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AAMENABAI TAYEBALY AND ORS.

v.

COMPETENT AUTHORITY UNDER SAFEMA AND ORS.

NOVEMBER 19, 1997

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[S.B. MAJMUDAR AND M. JAGANNADHA RAO, JJ.]

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Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976—S2 (2)(c)—The vendor of the immovable property, being the wife of COFEPOSA detenu, is liable to be proceeded under the Act—S2(2)(e)—Though the purchaser is not covered by this section, the property he purchased from the vendor is liable to be forfeited since he was aware of the proceedings under SAFEMA in respect to the said property before the purchase and cannot claim that the purchase was bonafide purchase for value without notice—There was also an undertaking by the vendor to the Court not to dispose off the property and there was no absolute stay granted by the High Court.

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S. 11—The forfeiture becomes confirmed from the actual date of the order of the Competent authority—When the Court dismisses the case the property ceases to be that of the vendor and he/she loses all title/interest in it and the same becomes vested in the Central Govt.—The sale is therefore void and the purchaser has no legal defence against the authorities.—A void purchase cannot be resurrected by the imposition of a fine—There is no double forfeiture when the money from the sale of a flat under SAFEMA proceedings is invested in another flat and both flats are forfeited—A later order of forfeiture of the immovable property under the Act will not invalidate an earlier order of forfeiture if another immovable property under the same Act, since both were independent of each other—When the earlier sale itself is still-born, the forfeiture of a subsequent property under the Act cannot bring to life earlier sale—S.s. 6(1), S. 7(2)&(3), S9—Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—S 3(1)—Transfer of Property Act—S52.

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The Present appeal relates to the sale of an immovable property by a vendor, who was the wife of a COFEPOSA detenu, which was forfeited by an order under S. 7 of SAFEMA passed by the Competent Authority and later confirmed by the Appellate Authority On a writ petition challenging the said order, the Bombay High Court gave a stay on the undertaking that the vendor

will not dispose/alienate or encumber/part with the right, title and interest in the said property during the pendency of the petition. A

However she sold the said property to a purchaser who was the respondents predecessor in-interest, for a consideration and from out of the sale proceeds bought another flat even during the court proceedings. The purchaser also filed a Writ petition in the High Court, challenging the forfeiture, which was dismissed when the Court became aware of the sale, the vendor was punished for contempt. The vendor, then filed another Writ petition in High Court. The purchaser also challenged the detention order against the vender's husband and the forfeiture arising therefrom, before the Gujarat High Court. That High Court remanded the matter to the Competent Authority holding that the order of forfeiture was made by the Competent Authority without giving a hearing to the purchaser. The Competent Authority in deference to the order of the High Court, heard the parties and re-confirmed the forfeiture The Competent Authority in an independent proceeding passed an order forfeiting the second flat purchased by the vendor out of the sale proceeds of the first flat. When the vendor appealed against the order of forfeiture, the Appellate Tribunal dismissed the appeal. A writ petition and a Special Leave Petition arising from this order were also dismissed. An appeal was filed before this Court from the order of the Bombay High Court dismissing the challenge to the forfeiture. B
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On behalf of the appellants, it was contended inter alia, that SAFEMA did not apply to the purchaser as he was not covered by S. 2(2) (e) of the Act and therefore the entire exercise was null and void. It was also submitted the purchaser was not aware of the Court proceedings and the undertaking by the seller, that the purchaser purchased the property in good faith and therefore he should not be punished. It was also pointed out that S. 11 of SAFEMA did not apply to the facts, as the purchaser purchased the flat in 1981 and not between two terminal dates, viz. 15th February 1977, when notice under S6 (1) of SAFEMA was issued to the seller and 12th October 1977 when the competent authority passed the order under S. 7. Another contention was that there was double forfeiture since, even granting that the said property was purchased with tainted money, the vendor had sold it for a consideration and had used that money for purchasing another flat which was also forfeited. It was submitted that it was the vendor who was at fault and the purchaser having bought the property in good faith should not be punished. The appellants urged that using the analogy of S. 3 of SAFEMA the Court could impose a fine on the purchaser instead of forfeiture. E
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Dismissing the appeal, this Court H

A HELD : 1. It is obvious that purchaser's vendor TS was covered by Section 2 sub-section (2) (c) as she was the wife of the COFEPOSA detenu. The 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).

B Accordingly the purchaser TA cannot be covered by Section 2 (20) (e) of SAFEMA. However difficulty in this case arises independently of the provisions of Section 2 sub-section (2) (e). The property in question at the relevant time stood in the name of the purchaser's vendor TS. As she was the relative of the COFEPOSA detenu, her husband, the competent authority issued a notice under Section 6(1) of SAFEMA in connection with DJ building flat, the disputed property herein. After hearing her, the Competent Authority

C passed an order under Section 7 of SAFEMA forfeiting the said property on 12th October 1997. It 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 TA. Apart from the fact that the said transaction had exposed purchased

D vendor TS to contempt proceedings and she was punished, the question survives whether the purchaser TA 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

E absolute order. It was conditional on the purchaser's vendor TS, 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 TS made the said property inalienable pending the writ proceedings before the High Court. Under these circumstances, even though

F Section 52 of the Transfer of Property Act, strictly speaking, may not apply as the lis was not registered in Bombay, 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

G any benefit to the purchaser. It would be too much to contend that he was a bonafide purchaser for value without notice. The High Court in the impugned judgment has noted that said plea does not appear to be probable. The ultimate finding of the High Court in this connection cannot be faulted on the touchstone of probabilities. [256-G-H; 257-A-H]

H 2. The COFEPOSA detenu 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 TS became the owner of the property and what had happened to this property in the proceedings under SAFEMA and whether the title of the said flat was clear or not. No such enquiry seems to have been 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 possibilities of the case it must be held that the 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 not bear scrutiny on the touchstone of probabilities. [258-A-C]

3. Once the writ petition filed by TS 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 TS and had vested in Central Government. Consequently when she purported to sell this property on 30th July 1981 to the purchaser TA she can be said to have sold property which had already ceased to belong to her and she could not pass any valid title in favour of TA in connection with the said property which no longer belonged to her since 1977. It is no doubt true that on the express language of the Section 11 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 as null and void. The purchaser's 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 his transaction was subsequent to the original order of forfeiture. The transaction of transfer in favour of TA would be said to have been effected after the notice under Section 6, issued to TS and before the order of forfeiture ultimately got confirmed by the High Court and this Court and which had back effect of confirming the same from 1977. It must, therefore, be held that the transaction of purchase by the appellants predecessor TA was also hit by Section 11 of SAFEMA. Consequently in 1981 when the purchaser purchased this property from TS 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

A 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 possession of the property to the Central Government as full owner thereof. [258-C-E; 259-B; D-F]

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4. 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 the procedure of SAFEMA would amount to multiple forfeiture.

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It is not as if DJ building flat is being forfeited twice. Consequently the forfeiture of DJ 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 S 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 DJ flat. At the

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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

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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. [259-G; 260-A; D-F]

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5. The appellant's predecessor purchaser TA played with fire. He purchased the property despite there being an injunction and an undertaking by his vendor TS 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 TA's vendor by the Bombay High Court the purchased

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property stood forfeited to the Government prior to the date of the purchase by the purchaser as the order of forfeiture operated from 1977 once the stay granted by the Bombay High Court stood lifted on the final dismissal of the writ petition of the writ petitioner TS. Therefore, the transaction of purchase by TA was an exercise in futility. Such a still-born transaction cannot be resurrected by passing an order of fine in lieu of forfeiture. The forfeiter

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of this very property had already taken place on the 12th October 1977 and

which order ultimately got 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 TS against whom the order has operated has finally lost in her challenge to the said order. [261-F-H; 262-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11836 of 1995.

From the Judgment and Order dated 29.6.95 of the Bombay High Court in W.P. No. 2841 of 1982.

R.F. Nariman and Mrs. M. Karanjawala for the Appellants.

K.N. Shukla, T.C. Sharma, S. Rajappa, S.N. Terdol, A.P. Mayec and A.M. Khanwilkar for Respondents.

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 Sumbhanis was detained under section 3 sub-section (1) of the conservation of Foreign Exchange and prevention of Smuggling Activities Act, 1974 (hereinafter referred to as 'COFEPOSA') by the Government of Gujarat by order dated 2nd 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 Co-operative Housing Society, Bandra Bombay in February 1975 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 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 under Section 7 of the SAFEMA on

- A 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
- B 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 Bombay admitted the said writ petition of Tahira Sultana on 3rd 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
- C 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

D 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

E 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

F 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

G 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 at 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

H flat, namely, the appellants' predecessor-in-interest. That on 5th 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 1984 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 Sultan, 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 the 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

- A 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 Appellant Tribunal on 2nd November 1987. Tahira Sultana unsuccessfully challenged the said order in proceedings for setting aside the ex parte order before the Appellant 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 in this appeal. We may also note at this stage that Tahira Sultana's Misc. Petition No. 1680 of 1977 was withdrawn by her before the Bombay High Court with a view to challenge 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.

- G 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
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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 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 of the purchaser by taking Rs. 360,000 from him and once out of the said consideration she 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 case 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 lacs 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 a 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

- A entered into between the widow of Talab Haji Hussein, COFEPOSA detenu and the purchaser, predecessor-in-interest of the appellants.
- 2 Whether the purchaser was bona fide purchaser for value without notice.
- B 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 of the Government under SAFEMA.
- C 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.

D We shall deal with these points for consideration seriatim.

Points Nos. 1 and 2

E 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 persons specified in sub-section (2). When we turn to sub-section (2) of section 2 we find list of persons mentioned therein at clause (a) to (e). In Section 2 sub-section 2(a) and (b) are mentioned persons who are themselves detenues 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 Tahira Sultana was covered by Section 2 sub-section (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

H 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 we 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 disputed property herein. After hearing her, the competent authority passed an order under Section 7 of SAFEMA forfeiting the said property on 12th October, 1977. It 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 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 affected 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 had 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 5th November, 1982 that the flat in question was already forfeited by the 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

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- A** 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 not 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 :

- H** "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." A

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 said Act and prior to the order of forfeiture shall be treated to be null and void. The purchaser's 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 the time of the purchases. 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. 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 of have been effected after the notice under Section 6, issued of Tahira Sultana, and before the order of forfeiture ultimately got confirmed by the High Court and by this Court and which had back effect of confirming the same from 1977. It must, therefore, be held that the transaction of purchase by the appellants predecessor Tayab Ali was 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. B C D E F

Point No. 3 G

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 H

A following due procedure of SAFEMA would amount to multiple for 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. 88,562 therefore, she must have added some more 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 early 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.

G *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 :

H “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 or 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 or 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

- A 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.
- B

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.

C

- After pronouncement of the judgment some reasonable time to vacate the premises was asked for by the learned counsel for the appellants. In the facts and circumstances of the case, we deem it fit to grant time upto 31st May, 1998 to vacate the premises and to hand over the possession to the authorities. The said time shall be granted on appellants' filing a proper undertaking within four weeks from today. A copy of the undertaking shall be furnished to the respondents. If any of the conditions of the undertaking is committed breach of or if the undertaking is not so filed, the grant of time shall not be available to the appellants.
- D

E I.M.A.

Appeal dismissed.