appellate tribunal also rejected his appeal. The writ petition was allowed by the learned Single Judge of the High Court. However, the Division Bench reversed the judgment of the learned Single Judge. The Supreme Court, after perusing the record of the "reason to believe", observed as follows:

> "*8. It must be stated that an order of confiscation is a very stringent order and hence a provision for confiscation has to be construed strictly, and the statute must be strictly complied with, otherwise the order becomes illegal.*
>
> *9. In our opinion, the facts of the case are covered by the decision of this Court in* ***Fatima Mohd. Amina*** *v.* ***Union of India*** *(supra). In the present case the contents of the notice, even if taken on face value, do not disclose any sufficient reason warranting the impugned action against the appellant as, in our opinion, the condition precedent for exercising the power under the Act did not exist. Hence, the impugned orders cannot be sustained.*
>
> *10. In the present case, in the notice dated 15.3.1988 issued to the appellant under Section 6(1) of the Act (copy of which is annexed as Annexure P1 to this appeal),* ***it has not been alleged therein that there***

> ***is any such link or nexus between the property sought to be forfeited and the alleged illegally acquired money of the appellant.***
>
> *11. Hence, in view of the decision of this Court in* ***Fatima Mohd. Amina's case*** *(supra), the said notice dated 15.3.1988 has to be held to be illegal. Consequently the order passed in pursuance of the said notice is declared as null and void. The appeal is, therefore, allowed and the impugned orders of the High Court and the concerned Authorities are set aside. No costs*". (emphasis supplied)

13. In ***Gian Chand Garg*** (supra), the facts of the case were somewhat similar. Like in the present case, the detenu had filed income tax returns collectively for five previous years (in the present case, they were filed for nine previous years), prior to the passing of the detention order. The detention order was passed after the filing of the said returns, like in the present case as well. The Court held that there was not a whisper that any enquiry or investigation under section 18 of the Act preceded the notice.

14. To counter the submission of Mr. Malik founded upon section 8 of the Act, Mr. Dhir has placed reliance on the judgment of this Court in ***Shanti Devi v. Union of India & Ors.***, 73 (1998) DLT 477 (DB). The Division Bench in this case held that the question of applying the rule of evidence enacted by section 8 of SAFEMA, casting the burden of proof on the person affected, shall come into play only on some connecting link or nexus being established or traced between the holding of the property or assets by the person proceeded against, and illegal activity of the detenu/convict.

15. The “reasons to believe” as recorded in the present case by the competent authority undoubtedly raise a doubt about the source of funds wherefrom the aforesaid properties were acquired at the relevant time. However, they do not go on to state that there was a nexus between the income derived from the alleged activity of smuggling and the scheduled properties acquired by the detenue, and the said “reasons to believe” do not show as to how a nexus is sought to be established between the income allegedly derived from the illegal activity of smuggling, and the acquisition of the said properties.

16. In the light of the aforesaid discussion, since the “reasons to believe”, as recorded by the competent authority appear to be wholly insufficient, the notice issued under section 6(1) of SAFEMA cannot be said to have been issued validly. The competent authority did not derive the jurisdiction to issue the same in the absence of the recording of the valid “reasons to believe”. Consequently, the orders passed on the said notice by the competent authority on 28.11.1994, and by the appellate tribunal on 08.03.1996 and the rectification order dated 08.05.1996 cannot be sustained and are, accordingly, quashed. Parties are left to bear their respective costs.

VIPIN SANGHI, J

NOVEMBER 25, 2011
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Date of Decision: 25.11.2011

% W.P.(C) 260/1995

KAMLAWATI (DECD.) TH. KAMAL KUMAR ..... Petitioner
Through: Mr. L.P. Dhir and Mr. Vikas Nautiyal, Advocates.

versus

UNION OF INDIA & OTHERS ..... Respondents
Through: Mr. Baldev Malik, Advocate

% W.P.(C) 302/1996

KAMAL KUMAR ..... Petitioner
Through: Mr. L.P. Dhir and Mr. Vikas Nautiyal, Advocates.

versus

UNION OF INDIA & OTHERS ..... Respondents
Through: Mr. Baldev Malik, Advocate

% W.P.(C) 303/1996

RAMAN KUMAR ..... Petitioner
Through: Mr. L.P. Dhir and Mr. Vikas Nautiyal, Advocates.

versus

UNION OF INDIA & OTHERS ..... Respondents
Through: Mr. Baldev Malik, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (Oral)

I have already quashed the notice issued to the detenu under section 6(1) of SAFEMA and the consequent orders of forfeiture passed by the competent authority and by the appellate tribunal in CWP No.2276/1996. The “reasons to believe” as recorded in that case have been found to be deficient.

The same “reasons to believe” have been recorded by the competent authority in these cases as well, while issuing the impugned notices which form the basis of the forfeiture orders. Consequently, the forfeiture orders passed in these cases by the competent authority and the orders of the appellate tribunal upholding the same also cannot be sustained and are, accordingly quashed. Parties are left to bear their respective costs.

VIPIN SANGHI, J

NOVEMBER 25, 2011
‘SR’