

[2012] 8 S.C.R. 1107

WINSTON TAN & ANR.
v.
UNION OF INDIA & ANR.
(Civil Appeal No. 7207 of 2012)

OCTOBER 04, 2012

[R.M. LODHA AND ANIL R. DAVE, JJ.]

SMUGGLERS AND FOREIGN EXCHANGE
MANIPULATORS (FORFEITURE OF PROPERTY) ACT,
1976:

ss.2(2)(b), 2(2)(c), 2(2)(e), 6,7,10 and 11 – Certain transfers to be null and void – Forfeiture of property illegally acquired by detenu and his wife – Challenged by purchasers claiming as transferees in good faith and for adequate consideration – Held: Any transfer of the property referred to in s.6(1) is prohibited – In respect of the transfer of the property after issuance of notice u/s.6, the holder cannot set up a plea that he is a transferee in good faith or a bona fide purchaser for adequate consideration – Such plea is not available to a transferee who has purchased the property during pendency of forfeiture proceedings – In the instant case, the transaction of sale in favour of the purchasers has to be ignored by virtue of s.11 and on passing of the order of forfeiture u/s.7, the sale in their favour has become null and void – The title in the subject flat is deemed to have vested in the Central Government when the first notice u/s.6(1) was issued and served on one of the vendors and they ceased to have any title in the subject flat on the date of transfer – In the circumstances, question of according any opportunity to the holders to prove that they are transferee in good faith with adequate consideration does not arise – Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

A One 'MI' was detained on 02.05.2003 under the
 Conservation of Foreign Exchange and Prevention of
 Smuggling Activities Act, 1974. Notices u/s.6(1) of the
 Smuggling and Foreign Exchange Manipulators
 (Forfeiture of Property) Act, 1976 in respect of the subject
 B property were issued to the detenu and his wife in 2003
 and 2004, respectively, as both owned the subject
 property. On 10.02.2005, both the noticees sold the
 subject property to the appellants. The appellants by their
 communication dated 20.05.2005, informed the
 C Competent Authority that they purchased the subject
 property under a registered sale deed after availing loan
 from the Bank. The Competent Authority on 23.06.2005
 passed an order u/ss.7(1) and (3) of SAFEMA forfeiting the
 subject property and declaring that the said property
 stood vested in the Central Government, and holding that
 D the transfer in favour of the appellants was null and void
 in view of s.11 of SAFEMA. The appellants filed a writ
 petition before the High Court contending that they were
 bonafide purchasers for adequate consideration. The
 Single Judge of the High Court quashed the order dated
 E 23.06.2005 as violative of principles of natural justice and
 remitted the matter to the Competent Authority for
 consideration afresh. However, on appeal, the Division
 Bench of the High Court held that the appellants were not
 entitled to any notice and as the sale in their favour was
 F subsequent to the issuance of the notice u/s.6 of
 SAFEMA, the transaction was null and void u/s. 11
 thereof.

Dismissing the appeal, the Court

G HELD: 1.1. The provisions of SAFEMA are stringent
 and drastic in nature. They are designed to discourage
 law breaking and directed towards forfeiture of illegally
 acquired properties. One of the concepts that centres
 H around the provisions of SAFEMA is to reach the

properties acquired illegally by the persons who are covered by Clauses (a) to (e) of s.2(2). The provisions of SAFEMA are intended to apply to any property acquired by persons covered by Clauses (a) to (e) of s.2(2), whether before or after the commencement, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force. [Para 22] [1122-D-G]

1.2. However, SAFEMA is not applicable to holder of any property u/s. 2(2)(e) who proves that he is a transferee in good faith for adequate consideration. Section 2(2)(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 such holder proves that he is a transferee in good faith for adequate consideration. The holder talked of in s.2(2)(e) does not cover a holder who is a transferee of the property after issuance of notice u/s.6. On issuance of notice u/s.6, a moratorium is placed on transfer of property referred to in the notice. Any transfer of the property referred to in s.6 notice is prohibited. [Para 22-23] [1222-G-H; 1124-C-E]

Aamenabai Tayebaly and Others v. Competent Authority 1997 (5) Suppl. SCR 246 = (1998) 1 SCC 703 – relied on

Competent Authority v. Parvathi Bai (2011) 6 MLJ 537 – approved

Attorney General for India and others v. Amratlal Prajivandas and Others 1994 (1) Suppl. SCR 1 = (1994) 5 SCC 54 – held inapplicable

1.3. Admittedly, SAFEMA was applicable to both vendors. They were served with notices u/s.6(1) before

A transaction of sale in favour of the appellants. After the issuance of notices u/s.6(1) of SAFEMA to the vendors, the transaction of sale in favour of the appellants has to be ignored by virtue of s.11 and on passing of the order of forfeiture u/s.7, the sale in their favour has become null and void. The order of forfeiture dated 23.06.2005 u/s.7 of SAFEMA relates back to the issuance of first notice u/s.6(1) to one of the vendors. [Para 25] [1126-E-G]

1.4. Section 11 is unequivocal and its object is clear. It intends to avoid transfer of property by the persons who are covered by clauses (a) to (e) of sub-s.(2) of s.2 during the pendency of forfeiture proceedings. The provision says that for the purposes of proceedings under the Act, transfer of any property referred to in the notice u/s.6 or u/s.10 shall be ignored. In respect of the transfer of the property after issuance of notice u/s.6, the holder cannot set up a plea that he is a transferee in good faith or a bona fide purchaser for adequate consideration. Such plea is not available to a transferee who has purchased the property during pendency of forfeiture proceedings. [Para 26] [1126-H; 1127-A-B]

1.5. It is true that the appellants had obtained encumbrances certificates from the Sub-Registrar prior to purchase which show that there were no encumbrances to the subject flat. It is also true that the appellants had obtained loan from the Bank, for purchase of the said flat. It is a fact that sale consideration to the tune of Rs. 26 lakhs was paid directly by the Bank to the vendors after the Bank was satisfied about the title of the vendors. The appellants had also mortgaged the flat with the Bank as a security towards loan. But these facts are of no help to the appellants as the sale in their favour was effected after notices u/s.6(1) were issued to the vendors. Such sale has no legal sanction. The sale is null and void on the face of s.11; it is not protected so as to enable the purchaser to prove that he is transferee in good faith for

adequate consideration. As a matter of law, no title came to be vested in the appellants by virtue of sale-deed dated 10.02.2005 as the vendors could not have transferred the property after service of the notice u/s.6(1) and during pendency of forfeiture proceedings under SAFEMA. The title in the subject flat is deemed to have vested in the Central Government on or about 08.12.2003 when the first notice u/s.6(1) was issued and served on one of the vendors. The vendors ceased to have any title in the subject flat on the date of transfer i.e. 10.12.2005. They had no transferable right. The appellants cannot claim any right in the flat. In the circumstances, question of according any opportunity to the appellants to prove that they are transferees in good faith with adequate consideration does not arise. [Para 28] [1127-E-H; 1128-A-C]

Case Law Reference:

1994 (1) Suppl. SCR 1 held inapplicable Para 6
(2011) 6 MLJ 537 approved Para 14
1997 (5) Suppl. SCR 246 relied on Para 14

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7207 of 2012.

From the Judgment & Order dated 16.3.2009 of the High Court of Karnataka at Bangalore in Writ Appeal No. 2181 of 2007.

S.B. Sanyal, K. Maruthi Rao, Anjani Aiyagari for the Appellants.

A.S. Chandhiok, ASG, S.K. Sahijpal, Ritesh Kumar, Piyush Sanghi, Shweta Gupta, Sidharth Tyagi, Arjun Pal, Vidit Gupta, Sonam Anand, Meenakshi Chauhan, B.K. Prasad, Shreekant N. Terdal for the Respondents.

The Judgment of the Court was delivered by

A **R.M. LODHA, J. 1.** Leave granted.

B 2. The forfeiture of Flat No. 4, Kamala Mansion, Ground Floor, Promenade Place, No. 45/2, Promenade Road, Bangalore – 560 042 under Section 7 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, to be referred as 'SAFEMA', is the subject matter in this Appeal. Col. K. M. Somana (Retd.) was the original owner of that flat. On 20.3.1997, he sold the flat to Mohd. Ismail Shabandari and his wife Fathima Kauser Ismail by a sale deed which was registered in the office of the Sub-Registrar, Bangalore.

D 3. Mohd. Ismail Shabandari was detained under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short, 'COFEPOSA') on 2.5.2003. The detention order came to be passed at the instance of the Enforcement Directorate, Bangalore; his premises were searched on 31.7.2002. In that search Indian Currency of Rs. 13,50,000/- along with incriminating materials showing illegal transfer of money from abroad was seized. The documents seized from the residence of Mohd. Ismail Shabandari on 31.7.2002 by the Enforcement Directorate also indicated that he had received Rs. 92,09,480/- from different persons as instructed by one Hussain Sherrif of Dubai and he had made payments in India to various persons to the tune of F Rs. 78,59,480/- leaving a balance of Rs. 13,50,000/- which was seized at the time of search. It was in this backdrop that the order dated 2.5.2003 for detention of Mohd. Ismail Shabandari came to be passed by the Competent Authority.

G 4. On 8.12.2003, a notice under Section 6(1) of SAFEMA in respect of subject flat was issued to Mohd. Ismail Shabandari. SAFEMA was applicable to him as he was a 'person' within the meaning of Section 2(2)(b) of SAFEMA. The Competent Authority having come to know that his wife, H Fathima Kauser Ismail, was having 50 per cent share in the

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subject property, a notice under Section 6(1) was also issued to her as she happened to be 'relative' within the meaning of Section 2(2)(c) of SAFEMA. The above notices were served on them.

5. In response to the notice issued to him under Section 6(1), Mohd. Ismail Shabandari sent a letter to the Competent Authority on 26.5.2004 stating therein that the subject flat was purchased through legal earnings. By a subsequent letter, he stated that he had explained the sources of acquisition before the income tax authorities. He filed copies of the income tax returns and also stated that his wife Fathima Kauser Ismail received remittances from her brother in 1994. Mohd. Ismail Shabandari was asked by the Competent Authority to substantiate his claim in respect of sources from which he and his wife purchased the property. He and his wife were asked to appear personally but they did not appear and it transpired that the subject property has been sold by them for Rs. 26,00,000/- on 10.2.2005 to the present appellants.

6. On 17.5.2005, a notice was again issued to Mohd. Ismail Shabandari by the Competent Authority to explain the sources of his income and earnings relating to Savings Bank A/c No. 15802, Vijaya Bank, Brigade Road Branch, Bangalore. A copy of the said notice was also sent to the Branch Manager, Vijaya Bank, Brigade Road Branch, Bangalore. The appellants claim that they came to know of Section 6(1) notice issued to their vendors from Vijaya Bank, Brigade Road Branch, Bangalore and consequently sent their reply to the Competent Authority through their Advocate on 20.5.2005. In their reply, the appellants intimated to the Competent Authority that they had purchased the subject flat by a registered sale deed. As they were having insufficient funds to purchase the subject flat, they availed of loan from Vijaya Bank, Brigade Road Branch, Bangalore. The Bank sanctioned loan after proper examination and scrutiny of the documents and after obtaining legal opinion. The appellants claimed that they were in actual possession and

A enjoyment of the subject flat and they have also applied to the authorities of Bangalore Mahanagar Palika for mutation of their names in the records and for obtaining Khatha Certificate and assessment of taxes.

B 7. The Competent Authority, on 23.6.2005 passed an order under Sections 7(1) and (3) of SAFEMA forfeiting the subject flat and declaring that forfeited property stands vested in the Central Government free from all encumbrances. It was held in the order that the subject flat was not acquired by Mohd. Ismail Shabandari and Fathima Kauser Ismail out of any legal earnings. The said flat had been sold stealthily after the commencement of the proceedings under SAFEMA and the said transfer in favour of the appellants on 10.2.2005 was null and void by virtue of the provisions of Section 11 of SAFEMA.

D 8. Subsequent to the passing of the above order, a further order under Section 19(1) of SAFEMA was passed by the Competent Authority on 23.12.2005 directing Mohd. Ismail Shabandari and Fathima Kauser Ismail to surrender/deliver possession of the forfeited flat within 30 days of the receipt of order. In that order, it was reiterated that transfer/sale effected by them subsequent to the notice under Section 6(1) was null and void in view of Section 11 of SAFEMA. A copy of this order was sent by the Competent Authority to the present appellants.

F 9. It was then that the appellants filed a writ petition before the Karnataka High Court for quashing the order dated 23.6.2005 forfeiting the subject flat and for writ of mandamus to the Competent Authority not to interfere with their peaceful possession and enjoyment in respect of the subject flat. The above reliefs were sought on diverse grounds, including that they had purchased the subject flat after thorough verification and after obtaining encumbrance certificates for the period from 1.4.1990 to 4.1.2005 and after satisfying with the title of the vendors and also that there was no charge or encumbrance created over the subject flat. They claimed that they were bona fide purchasers for adequate consideration.

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10. A counter affidavit was filed by the Competent Authority in opposition to the writ petition. The appellants filed rejoinder to the counter affidavit.

11. The learned Single Judge of the High Court heard the parties and considered the question that was raised before him as to whether the appellants (petitioners therein) were entitled to a notice from the Competent Authority before order of confiscation/forfeiture was passed under SAFEMA. The Single Judge in his order dated 12.9.2007 held that the sale in favour of the appellants had taken place on 10.2.2005, i.e., before the order of forfeiture was passed by the Competent Authority. Although it was a fact that the first notice was issued under SAFEMA to the transferors much before the sale had taken place, but in the opinion of the Single Judge, the order dated 23.6.2005 was violative of the principles of natural justice and, consequently, he quashed the same and remitted the matter to the Competent Authority for fresh consideration.

12. A writ appeal was preferred by the Union of India and the Competent Authority against the order of the Single Judge. The Division Bench of the High Court held that the sale transaction in favour of the appellants was subsequent to the issuance of notice under Section 6 and, accordingly, the transaction was null and void under Section 11 of SAFEMA. In the opinion of the Division Bench, the appellants were not entitled to any notice and non-issuance of notice to them had not vitiated the action taken by the Competent Authority.

13. Mr. S.B. Sanyal, learned senior counsel for the appellants, heavily relied upon the excepted clause of Section 2(2)(e) that protects a transferee in good faith for adequate consideration and the observations made by a 9-Judge Bench of this Court in *Attorney General for India and others v. Amratlal Prajivandas and Others*¹ in para 44 (Pg. 92) of the Report observing, 'So far as the holders (not being relatives

1. (1994) 5 SCC 54.

A and associates) mentioned in Section 2(2)(e) are concerned, they are dealt with on a separate footing. If such person proves that he is a transferee in good faith for consideration, his property – even though purchased from a convict/detenu – is not liable to be forfeited'. He referred to diverse documents to show that the appellants had purchased the property after due diligence and after obtaining certificates from Sub-Registrar, Bangalore, that the subject flat was not encumbered in any manner whatsoever. Learned senior counsel would submit that the appellants had obtained loan from the Vijaya Bank, Brigade Road Branch, Bangalore and the title of the property was fully scrutinized by the Bank and its Panel Advocate. The adequate consideration of Rs. 26,00,000/- was paid by the Bank to the transferors which prima facie establishes that the appellants are transferees in good faith for adequate consideration. Learned senior counsel contended that the appellants were seeking an opportunity to be given to them to prove before the Competent Authority that they were transferees in good faith for adequate consideration and that is what was done by the Single Judge and there was no justification for the Division Bench to upset such a just order.

14. On the other hand, Mr. A.S. Chandhok, Additional Solicitor General, would submit that the purchase of the subject flat by the appellants was after the issuance of notice under Section 6(1) to the vendors by the Competent Authority. SAFEMA is applicable to one of the vendors by virtue of Section 2(2)(b) and to the other vendor by virtue of Section 2(2)(c). He argued that transaction of sale was null and void under Section 11 and the appellants are not covered by the excepted category of the 'holder' under Section 2(2)(e). He placed reliance upon a decision of this Court in *Aamenabai Tayebaly and Others v. Competent Authority under SAFEMA and others*² and a decision of Madras High Court in *Competent Authority v. Parvathi Bai*³.

2. (1998) 1 SCC 703.

3. (2011) 6 MLJ 537.

15. SAFEMA came into effect from 05.11.1975. It, inter alia, provides for forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators. Its applicability is provided in Section 2. Sub-section (1) of Section 2 provides that the provisions of SAFEMA shall only apply to persons specified in sub-section (2). Clause (b), amongst others, covers the persons in respect of whom an order of detention has been made under COFEPOSA and such order has not been revoked or set aside in any of the situations set out in the four sub-clauses of the proviso. Clause (c) of sub-section (2) of Section 2 applies to the relatives of persons referred to in clauses (a) or (b) while clause (d) applies to the associates of persons referred to in clauses (a) or (b). Clause (e) of sub-section (2) of Section 2 refers to a holder of property. It reads as under :

“S. 2. Application.—(1) xxx xxx xxx
(2). The persons referred to in sub-section (1) are the following, namely: -
(e) any holder (hereinafter in this clause referred to as the present 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.”

16. Section 3 defines various expressions. Section 3 (1) defines ‘illegally acquired property’ which reads as follows:

“S. 3(1). In this Act, unless the context otherwise requires,—

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

(i) any property acquired by such person, whether before or after the commencement of this Act,

- A wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force relating to any matter in respect of which Parliament has power to make laws; or
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- (ii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets in respect of which any such law has been contravened; or
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- (iii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved and which cannot be shown to be attributable to any act or thing done in respect of any matter in relation to which Parliament has no power to make laws; or
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- E (iv) any property acquired by such person, whether before or after commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property referred to in sub-clauses (i) to (iii) or the income or earnings from such property ; and includes-
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- (A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;
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(B) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings therefrom;”

17. Section 4 prohibits holding of illegally acquired property which reads as follows :

“S. 4. Prohibition of holding illegally acquired property.—
(1) As from the commencement of this Act, it shall not be lawful for any person to whom this Act applies to hold any illegally acquired property either by himself or through any other person on his behalf.

(2) Where any person holds any illegally acquired property in contravention of the provision of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Act.”

18. Section 6 provides for issuance of show cause notice before forfeiture of illegally acquired property while Section 7 provides for passing of final orders in that behalf. These provisions read as under:-

“S.6. - Notice of forfeiture.—(1) If, having regard to the value of the properties held by any person to whom this Act applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, any other information or material available to it as a result of action taken under section 18 or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the sources of his income,

A earnings or assets, out of which or by means of which he
has acquired such property, the evidence on which he
relies and other relevant information and particulars, and
to show cause why all or any of such properties, as the
B case may be should not be declared to be illegally
acquired properties and forfeited to the Central
Government under this Act.

(2) Where a notice under sub-section (1) to any person
specifies any property as being held on behalf of such
C person by any other person, a copy of the notice shall also
be served upon such other person.”

“S.7.- Forfeiture of property in certain cases.—(1) The
competent authority may, after considering the explanation,
if any, to the show-cause notice issued under section 6,
D and the materials available before it and after giving to the
person affected (and in a case where the person affected
holds any property specified in the notice through any other
person, to such other person also) a reasonable
opportunity of being heard, by order, record a finding
E whether all or any of the properties in question are illegally
acquired properties.

(2) Where the competent authority is satisfied that some
of the properties referred to in the show-cause notice are
F illegally acquired properties but is not able to identity
specifically such properties, then, it shall be lawful for the
competent authority to specify the properties which, to the
best of its judgment, are illegally acquired properties and
record a finding accordingly under sub-section(1).

(3) Where the competent authority records a finding under
this section to the effect that any property is illegally
G acquired property, it shall declare that such property shall,
subject to the provisions of this Act, stand forfeited to the
Central Government free from all encumbrances.

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(4) Where any shares in a company stand forfeited to the Central Government under this Act, then the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.”

19. Section 8 provides that burden of proving that property specified in the notice served under Section 6 is not illegally acquired property shall be on the person affected.

20. Section 11 declares transfers of properties specified in the notice issued under Section 6 null and void when such transfers are effected after the issuance of notice. Section 11 reads as follows :

“11. Certain transfers to be null and void.—Whereafter 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 purpose 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.”

21. Section 19 makes a provision for taking possession of the property which has been declared to be forfeited to the Central Government and where the person affected as well as any other person who may be in possession of the property fails to surrender or deliver possession. Section 19 reads as under :

“S. 19. Power to take possession.—(1) Where any property has been declared to be forfeited to the Central Government under this Act, or where the person affected has failed to pay the fine due under sub-section (1) of section 9 within the time allowed therefor under sub-section (3) of that section, the competent authority may order the

A person affected as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the competent authority or to any person duly authorised by it in this behalf within thirty days of the service of the order.

B (2) If any person refuses or fails to comply with an order made under sub-section (1), the competent authority may take possession of the property and may for that purpose use such force as may be necessary.

C (3) Notwithstanding anything contained in sub-section (2), the competent authority may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the service of any police officer to assist the competent authority and it shall be the duty of such officer to comply with such requisition.”

22. The provisions of SAFEMA are stringent and drastic in nature. They are designed to discourage law breaking and directed towards forfeiture of illegally acquired properties. One of the concepts that centres around the provisions of SAFEMA is to reach properties acquired illegally by the persons who are covered by Clauses (a) to (e) of Section 2(2). The provisions of SAFEMA are intended to apply to any property acquired by persons covered by Clauses (a) to (e) of Section 2(2), whether before or after the commencement, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force. However, SAFEMA is not applicable to holder of any property under Section 2(2)(e) who proves that he is a transferee in good faith for adequate consideration. The question that arises for consideration in this appeal is, whether appellants who purchased the subject flat during pendency of forfeiture proceedings are entitled to an opportunity to prove that they are transferees in good faith for adequate consideration.

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23. In *Amratlal Prajivandas*¹, a 9-Judge Bench of this Court extensively considered the scheme and the provisions of SAFEMA and the Act has been held to be constitutional. The observations in para 44 of the Report in *Amratlal Prajivandas*¹, upon which heavy reliance has been placed by the learned senior counsel for the appellants, were made by this Court while dealing with the question, whether the application of SAFEMA to the relatives and associates of detenu was violative of Articles 14,19 and 21? It was submitted on behalf of the petitioners therein that the relatives or associates of a person falling under Clause (a) or Clause (b) of Section 2(2) of SAFEMA might have acquired properties of their own, could be by illegal means, but there was no reason why those properties be forfeited under SAFEMA just because they were related to or were associates of the detenu or convict. This Court held that the relatives or associates were brought in only for the purpose of ensuring that the illegally acquired properties of the convict or detenu, acquired or kept in their names, do not escape the net of SAFEMA. It was further observed that it was not unknown that persons indulging in illegal activities screen the properties acquired from such illegal activities in the names of their relatives and associates, sometimes they transfer such properties to them with an intent to transfer the ownership and title and it was immaterial how such relative or associate held the properties of convict/detenu, whether as a benami or a mere name-lender or as a bona fide transferee for value or in any other manner. Where a person is relative or associate as defined under SAFEMA, he or she cannot put forward any defence on proof of the fact that the property was acquired by the detenu, whether in his own name or in the name of his relatives or associates. The Court allayed the apprehension that the independently acquired properties of such relatives or associates could be forfeited even if they were in no way connected with the convict/detenu. This Court then made the observations, 'So far as the holders (not being relatives and associates) mentioned in Section 2(2)(e) are concerned, they are dealt with on a separate footing. If such

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A person proves that he is a transferee in good faith for consideration, his property – even though purchased from a convict/detenu – is not liable to be forfeited”. We are afraid these observations have no application to a transferee who has purchased illegally acquired property defined under Section 3 from a detenu/convict and/or his relative or associate after issuance of notice under Section 6 of SAFEMA. Section 2(2)(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 such holder proves that he is a transferee in good faith for adequate consideration. The holder talked of in Section 2(2)(e) does not cover a holder who is a transferee of the property after issuance of notice under Section 6. It is so because Section 11 makes it manifest that if any property referred to in the notice under Section 6 or under Section 10 is transferred by any mode whatsoever, such transfer shall be ignored for the purposes of proceedings under SAFEMA and if such property is subsequently forfeited under Section 7 then the transfer of such property shall be deemed to be null and void. On issuance of notice under Section 6, a moratorium is placed on transfer of property referred to in the notice. Any transfer of such property (the property referred to in Section 6 notice) is prohibited.

24. In *Aamenabai Tayebaly*², this Court had expressly held that the transaction of transfer effected after the issuance of notice under Section 6 is of no legal consequence and such transfer does not confer any title on the transferee. *Aamenabai Tayebaly*² was a case where one Talab Haji Hussein Sumbhania was detained under Section 3(1) of COFEPOSA by an order dated 2.4.1976. Before the detention order, in February, 1975, Tahira Sultana, second wife of Talab Haji Hussein Sumbhania purchased a flat in Mumbai. On 15.2.1977, a notice was issued by the Competent Authority under Section 6(1) of SAFEMA to Tahira Sultana calling upon her to show cause why the said flat should not be forfeited as the illegally acquired property of the COFEPOSA detenu, her

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husband. On 12.10.1977, a forfeiture order relating to that flat was passed under Section 7. The said order was challenged by her in the Bombay High Court. She undertook before the High Court not to alienate the said flat. However, on 30.7.1981, Tahira Sultana sold the said flat to Tayab Ali in breach of the undertaking given to the High Court. Tayab Ali received an information on 5.11.1982 that the flat purchased by him was already forfeited by the Central Government and based on that information he filed a writ petition before Bombay High Court on 13.12.1982. Tayab Ali raised the plea that he was a bona fide purchaser for value without notice. The High Court dismissed the writ petition filed by Tayab Ali and consequently the order of the Competent Authority forfeiting the flat was confirmed. The matter reached this Court at the instance of successor in interest of Tayab Ali. In the backdrop of these facts, this Court referred to Section 11 of SAFEMA (Pgs. 713-714) and then proceeded to hold as under:

“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’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 purchase. It got confirmed by the Bombay High Court ultimately when the Miscellaneous 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 SLP filed by her in this Court was also dismissed. We may also note that as the Miscellaneous Petition No. 1680 of 1977 was withdrawn on 19-6-1995 and ultimately the forfeiture order came to be confirmed in the subsequent Writ Petition No. 1527 of 1995 on 21-8-1995, the

A 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 effect 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....."*

D (Emphasis Supplied)

25. The above position wholly and squarely applies to the present case. Admittedly, SAFEMA was applicable to both vendors here. One of the vendors, a detenu, who was covered by Section 2(2)(b), was issued notice way back on 8.12.2003 under Section 6(1) of SAFEMA. The other vendor, wife of the detenu, was also issued notice under Section 6(1) in 2004 once it transpired that she held 50% share in the said flat. Both vendors were served with notices under Section 6(1) before transaction of sale in favour of the appellants. After the issuance of notices under Section 6(1) of SAFEMA to the vendors, the transaction of sale in favour of the appellants has to be ignored by virtue of Section 11 and on passing of the order of forfeiture under Section 7, the sale in favour of the appellants had become null and void. The order of forfeiture dated 23.06.2005 under Section 7 of SAFEMA relates back to the issuance of first notice under Section 6(1) to one of the vendors.

26. Section 11 is unequivocal and its object is clear. It intends to avoid transfer of property by the persons who are covered by clauses (a) to (e) of sub-section (2) of Section 2

during the pendency of forfeiture proceedings. The provision says that for the purposes of proceedings under the Act, transfer of any property referred to in the notice under Section 6 or under Section 10 shall be ignored. In respect of a transfer after issuance of notice under Section 6, the property referred to therein, the holder cannot set up plea that he is a transferee in good faith or a bona fide purchaser for adequate consideration. Such plea is not available to a transferee who has purchased the property during pendency of forfeiture proceedings.

27. Learned Additional Solicitor General referred to a decision of Madras High Court in the case of *Parvathi Bai*³. The Division Bench of Madras High Court referred to the two decisions of this Court in *Amratlal Prajivandas*¹ and *Aamenabai Tayebaly*² and after noticing the relevant provisions of SAFEMA held that the protection given to a bona fide sale under Section 2(2)(e) would not extend to a sale made subsequent to the issuance of notice under Section 6 and in violation of Section 11 of SAFEMA. We are in complete agreement with the view of the Madras High Court in *Parvathi Bai*³.

28. It is true that the appellants had obtained encumbrances certificates from the Sub-Registrar prior to purchase which show that there were no encumbrances to the subject flat. It is also true that the appellants had obtained loan from Vijaya Bank, Brigade Road Branch, Bangalore for purchase of the said flat. It is a fact that sale consideration to the tune of Rs. 26 lakhs was paid directly by the Bank to the vendors after the Bank was satisfied about the title of the vendors. The appellants had also mortgaged the flat with the Vijaya Bank as a security towards loan. But unfortunately these facts are of no help to the appellants as the sale in their favour was effected after notices under Section 6(1) were issued to the vendors. Such sale has no legal sanction. The sale is null and void on the face of Section 11; it is not protected so as to

A enable the purchaser to prove that he is transferee in good faith for adequate consideration. As a matter of law, no title came to be vested in the appellants by virtue of sale-deed dated 10.02.2005 as the vendors could not have transferred the property after service of the notice under Section 6(1) and during pendency of forfeiture proceedings under SAFEMA.

B The title in the subject flat is deemed to have vested in the Central Government on or about 08.12.2003 when the first notice under Section 6(1) was issued and served on one of the vendors. The vendors ceased to have any title in the subject flat on the date of transfer i.e. 10.02.2005. They had no transferable right. The appellants cannot claim any right in the flat. In the circumstances, question of according any opportunity to the appellants to prove that they are transferees in good faith with adequate consideration does not arise.

C

D 29. In view of the above, we find no merit in the appeal. The impugned order does not call for any interference. Civil Appeal is dismissed with no order as to costs.

R.P.

Appeal dismissed.