

PETITIONER:
AMENABAI TAYEBALY & ORS.

Vs.

RESPONDENT:
COMPETENT AUTHORITY UNDER SAFEMA & ORS.

DATE OF JUDGMENT: 19/11/1997

BENCH:
S.B. MAJMUDAR, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:

THE 19TH DAY OF NOVEMBER, 1997

Present

Hon'ble Mr. Justice S.B. Majmudar

Hon'ble Mr. Justice M. Jagannadha Rao

R.F. Nariman, Sr. Adv., Mrs. M. Karanjawala, Adv. with him
for the appellants

K.N. Shukla, Sr. Adv., T.C. Sharma, S. Rajappa, S.N. Terdol,
A.P. Mayee and A.M. Khanwilkar, Advts. with him for the
Respondents

J U D G M E N T / O R D E R S

The following Judgment of the Court was delivered:

S.B. Majmudar J.

This appeal by special leave seeks to challenge judgment and order rendered by a Division Bench of the Bombay High Court in Writ Petition No.2841 of 1982. By the impugned judgment the order of respondent - competent authority forfeiting the property in question under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as 'SAFEMA') came to be confirmed.

In Order to appreciate the grievance of the appellants it is necessary to note a few introductory facts.

Introductory Facts.

One Talab Haji Hussein Sumbhania was detained Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'COFEPOSA') by the Government of Gujarat by order dated 02nd April 1976. Before the said order of detention, the second wife of said Talab Haji Hussein, Tahira Sultana, purchased a flat being Flat No.25 in Dharam Jyoti Premises Cooperative Housing Society, Bandra, Bombay in February 1979 for a consideration of Rs. 88,562/-. On 15th February 1977 the competent authority issued a notice under Section 6(1) of SAFEMA to the said Tahira Sultana calling upon her to show cause why the said flat purchased upon her to show cause why the said flat purchased in her name should not be forfeited as illegally acquired property of the COFEPOSA detenu, her husband, the aforesaid Talab Haji Hussein. After hearing said Tahira Sultana the competent authority passed an order Section 7 of the SAFEMA on 12th October 1977 holding that the said

property was illegally acquired property and, therefore, it stood forfeited to the Central Government free from all encumbrances as laid down under Section 7(3) of SAFEMA. Said Tahira Sultana challenged the aforesaid order of forfeiture by filing a Misc. Petition No.1680 of 1977 on the Original Side of the Bombay High court. In the writ petition she challenged both the order of detention of her husband as well as the order of forfeiture of the said property standing in her name. The said writ petition was moved in December 1977. The High Court of her husband as well as the order of forfeiture of the said property standing in her name. The said writ petition was moved in December 1977. The High Court of Bombay admitted the said writ petition of Tahira Sultana on 03rd March 1978 and stayed the order of forfeiture of the said property on an undertaking by her that she would not dispose of or alienate or encumber or part with the right, title and interest in the said flat pending the final disposal of the writ petition.

Simultaneously she moved the Appellate Tribunal under the SAFEMA challenging the order of forfeiture of her property. The Appellate Authority dismissed her appeal and confirmed the order of forfeiture by its order dated 25th July 1978. By amendment to her writ petition she also challenged the latter order. In the meantime the writ petition filed by her before the Bombay High Court remained pending. On 20th November 1980 COFEPOSA detenu Talab Haji Hussein expired.

Now comes the crucial date when the present appellants' predecessor came in picture. By a Sale Deed dated 30th July 1981 Tahira Sultana sold the said flat to Tayab Ali, predecessor-in-interest of the present appellants for a consideration of Rs. 3,60,000/-. We will refer to Tayab Ali as the purchaser of this flat. It is obvious that the said sale was in breach of the undertaking given by the vendor Tahira Sultana to the Bombay High Court and it was pending the disposal of the writ petition challenging the order forfeiting the very same property as passed by the competent authority years back on 12th October 1977 and as confirmed by the Appellate Tribunal on 25th July 1978. It is the case of the purchaser that he had purchased the said flat in good faith for valuable consideration since he was not aware of the order of the competent authority or his vendor Tahira Sultana's undertaking to the High Court. Said Tahira Sultana out of the consideration money received by her from the purchaser in the aforesaid transaction amounting to Rs. 3,60,000/- is said to have purchased a flat a Shivasthan Co-operative Society, Bandra, Bombay, for Rs. 1,86,000/-. The case of the appellants is that towards the said purchase consideration Rs.1,60,000/- were utilised by the said Tahira Sultana from the sale proceeds which she received from the purchaser of Dharam Jyoti flat, namely, the appellants' predecessor-in-interest. The on 05th November 1982, according to the appellants, the purchaser for the first time got information from the Society in whose building the flat was situated, about the order of forfeiture of the said flat and the undertaking given by the purchaser's vendor Tahira Sultana before the Bombay High Court. That resulted in a Writ Petition No. 2841 of 1982 filed by the purchaser Tayab Ali on 13th December 1982 in the Bombay High Court. the said writ petition was admitted on 16th December 1982 by the High Court and interim relief was granted to the purchaser. When it was brought to the notice of the Bombay High Court that purchaser's vendor Tahira Sultana had committed breach of the undertaking given by her in her

pending writ petition against the forfeiture order of the flat in Dharam Jyoti Building, the High Court initiated contempt of court proceedings against the said Tahira Sultana and by an order dated 21st February 1983 held her guilty of contempt and imposed punishment of simple imprisonment for four weeks and a fine of Rs. 2,000/- on said Tahira Sultana. She underwent the said sentence. Tahira Sultana on her part filed Writ Petition No.100 of 1984 on the Criminal Side of Bombay High Court in 184 again challenging the detention order and order of forfeiture of property, while the appellants' predecessor-in-interest Tayab Ali, the purchaser of the flat in question, moved the High Court of Gujarat on 12th August 1985 challenging the detention order of the COFEPOSA detenu Talab Haji Hussein which gave rise to the proceedings under SAFEMA as well as consequential order under SAFEMA since the order of detention was issued by the State of Gujarat. The Division Bench of the High Court of Gujarat by its judgment dated 17th July 1986 held that the order of forfeiture of property was passed by the competent authority without hearing the purchaser of the property and hence the proceedings were required to be decided afresh after giving an opportunity of hearing to the said purchaser. Pending the remanded proceedings the purchaser Tayab Ali expired on 24th December 1986 leaving present appellants as his heirs and legal representatives. Pursuant to the order of the High Court of Gujarat the competent authority functioning under SAFEMA by order dated 17th March 1987 after hearing the purchaser's heirs, namely, the present appellants re-confirmed the order of forfeiture of the flat purchased by their predecessor, under SAFEMA. Independent of these proceedings the competent authority also passed an order on 18th June 1987 under Section 7(2) of SAFEMA, after hearing Tahira Sultana, forfeiting the second flat purchased by her being Flat No.1, Ground Floor, Shivasthan Co-operative Housing Society Ltd., Bandra, Bombay. It was held by the competent authority in the said proceedings that Flat No.1, Ground Floor, Shivasthan Co-operative Housing Society Ltd., had been acquired by said Tahira Sultana partly out of the sale proceeds of Flat No.25, Dharam Jyoti Building, Pali Hill, Bandra, Bombay, which was held to be illegally acquired and was forfeited to the central Government by an order passed on 12th October 1977. As a consequence of this order of 18th June 1987 it was directed by the competent authority under section 19(1) of SAFEMA that said Flat No.1, Shivasthan Society, was illegally acquired by Tahira Sultana and directed her to deliver possession thereof to the central Government authorities. Tahira Sultana filed appeal against the said order in connection with forfeiture of Flat No.1, Shivasthan Society, which was dismissed by the Appellate Tribunal on 02nd November 1987. Tahira Sultana unsuccessfully challenged the said order in proceedings for setting aside the ex parte order before the Appellate Tribunal. The said application was dismissed by the Tribunal. She filed Writ Petition No. 1527 of 1995 before the Bombay High Court challenging the order of Appellate Tribunal passed on 18th April 1995 dismissing her application for setting aside the ex parte order of the Appellate Tribunal. Her writ petition was dismissed by the Bombay High Court on 21st August 1995. The authorities took possession of Flat No.1, Shivasthan Society, from Tahira Sultana on 13th September 1995. She filed Special Leave Petition before this Court challenging the order of the Bombay High Court pertaining to Flat No.1, Shivasthan Society, Bombay. It was dismissed by this Court on 24th

November 1995. Therefore the forfeiture of Flat No.1, Shivasthan Society, became final upto this Court. The appellants, who were brought on record as heirs of purchaser in the latter's Writ Petition No, 2841 of 1982, which challenged the forfeiture of the said Flat No.25, Dharam Jyoti Building, and the direction to them to hand over possession ultimately came to be dismissed by a Division Bench of the High Court of Bombay by an order dated 29th June 1995 and that is how the appellants are before us Tahira Sultana's Misc. Petition No.1680 of 1977 was withdrawn by her before the Bombay High Court with a view to challenging the appellate order confirming the order of forfeiture. She accordingly filed subsequent Writ Petition No.1527 of 1995 which was rejected by the Bombay High Court on 21st August 1995. The said decision was challenged before this Court in S.L.P. (C) No. 25358 of 1995 which was dismissed by this Court on 24th November 1995.

It is in the background of the aforesaid facts that the main contentions canvassed in support of this appeal have to be examined.

Learned senior counsel, Shri R.F. Nariman, for the appellants firstly contended that SAFEMA itself did not apply to the purchase made by the purchaser as he was not one of the persons mentioned in Section 2(2) of SAFEMA especially Section 2(2)(e) thereof and, therefore, entire proceedings against him were null and void. It was alternatively contended that in any view of the matter the original purchaser Tayab Ali was a bona fide purchaser for value without notice and he was, therefore, not responsible for the acts of commission on the part of his vendor Tahira Sultana. That even if she might have committed breach of the undertaking given to the High Court of Bombay for which she was adequately punished the purchaser cannot be visited with any adverse consequences thereof. It was next contended that Section 11 of SAFEMA would not apply to the facts of the present case as the appellants' predecessor-in-interest had not purchased the flat in Dharam Jyoti Building between two terminal dates, namely, 15th February 1977 when notice under Section 6(1) of SAFEMA was issued to Tahira Sultana and 12th October 1977 when the order of the competent authority under section 7 of SAFEMA was passed. On the other hand he had purchased the property on 30th July 1981. Therefore on the express language of section 11 of the SAFEMA the said transaction could not be said to be null and void. It was next contended that even proceeding on the basis that Dharam Jyoti Building flat was originally purchased by Tahira Sultana for a consideration of Rs. 88,562/- by utilising the tainted money of her husband, Talab Haji Hussein, who was a COFEPOSA detenu, once she sold the said property to the purchaser by taking Rs. 3,60,000/- spent Rs.1,60,000/- for purchasing Shivasthan Society flat, the tainted money which were converted into flat in Dharam Jyoti were again re-converted into cash and were utilised for purchasing another immovable property. Therefore, the tainted money could be traced out to the said property in Shivasthan Society and could be said to have ultimately resulted in purchase of Shivasthan Society property and which now is likely to fetch Rs. 65 lac, as seen from the auction notice dated 24th July 1996. Hence the purchaser's transaction may not be treated to be a void transaction as it would amount to double forfeiture of the original smuggler's property. It was lastly contended that in any case looking to the equities of the case and as the purchaser was a bona fide purchaser for value without notice he may not be visited with the evil consequences of the

transaction wherein only the vendor Tahira Sultana was at fault and consequently on an analogy of Section 9 of the SAFEMA this Court may impose appropriate fine in lieu of forfeiture.

Learned senior counsel for the respondents, Shri K.N. Shukla, on the hand, supported the decision of the High Court.

In view of the aforesaid contentions of learned senior counsel Shri Nariman, the following points arise for determination ;

1. Whether the provisions of SAFEMA apply to the sale transaction entered into between the widow of Talab Haji Hussein, COFEPOSA detenu and purchaser, predecessor-in-interest of the appellants.
2. Whether the purchaser was a bona fide purchaser for value without notice.
3. Whether the forfeiture of purchaser's Flat in Dharam Jyoti Building by the authorities can be treated as double forfeiture on the basis of the same tainted money of the COFEPOSA convict only because the subsequent property purchased by the purchaser's vendor in Shivasthan Co-operative Society has also been forfeited to the Government under SAFEMA.
4. Whether the transaction in favour of the purchaser could be cleared on principles analogous to Section 9 of the SAFEMA by imposing fine in lieu of forfeiture on the peculiar facts of this case.

We shall deal with these points for consideration seriatim.

Point Nos.1 and 2

It is true that the SAFEMA has been enacted to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto, It is also true that Section 2 sub-section (1) of the SAFEMA lays down that 'the provisions of this act shall apply only to the persons specified in sub-section (2)'. When we turn to sub-section (2) of Section 2 we find list of persons mentioned therein at clauses (a) to (e). In section 2 sub-section 2(a) and (b) are mentioned persons who are themselves detenués under the Act. Clause (c) refers to every person who is a relative of a person referred to in clause (a) or clause (b); Clause (d) refers to every associate of a person referred to in clause (a) or clause (b); while clause (e) refers to any holder of any property which was at any time previously held by a person referred to in clause (a) or clause (b) unless the present holder or, as the case may be, any one who held such property after such person and before the present holder, is or was a transferee in good faith for adequate consideration. It is obvious that purchaser's vendor (2)(c) as she was the wife of the COFEPOSA detenu Talab Haji Hussein. Property standing in her name, therefore, could be processed under the provisions of the SAFEMA. It is true that a purchase from a relative of the COFEPOSA detenu would not be covered by Section 2 sub-section (e). Accordingly the purchaser Tayab Ali cannot be covered by Section 2(2)(e) of SAFEMA. However difficulty in his case arises independently of the provisions of Section 2 sub-section (2)(e) as well will presently show. The property in question at the relevant time stood in the name of purchaser's vendor Tahira Sultana. As she was the relative of the COFEPOSA detenu, her husband, the competent authority issued a notice to her under Section 6(1) of SAFEMA in connection with Dharam Jyoti Building flat, the dispute property herein. After hearing her, the competent

authority passed an order under Section 7 of SAFEMA forfeiting the said property on 12th October 1977. Of is this order which was challenged by her in the Bombay High Court. She had undertaken not to alienate the said property and still in flagrant breach thereof she sold the property in 1981 to purchaser Tayab Ali. Apart from the fact that the said transaction had exposed purchaser's vendor Tahira Sultana to contempt proceedings and she was punished, the question survives whether the purchaser Tayab Ali could derive any benefit out of the said tainted transaction. It is, of course, true that pending the writ petition there was already a stay order of the High Court of Bombay by which the order of forfeiture of the said property had remained stayed. But it was not an absolute order. It was conditional on the purchaser's vendor Tahira Sultana, the writ petitioner, not transferring or alienating the said property pending the proceedings. The said injunction of the High Court reflected by the undertaking of Tahira Sultana made the said property inalienable pending the writ petition proceedings moved by purchaser's vendor before the High Court. Under these circumstances even though Section 52 of the Transfer of Property Act, strictly speaking, may not apply as the lis was not registered in Bombay as informed to us, the prohibition against alienation of this property, by way of undertaking of purchaser's own predecessor-in-title before the High Court had its full sway and operation. Therefore, if ultimately the writ petition was dismissed the transfer effected by the writ petitioner in breach of the prohibition and the undertaking would not give any benefit to the purchaser. It would be too much for him to contend that he was a bona fide purchaser for value without notice. The High Court in the impugned judgment has noted that the said plea does not appear to be probable. It is true, as pointed out by learned senior counsel Shri Nariman for the appellants, that for coming to this finding the High Court has wrongly assumed that the purchaser Tayab Ali had immediately filed a writ petition after purchasing the property as he had filed his writ petition only on 13th December 1982 when he had received information on 05th November 1982 that the flat in question was already forfeited by Government. That may be so, However, the ultimate finding of the High Court in this connection cannot be faulted on the touchstone of probabilities. Reason is obvious. The COFEPOSA detenu Talab Haji Hussein was a smuggler. When the purchaser purchased the said flat standing in the name of the wife of the said smuggler, in usual course of conduct the said purchaser must have been put on enquiry as to how COFEPOSA detenu's wife Tahira Sultana became the owner of this property and what had happened to this property in the proceedings under SAFEMA and whether title of the said flat was clear or not. No such enquiry seems to have been made and it is not the case of the purchaser that any such enquiry was made by him at the relevant time when he entered into the said transaction pending the writ petition in the Bombay High Court. Thus on broad probabilities of the case it must be held that purchaser willingly and with open eyes played with fire and purchased litigation and it is too tall a claim on his part to submit that he was a bona fide purchaser for value without notice. Such stand does into bear scrutiny on the touchstone of probabilities. But even that apart once the writ petition filed by Tahira Sultana challenging forfeiture order of 12th October 1977 got dismissed by the Bombay High Court and once that order became final the original order of forfeiture of this property dated 12th October 1977 operated

in full swing and the result was that as per Section 7 sub-section (3) of SAFEMA the said property stood forfeited to the Central Government free from all encumbrances. Therefore, it must be held that by 12th October 1977 the property in dispute had ceased to belong to purchaser's vendor Tahira Sultana and had vested in the Central Government. Consequently when she purported to sell this property on 30th July 1981 to the purchaser Tayab Ali she can be said to have sold the property which had already ceased to belong to her and she could not pass any valid title in favour of Tayab Ali in connection with the said property which no longer belonged to her since 1977. It is, of course, true that when she sold the said property the order of forfeiture had been stayed by the High Court but, as seen earlier, it was a limited stay subject to the condition of inalienability of the property by Tahira Sultana and breach of such undertaking, which was a substitute for an injunction, would make that transaction voidable and its efficacy had to be seen in the light of the final result of the writ petition and once the final result was against Tahira Sultana, whatever she did in the meantime became an exercise in futility. In this connection we may usefully refer to section 11 of SAFEMA which reads as under:

"11. Certain transfers to be null and void.-Where after the issue of a notice under section 6 or under section 10, any property referred to in the said notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently forfeited to the central Government under Section 7, then the transfer of such property shall be deemed to be null and void."

It is no doubt true that on the express language of the said Section transfer of any property pending the proceedings under Section 6 or 10 of the said act and prior to the order of forfeiture shall be treated to be null and void. The purchaser transaction is after the order of forfeiture of the said property, Still the consequence of the said transaction being null and void could not be avoided by the purchaser on the plea that this transaction was subsequent to the original order of forfeiture, The original order of forfeiture was stayed at time of the purchase. It got confirmed by the Bombay High Court ultimately when the Misc. Petition No. 1680 of 1977 moved by Tahira Sultana was disposed of and the subsequent Writ Petition No. 1527 of 1995 was dismissed by the High Court and the S.L.P was filed by her in this Court was also dismissed. We may also note that as the Misc. Petition No.1680 of 1977 was withdrawn on 19th June 1995 and ultimately the forfeiture order came to be confirmed in the subsequent Writ Petition No.1527 of 1995 on 21st August 1995, the transaction of transfer in favour of Tayab Ali would be said to have been effected after the notice under section 6, issued to Tahira Sultana, and before the order of forfeiture ultimately got confirmed by the High Court and by this Court and which had back affect of confirming the same from 1977. It must, therefore, be held that the transaction of purchase by the appellants' predecessor Tayab Ali was also hit by Section 11 of SAFEMA. Consequently in 1981 when the purchaser purchased this property from Tahira Sultana

she had no interest in the said flat which she could convey to the appellants' predecessor. In substance it amounted to selling of Central Government's property by a total stranger in favour of the purchaser. No title, therefore, in the said property passed to the appellants' predecessor. Appellants' predecessor, therefore, had no legal defence against the claim of the authorities in calling upon the appellants as heirs of the original purchaser to vacate and hand over the possession of the property to the Central Government as full owner thereof. Both the points for determination, therefore, are answered against the appellants and in favour of the respondents.

Point No.3

So far as this point is concerned we fail to appreciate how it is a case of double forfeiture of the property purchased from the very same tainted money. It is easy to visualise that tainted money earned by smuggler who is convicted under COFEPOSA may result in purchasing number of properties. It cannot, therefore, be said that these properties when confiscated after following due procedure of SAFEMA would amount to multiple forfeiture. So far as the facts of the present case are concerned it has to be kept in view that for Rs. 88,562/- the original vendor Tahira Sultana purchased the disputed flat in February 1975. She sold this very flat to the purchaser for Rs. 3,60,000/-. Therefore, money earned out of the said consideration Rs. 88,562/- remained tainted money. Utilising a part of this money she purchased Shivasthan Society flat for Rs. 1,86,000/- out of which it is said that Rs. 1,60,000/- were utilised from the sale proceeds of Dharam Jyoti Building flat. To this original tainted money of Rs. 988,562/-, therefore, she must have added some more money for purchasing Shivasthan Society flat. Even assuming that for the purchase of the said flat she utilised Rs. 1,60,000/- out of Rs. 3,60,000/- obtained by her from the purchaser as consideration for the sale of the Dharam Jyoti Building flat to him it cannot be said that the original forfeiture of Dharam Jyoti Building flat on 12th October 1977 was in any way affected by the subsequent forfeiture of another immovable property purchased by the widow of original COFEPOSA smuggler when she purchased the second flat. The said transaction was quite independent of the earlier transaction which had already resulted in forfeiture of the disputed property. It is not as if that Dharam Jyoti Building flat is being forfeited twice. Consequently the forfeiture of the Dharam Jyoti flat on 12th October 1977 by the competent authority must be treated to be quite an independent transaction as compared to the latter order of forfeiture of Shivasthan Flat on 18th June 1987. The latter order of forfeiture of entirely different immovable property cannot retrospectively invalidate the earlier order of forfeiture of 12th October 1977 pertaining to Dharam Jyoti Building flat. At the time when the earlier order of 12th October 1977 was passed the said disputed property clearly reflected the utilisation of tainted money of Rs. 88,562/-. If subsequent dealing with the said property is found to be unauthorised and inoperative in law and if such subsequent transaction qua the said property remains a still-born one no life can be infused in it on account of the subsequent forfeiture of some other property of the original vendor when a subsequent forfeiture has stood on its own and has become final. The third point for determination, therefore, also is held against the appellants and in favour of the respondents.

Point No.4

So far as this contention is concerned Section 9 of SAFEMA on its express language cannot apply. It lays down as under:

"9. Fine in lieu of forfeiture. -

(1) Where the competent authority makes a declaration that any property stands forfeited to the central Government under section 7 and it is a case where the source of only a part, being less than one-half, of the income, earnings of assets with which such property was acquired has not been proved to the satisfaction of the competent authority it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to one and one-fifth times the value of such part.

Explanation- For the purposes of this sub-section, the value of any part of income, earnings or assets, with which any property has been acquired, shall be.-

(a) in the case of any part of income or earnings, the amounts of such part of income earnings;

(b) In the case of any part of assets, the proportionate part of the full value of the consideration for the acquisition of such assets."

This is not a case in which the purchase of Flat No.25, Dharam Jyoti Building, Bandra, Bombay, by Tahira Sultana in February 1975 could be said to be a result of only a part utilisation of the tainted money and any part of the said sale consideration of Rs.88,562/- could be said to have come out of a source which was not tainted. Such is not a case of anyone, Shri Nariman, learned senior counsel for the appellants, also therefore, rightly contended that he only draws an analogy from Section 9 and submits in the peculiar facts of this case that the appellants may not be disturbed after so many years especially when from the other forfeited property the central Government is likely to get Rs., 65 lacs as seen from the auction notice and that appropriate fine may be imposed on the appellants in lieu of forfeiture. It is difficult to agree. The appellants' predecessor, purchaser Tayab Ali played with fire. He purchased the property despite there being an injunction and an undertaking by his vendor Tahira Sultana in the pending proceedings in the writ petition. His transaction, therefore, was liable to be voided in the light of the final result of the writ petition which confirmed the order of forfeiture of this very property purchased by him. Even that apart, as a result of the dismissal of the writ petition of Tayab Ali's vendor by the Bombay High Court the purchased property stood forfeited to the Government prior to the date of purchase by the purchaser as the order of forfeiture, as seen above, operated from 1977 once the stay granted by the Bombay High Court stood lifted on the final dismissal of the writ petition of writ petitioner Tahira Sultana, Therefore, the transaction of purchase by Tayab Ali was an exercise in futility. Such a still-born transaction cannot be resurrected by passing an order of fine in lieu of

forfeiture. The forfeiture of this very property had already taken place on 12th October 1977 and which order got ultimately confirmed by the Bombay High Court. Therefore, it is too late in the day for the appellants to contend that the clock should be put back and the 12th October 1977 order may be converted into fine in lieu of forfeiture especially when Tahira Sultana against whom that order has operated, has finally lost in her challenge to the said order. The fourth point for determination, therefore, has also to be rejected and stands decided against the appellants.

As a result of the aforesaid findings of ours on all these points the inevitable result is that the appeal fails and is dismissed. Interim order of stay granted pending the appeal will stand vacated. On the facts and circumstances of the case there will be no order as to costs.

JUDIS