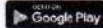




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SUPREME COURT OF INDIA (//)

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<https://apps.apple.com/in/app/supreme-court-of-india/id152>

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Case information (click here)

Diary Number	Case Number	Party Name	AOR	Court / Tribunal	Free Text
	1136				
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Case Type	Number	Year			
SPECIAL LEA ▼	8358	2011 ▼		Submit	

Diary No.- 31107 - 2011

PARVATHI BAI vs. COMPETENT AUTH.

Case Details

Diary No.	31107/2011 Filed on 28-09-2011 04:10 PM [SECTION: II-C] DISPOSED
Case No.	SLP(CrI) No. 008358 / 2011 Registered on 04-11-2011 SLP(CrI.)...CRLMP No. 021502 / 2011 Registered on 04-11-2011
Present/Last Listed On	
Status/Stage	DISPOSED () (Disposal Date: 18-11-2011, Month: 11, Year: 2011) JUDGES: HON'BLE MR. JUSTICE ASOK KUMAR GANGULY, HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
Disp.Type	Dismissed
Category	1416-Criminal Matters : Criminal matters relating to preventive detention, TADA/POTA & national security-COFEPOSA-SAFEMA
Act	
Petitioner(s)	1 PARVATHI BAI
Respondent(s)	1 COMPETENT AUTH.
Pet. Advocate(s)	AJAY SHARMA (Dead / Retired / Elevated)
Resp. Advocate(s)	
U/Section	

Indexing

Earlier Court Details

Tagged Matters

Listing Dates

Interlocutory Application / Documents

Court Fees

Notices

Defects

Judgement/Orders

Mention Memo

Restoration Details

ITEM NO.10

COURT NO.9

SECTION 11A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl) No(s).8358/2011

(From the judgement and order dated 01/07/2011 in WA No. 967/2009 of The HIGH COURT OF MADRAS)

PARYVACHI BAI

Petitioner(s)

VERSUS

COMPETENT AUTH.

Respondent(s)

(With appln(s) for ex-Parte stay and office report)

Date: 18/11/2011 This Petition was called on for hearing today.

FORAM :

HON'BLE MR. JUSTICE ASOK KUMAR GANGULY
HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR

or Petitioner(s) Mr. K. Kumar, Sr. Adv.
Mr. Ajay Sharma, Adv.
Ms. Neelam Sharma, Adv.
Mr. Vivek Mishra, Adv.

or Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

The Special Leave Petition is dismissed.

On the prayer of the petitioner's counsel, liberty is given to the counsel for the petitioner to file Review Petition before the High Court according to law.

We do not express any opinion on the merits of such application, if filed.

(KUSUM SYAL)
SR.P.A

(VINOD KULVI)
COURT MASTER

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2011

CORAM:

THE HONOURABLE MR. JUSTICE D. MURUGESAN
AND
THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

W.A.No.967 of 2009

The Competent Authority
SAFEM (FOP) and NDPS Acts
"UTSAV", No.64/1, G.N.Chetty Street
T. Nagar, Chennai-600 017.

..Appellant/Respondent

-Vs.-

Parvathi Bai

..Respondent/Petitioner

Prayer:- Writ Appeal under clause 15 of the Letter Patent against the order dated 11.11.2008 in W.P.No.31869 of 2003 on the file of the Court. Petition presented under Article 226 of the Constitution of India for the issuance of writ of Certiorari to call for records relating to the order of respondent dated 13.10.2003 F.No.OCA/MDS/1747/78 and quash the same.

For Appellant : Mr.S.Haja Mohideen Gisthi
BCGSC
For Respondent : No appearance

J U D G M E N T

K.K.SASIDHARAN, J

This appeal, at the instance of the competent authority under the Smugglers and Foreign Exchange Manipulators (Forfeiture Property) Act, 1976 challenges the order dated 11 November, 2008 W.P.No.31869 of 2003, setting aside the order of forfeiture.

The facts:

2. The property, which is the subject matter of this appeal initially purchased by Mrs.Sulaikha Beevi, wife of Mr. K.K.Sheik Dawood. The said Sheik Dawood was involved in proceedings under Conservation of Foreign Exchange and Prevention of Smugglers Activities Act, 1974 and he was detained on several occasions by Customs department. The department found that it was only with money contributed by the detenu, Sulaikha Beevi purchased

property. Therefore, proceedings were initiated to confiscate the property.

3. The Competent Authority issued a notice to Mrs. Sulaika Beevi under Section 6 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as "SAFEMA") on 21 October, 1978. She received the notice on 31 October, 1978. The Competent Authority ultimately passed an order under Section 7(1) of SAFEMA on 24 February, 1995. The said order has become final.

4. The Competent Authority as per notice dated 13 October, 2003 directed Smt. Sulaikha Beevi to surrender the property. The said notice was challenged before the writ Court in W.P.No.31869 of 2003 at the instance of the respondent. Before the learned Single Judge, the respondent contended that she was a bona fide purchaser for valuable consideration and though the sale deed was executed subsequent to the notice under Section 6 of SAFEMA, payments were made even before. The purchase was not with the knowledge of the proceedings. It was her further contention that she is entitled to the benefit of Section 2(2)(e) of SAFEMA as she is a bona fide purchaser for value. Therefore, the order passed by the Competent Authority under Section 7(1) of SAFEMA behind her back is unsustainable.

Views of learned Judge:

5. The learned Single Judge allowed the writ petition mainly on the ground that payments were made on various dates commencing from January, 1978 and ending with 8 January, 1978. Therefore, consideration was paid before the initiation of proceedings on 21 October, 1978. In view of the payment of sale consideration even before the notice under Section 6(1) of SAFEMA, the sale made on 13 November, 1978 cannot be construed to be a transaction subsequent to the initiation of proceedings. Accordingly, the order was quashed.

6. Dis-satisfied with the order, passed by the writ Court, the Competent Authority has come up by way of this Intra Court appeal.

Submissions:

7. The learned Senior Central Government Standing Counsel contended that the sale in question was made only after the commencement of proceedings under Section 6(1) of SAFEMA and as such it was an invalid sale. It was his further contention that the original land owner was aware of the proceedings and knowing fully well, she sold the property and therefore, the order passed against her is binding on the transferee. In any case, according to the learned counsel, the sale is hit by Section 11 of SAFEMA and therefore, the learned Single Judge was not correct in quashing the

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proceedings.

Discussion:

8. The proceedings under SAFEMA was initiated against Mrs.Sulaikha Beevi, wife of detenu K.K.Sheikh Dawood and it was commenced by issuing notice under Section 6 of SAFEMA. Notice of forfeiture issued on 21 October, 1978 was accompanied by reasons, which actually weighed with the Competent Authority to initiate action. The addressee received the notice on 31 October, 1978. It was only thereafter, the respondent purchased the property by way of a sale deed executed on 13 November, 1978.

9. The notice dated 21 October, 1978 was challenged by the land owner Mrs.Sulaikha Beevi and her husband K.K.Sheikh Dawood before this Court in W.P.No.333 of 1979. The writ petition was dismissed on 18 July, 1994 following the judgment of the Supreme Court in Attorney General for India v. Amratlal Prajivandas and Others (JT 1994(3) Supreme Court 583) upholding the constitutional validity of SAFEMA. The land owner was given time to file her objections and the Competent Authority was directed to decide the matter on merits and as per law.

10. Thereafter, the Competent Authority considered the matter. Though Mr. Sheikh Dawood appeared before the Competent Authority, Mrs. Sulaikha Beevi, failed to appear before the authority. The Competent Authority considered the explanation given by Mr.Sheikh Dawood and the deposition of Mrs. Sulaikha Beevi and rejected the same after indicating sufficient reasons. The order has become final. In short, the order of Forfeiture dated 24 February, 1995 had attained finality.

11. Before the writ Court, the learned counsel for the respondent relied on Section 2(2)(e) of SAFEMA in support of his contention that the respondent was a bona fide transferee in good faith for adequate consideration and as such, proceedings cannot be initiated in respect of the said property. Though the learned Single Judge has not considered the said issue, we consider it fit and proper to decide the said question even though there was no appearance on behalf of the respondent during the course of hearing the writ appeal.

The statutory provisions:

12. Section 2(2)(e) reads thus:

"2. Application:- (1) The provisions of this Act shall apply only to the persons specified in sub-section (2)

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(2) The persons referred to in sub-section (1) are the following namely:-

(a) to (d)

(e) any holder (hereinafter in this clause referred 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."

13. Section 11 invalidates transfer of property pending proceedings for forfeiture. It reads as follows:

"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."

The issue:

14. The question is whether a transferee of property, who purchased the property subsequent to the issue of forfeiture notice under Section 6 of SAFEMA can take advantage of this provision to contend that she is a transferee in good faith for adequate consideration.

15. Section 2(2)(e) was incorporated with a view to save the property purchased by an innocent purchaser, before initiating proceedings under SAFEMA. It was not intended as a protective umbrella to those, who have made purchases subsequent to the initiation of proceedings.

16. Section 11 was introduced to avoid transfer of subject property during the pendency of forfeiture proceedings. In case, transfers are recognised during the enquiry stage, subsequent purchasers should be impleaded and the competent authority has to decide the question of good faith. Therefore, a free hand was given to the competent authority to ignore all such transfers made after the issuance of notice under Section 6(1) of SAFEMA, meaning thereby

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he is not bound to issue notice to such subsequent purchasers, whether it be a bona fide or mala fide transaction.

17. The transfers made after notice under Section 6(1), though a non-cognizable transaction originally, would become a null and void transaction, the moment forfeiture order is passed under Section 7 of SAFEMA. When the transaction is deemed to be null and void, there is no question of considering the good faith or valuable consideration.

18. Section 7(3) of SAFEMA provides for statutory vesting. The finding regarding illegal acquisition of property and the consequential declaration of forfeiture by the competent authority would result in statutory transfer of ownership of property. The Central Government would thereafter become the absolute owner of the property free from all encumbrances.

19. The procedure for forfeiture would commence by the issue of notice under Section 6(1) of SAFEMA and it would close by passing an order under Section 7. The order of forfeiture passed by the competent authority would relate back to the date of issue of notice under Section 6. Therefore, Section 7 has to be read along with Sections 6 and 11 and a combined reading of these provisions would reveal the real spirit behind Section 11 of SAFEMA. The transfer pending proceeding would be an irregular transaction not binding on the competent authority. When the proceedings culminate in passing an order of forfeiture, the transfer of property pending forfeiture proceeding would become a null and void transaction. Therefore, till a declaration is made under section 7(3), after recording a finding under sub clause 2 of Section 7, the transfer pending proceeding would not constitute a tainted sale, void ab initio.

20. The Supreme Court in *Aamenabai Tayebaly v. Competent Authority under Safema*, (1998) 1 SCC 703, observed that transfer of property pending proceedings under Section 6 or 10 of SAFEMA and prior to the order of forfeiture shall be treated to be null and void.

21. Section 11 of SAFEMA invalidates all those transactions which have taken place subsequent to the notice under Section 6 or under Section 10. Therefore Section 2(2)(e) has to be read in the light of Section 11 of SAFEMA. This gives a clear indication that only those transactions which were made prior to the initiation of proceedings alone would be saved and not such of those transactions which have taken place subsequent to the issuance of notice under Section 6, proposing to forfeit the property. Since the transfer made after initiation of forfeiture proceedings under Section 6 is statutorily invalidated, there is no question of saving those transactions by invoking Section 2(2)(e) of SAFEMA. We are, therefore, of the view that the protection given to a bona fide sale would not extend to a sale made subsequent to the issuance of notice

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under Section 6 and in violation of Section 11 of SAFEMA.

22. We, therefore, hold that it is not open to a transferee of property hit by Section 11 of SAFEMA to resist the forfeiture proceedings and challenge the order under Sections 7(2) and 7(3) on the ground that he is a bona fide purchaser and the transaction was made in good faith for adequate consideration and that he is entitled to the benefits of Section 2(2) (e) of SAFEMA.

23. The learned Single Judge quashed the possession notice dated 13 October, 2003 solely on the ground that the purchase price paid in instalments were sufficiently earlier to the issuance of notice under Section 6 of SAFEMA.

24. We have perused the sale deed executed in favour of the respondent on 13 November, 1978. There is a recital in the said document that payments were made on five occasions and the last of such payment was made on 8 January, 1978. The payments were all made by way of cash and it was not through draft or cheque. Therefore, it was nothing but a self serving statement. The recitals regarding payment of consideration, much before the execution of sale deed was made with a definite purpose. It was only to avoid the statutory proceedings and to save the document from the statutory invalidation, such a statement was made in the sale deed.

25. Even though the entire sale consideration was paid as on 8 January, 1978, the document was registered only on 13 November, 1978. The factum of registration on 13 November, 1978 after receiving notice under Section 6 on 31 October, 1978 clearly proves the lack of bona fides in the transaction. In case payments were made earlier, nothing prevented the vendor to execute the document in favour of the respondent immediately after the receipt of final payment. No prudent purchaser would wait indefinitely to get the sale deed registered, after making full payments. The very fact that the document was executed after receiving the notice on 31 October, 1978 clearly shows that the sale deed was executed with full knowledge of the proceedings. This aspect was not considered by the learned Single Judge.

26. Even otherwise, the date of payment of sale consideration is immaterial. The date of execution of the sale deed alone is material. The sale in question was for a sum of Rs.18,000/-. Therefore the document must compulsorily be registered. So the material date, for all practical purposes is the date of registration of sale deed.

27. The sale deed was executed only on 13 November, 1978 about twenty four days after issuing notice under Section 6 and twelve days after receipt of the said notice by the land owner. Therefore, the recitals regarding earlier payments were made with an intention to over come the statutory invalidation as provided under Section 11 of

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SAFEMA.

28. We are not inclined to accept the views expressed by the learned Single Judge regarding the payment of consideration before the notice under Section 6 as a ground to set aside the order of confiscation.

29. The notice dated 21 October, 1978 was challenged by Mrs. Sulaikha Beevi represented by her husband in W.P.No.333 of 1979. The respondent was not a party to the said writ petition. While granting interim order on 5 February, 1979, this Court restrained the writ petitioner from alienating the property. Even though sale was made as early as on 13 November, 1978, the factum of such sale was not disclosed before the writ Court. The writ petition was disposed of on 18 July, 1994. It was only thereafter i.e. on 24 February, 1995, the order under Section 7(1) of SAFEMA was issued. This was followed by an order under Section 19(1) on 28 October, 1998, directing the land owner to surrender property. Even then the property was not surrendered. Therefore, the impugned notice dated 13 October, 2003 was issued to hand over vacant possession of the property within thirty days. It was only the said notice which was challenged by the respondent in the writ petition.

30. The respondent has no case that she was not aware of these proceedings. The respondent was sitting on the fence and she was watching the entire proceedings. The fact that Mrs. Sulaikha Beevi challenged the proceedings dated 21 October 1978 by filing writ petition in W.P.No.333 of 1979 even after the sale in favour of the respondent indicates that it was a fraudulent transaction intended to defeat the statutory proceedings. Mrs. Sulaikha Beevi has no interest in the property subsequent to 13 November, 1978. Therefore, the fact that she challenged the proceedings thereafter and obtained an interim order shows that the property continues to be in her possession only and the sale was only a make-belief affair to get over the proceedings initiated by the Competent Authority.

31. The order impugned in the writ petition was only a possession notice. It was nothing but a consequential proceedings issued by the statutory authority pursuant to the final order passed under Section 7(1) of SAFEMA on 24 February, 1995. The order passed by the Competent Authority contains sufficient reasons justifying the order of forfeiture. The said proceedings has become final. It is not open to the transferee, whose sale was statutorily invalidated to challenge the possession notice. The respondent has been banking upon Section 2(2)(e) to relieve the property from forfeiture proceedings. Since the sale was made only after initiation of proceedings under Section 6, it is void under Section 11 of SAFEMA. Therefore, Section 2(2)(e) of SAFEMA cannot be relied on to avoid the sale as the same being statutorily invalidated under Section 11 of SAFEMA.

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32. The learned Judge has incidentally referred to the permission granted by the Reserve Bank of India on 15 April, 1978 to sell the property. The land owner appears to have taken permission on account of her Malaysian nationality. The permission obtained from the Reserve Bank of India cannot be taken as a factor to save the property from the legal bar contained under Section 11 of SAFEMA.

33. The landlady was given an opportunity to prove that the purchase of property was not with tainted money. However she miserably failed in her attempt to save the property.

34. The burden of proving that the property is not an illegally acquired property is on the person affected. Section 8 of SAFEMA gives an initial statutory presumption that the property shown in the notice under Section 6(1) was an illegally acquired property. That is why the competent authority was required to record his reason regarding illegal acquisition of property. The legislature wanted the person affected to prove that it was not an illegally acquired property rather than the authority proving that it was purchased with the help of tainted money. The burden of proof never shifts on the authority at any stage of the proceeding, after the reasoned under Section 6(1) of SAFEMA.

35. The writ petition filed by the respondent is liable to be rejected for more than one reason. The only challenge was to the notice issued under Section 19 of SAFEMA proposing to take possession of property. This was only a consequential action pursuant to the order passed under Section 7(1) of SAFEMA. Admittedly, the vendor of the respondent has not challenged the proceedings. Similarly, there was no challenge to the forfeiture order at the instance of the respondent also. The substantive order has become final. The consequential action to take possession was nothing but an execution proceedings. The notice regarding possession cannot be set aside unless the order under Section 7(1) is set aside in the manner known to law.

36. Therefore, unless and until the statutory order made under Section 7(1) of SAFEMA is set aside, the respondent cannot maintain the writ petition, challenging the consequential proceedings issued under Section 19 of the said Act. Therefore, the writ petition itself should have been dismissed on the preliminary point.

Conclusion:

37. On a careful consideration of the entire factual matrix, we are of the considered view that the learned Single Judge was not justified in quashing the impugned possession notice. Accordingly, the order dated 13 October, 2003 is set aside and the writ petition is dismissed.

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38. In the upshot, we allow the writ appeal. No costs.

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Asst. Registrar

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Sub Asst. Registrar
Sub Asst. Registrar

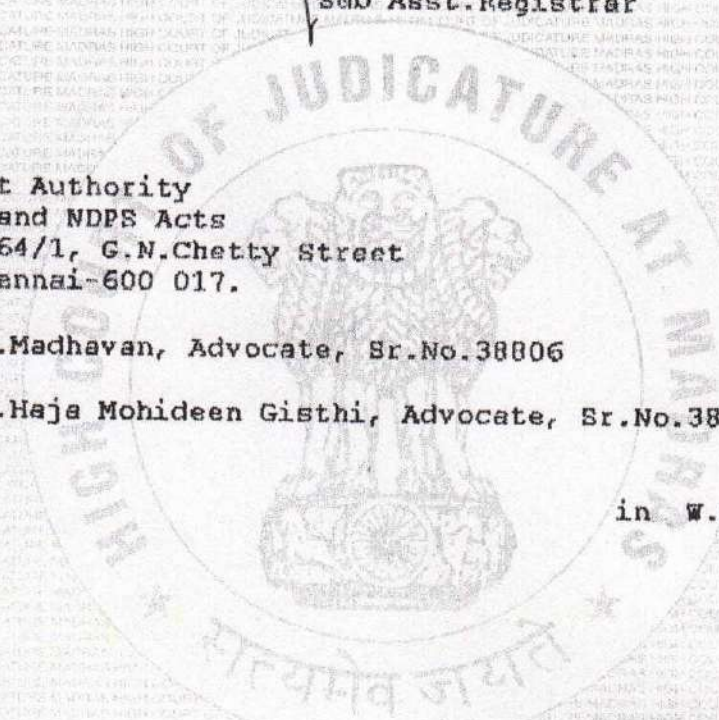
Tr/
To
The Competent Authority
SAFEM (FOP) and NDPS Acts
"UTSAV", No.64/1, G.N.Chetty Street
T. Nagar, Chennai-600 017.

1 cc to Mr.P.Madhavan, Advocate, Sr.No.38806

1 cc to Mr.S.Haja Mohideen Gisthi, Advocate, Sr.No.38359

Judgment
in W.A.No.967 of 2009

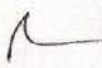
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HIGH COURT OF JUDICATURE	
MADRAS	
No.	38359
Application Copy application made	11/7/21 20d/
Application Returned	200
Application Represented	200
Application made ready	11/12/21 20d/
Application Delivered	12/7/21 20d/
 12-7-2011 Section Officer Current Section	

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Case Details

Filing Number	REV.APPL /87348/2011	Filing Date	18-10-2011
Registration Number	REV.APPL /11/2012	Registration Date	20-01-2012
CNR Number	HCMA01-117260-2012		

Case Status

First Hearing Date	07th March 2012
Decision Date	20th March 2012
Case Status	CASE DISPOSED
Nature of Disposal	--DISMISSED
Court Number and Judge	
Bench Type	Division Bench
Judicial Branch	JUDICIALSECTION
State	TAMIL NADU
District	Chennai

Petitioner and Advocate

1) MRS.PARVATHI BAI
Advocate- M/S P.MADHAVAN

Respondent and Advocate

1) THE COMPETENT AUTHORITY
Advocate - MR.S.HAJA MOHIDEEN GISTHI,
FOR SOLE RESPONDENT

Category Details

Category	CIVIL MISCELLANEOUS PETITION (177)
Sub Category	Review Petition - Order 47 Rule 1 & 2, S114 CPC (4)

Subordinate Court Information

Court Number and Name	: HIGH COURT, MADRAS
Case Number and Year	: wa - 0000967 - 2009
	: --
	state :
Case Decision Date	: District :

History of Case Hearing

Cause List Type	Judge	Business On Date	Hearing Date	Purpose of hearing
	Honourable Mr Justice P.P.S. JANARTHANA RAJA , Honourable Mr Justice D.MURUGESAN		20-03-2012	