

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 5946 of 2000

Reserved on: July 8, 2010  
Decision on: July 26, 2010

MAHESH KANTILAL ZAVERI ..... Petitioner  
Through: Mr. Anand Nandan and  
Mr. Amit Pawan, Advocates

versus

UNION OF INDIA ORS ..... Respondents  
Through: Mr. Atul Nanda with  
Ms. Sugandha, Advocate for UOI.  
Mr. Rajiv Kapur, Advocate for SBI.

**CORAM: JUSTICE S. MURALIDHAR**

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

**JUDGMENT**  
**26.07.2010**

**CM APPL No. 12809/2009 (for delay)**

1. Having heard learned counsel for the parties and for the reasons stated therein, the delay in filing the application for restoration is condoned.
2. The application is disposed of.

**CM APPL No. 12808/210 (for restoration)**

3. Having heard learned counsel for the parties and for the reasons stated therein, the petition is restored to its file.
4. The application is disposed of.

**WP (Civil) No. 5946 of 2000 & CM APPLs 8853/10 (for amendment) & 8854/10 (for delay)**

5. The challenge in this petition is to an order dated 14<sup>th</sup> August 2000 passed by the Appellate Tribunal for Forfeited Property ('the Appellate Tribunal') dismissing the Petitioner's Appeal No. 48/B/BOM/99 thereby affirming an order dated 22<sup>nd</sup> November 1999 passed by the Competent Authority, Mumbai under Sections 7 and 19 of the Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 ('SAFEMA').

5a. The Petitioner states that he started his proprietary concern M/s. Calcutta Art Jewellers on 1<sup>st</sup> January 1982. He states that he purchased a residential flat being Flat No. 7, 3<sup>rd</sup> Floor, Tirath Apartments, New Andheri Co-operative Society, Andheri (West) for a consideration of Rs.5.05 lakhs. He states that on 16<sup>th</sup> January 1986 he sold a flat at Jasmine Apartments, 31 SV Road, Andheri (West) for Rs. 5 lakhs.

6. On 3<sup>rd</sup> June 1991 a detention order was passed against the Petitioner under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ('COFEPOSA'). It is stated that on the report dated 5<sup>th</sup> August 1996 of the Advisory Board this detention order was revoked. A show cause notice is stated to have been issued to the Petitioner and his wife on 12<sup>th</sup> September 1995 under Section 6 SAFEMA. After response to the show cause notice, on 12<sup>th</sup> July 1995 a consequential order was passed by the Competent Authority under the SAFEMA forfeiting the properties listed out in the show cause notice on the ground that they were illegally acquired. Among the properties forfeited were Rs. 36,90,000/- and Rs. 36,80,000/- deposited with the State Bank of India ('SBI'), standing to the

credit of M/s. Italian Chain Manufacturing Co. and M/s. A.M. Zaveri & Co. respectively. Aggrieved by the aforementioned order dated 12<sup>th</sup> July 1995 the Petitioner, his wife and State Bank of India filed three separate appeals before the Appellate Tribunal. While the appeals were pending a second detention order dated 5<sup>th</sup> October 1995 came to be passed against the Petitioner under Section 3(1) COFEPOSA.

7. The Appellate Tribunal which heard three appeals passed an order dated 10<sup>th</sup> December 1997 setting aside the order of the Competent Authority by holding that the Appellants did not answer the description of “person” under Section 2 SAFEMA. It is observed that the Competent Authority could not have relied upon the second detention order dated 5<sup>th</sup> October 1995 which had not been passed by then. As regards the appeal filed by the SBI the Appellate Tribunal was of the view that it could not entertain the said appeal and that the SBI’s remedy lay elsewhere.

8. On 31<sup>st</sup> December 1997 a show cause notice was issued by the Competent Authority under Section 6(1) SAFEMA to the Petitioner asking him to explain the source of his income, earnings or assets out of which he had acquired the properties mentioned in the schedule enclosed with the notice.

The properties listed out in the schedule to the said notice were:

“(a) Amount of Rs.36,90,000/- standing to the credit of M/s Italian Chain Mfg. Co. with State Bank of India, Overseas Branch, Cuffe Parada Mumbai.

(b) Amount of Rs.36,80,000/- lying to the credit of M/s A.M. Zaveri & Co. with State Bank of India, Overseas Branch, Cuffe Parade, Mumbai.

(c) Amount of Rs.77,937/- lying to the credit of M/s A.M. Zaveri & Co. in account CD No. 11447 at Bank of India, Kalbadevi Branch, Mumbai.

(d) Amount of Rs.75,279/- lying to the credit of M/s Italian Chain Mfg. Co. in account No. CD 21244 at Bank of India, Kalvadevi Branch, Mumbai.

(e) Amount of Rs.1,726/- lying to the credit of M/s A.M. Zaveri & Co. in account No. 101899 at Allahabad Bank, Juhu Vile Parle Branch, Mumbai.

(f) Amount of Rs.1,449.69 lying to the credit of M/s. Italian Chain Mfg. Co. in account No. 600117 at Allahabad Bank, Juhu Vile Parle Branch, Mumbai.

(g) Contents of locker No. 206 standing in the name of Mrs. Anjana Mahesh Nanda (Zaveri) and Shri Mahesh Kantilal Nanda (Zaveri) at Allahabad Bank, Juhu Vile Parle Branch, Mumbai.

(h) Contents of locker No. 933, Chira Bazar Branch of Bank of Baroda, Mumbai in the name of Shri Mahesh Kantilal Zaveri & Smt. Anjana Mahesh Zaveri.

(i) Amount of Rs. 10,271.62 lying in S.B. A/c No. 10/4948 in the name of Anjana M. Nanda (Zaveri) at Allahabad Bank, Juhu Vile Parle Branch, Mumbai.

(j) Residential flat No. 7-B, 3<sup>rd</sup> floor, Tirath Apartments, New Andheri, C.H.S. Limited, Lallubhai Park, Andheri (W), Mumbai in the name of Shri Mahesh Kantilal Zaveri.

(k) Right, title and interest in business known as M/s A.M. Zaveri & Co. and M/s. Italian Chain Mfg. Co. with premises,

goodwill, machinery, furniture and fittings and other moveable assets in the premises situated at 188-A, Bhimraowadi, Thakurdwar, Girgaum, Mumbai – 400 002.”

9. The notice stated that the Competent Authority had “reason to believe that the funds for acquiring these assets have come from illegal sources of the AP No. 1 (the Petitioner herein) who has been indulging in foreign exchange manipulations involving crores of rupees as is evident from the investigations made by the Enforcement Directorate (FERA), Mumbai.”

10. Meanwhile, on 10<sup>th</sup> January 1996 the Advisory Board upheld the validity of the second detention order dated 5<sup>th</sup> October 1995 against the Petitioner by the Government of India under Section 3 COFEPOSA. The Petitioner was detained for one year from 11<sup>th</sup> October 1995 under Section 10 COFEPOSA.

11. On 22<sup>nd</sup> November 1999 the Competent Authority passed an order under Sections 7 and 19 SAFEMA holding that the properties mentioned in the notice dated 31<sup>st</sup> December 1997 were acquired by the Petitioner and his wife through prohibited means of income in terms of the Foreign Exchange Regulation Act, 1973 (‘FERA’) and Customs Act 1962 and were, therefore, illegally acquired properties. The findings of the Competent Authority were as under:

(i) The detention order dated 5<sup>th</sup> October 1995 under which the affected person had been detained for one year, had neither been revoked nor set aside. The affected persons despite having been given “enough opportunities” gave “generalised explanations about the sources of the properties” and made no effort “to explain the creation of a property from legal sources.”

(ii) The Petitioner changed his stand regarding the flat at Tirath Apartment and produced no satisfactory evidence. There was no proof to indicate availability of legal funds in the businesses of the Petitioner which were stated to have been withdrawn for acquisition of this property.

(iii) Mere filing of income and wealth tax returns with the concerned authorities was not reason enough to indicate legality of any property. The affected persons being persons covered by the provisions of SAFEMA were required to prove beyond doubt the genuineness of their sources of income. The tax authorities were primarily concerned with recovery of tax on income and may or may not make attempts to verify sources of income.

(iv) The Petitioner has been time and again proceeded against by various investigating agencies between 1985 and 1995. The quantum of income illegally generated could be perceived from the fact that the Petitioner carried out transactions of over Rs. 5 crores within a period of one and a half months.

(v) The affected persons had not discharged their obligation to prove the legality of the investments made in the firms. Further, the Enforcement Directorate proved that the Petitioner used the firms as fronts for illegal activities.

(vi) The contentions of SBI were also rejected and it was held that the proceedings under SAFEMA have an overriding effect and the deposits held by the bank were forfeitable to the Central Government free from all encumbrances.

12. Consequently, the Competent Authority directed two bank lockers mentioned at serial Nos. (g) and (h) of the list of properties to be opened in the presence of the affected persons ('APs') and in case of their failure to remain present, the lockers could be broken open and the contents taken over under a *panchnama*. The APs were directed to hand over the properties at (j)

and (k) i.e. Residential Flat No. 7-B, 3<sup>rd</sup> floor, Tirath Apartments, New Andheri Co-operative Society, Andheri (West), Mumbai as well as the premises, goodwill, machinery, furniture and fittings and other moveable properties, and the business of M/s. A.M. Zaveri & Co. and M/s. Italian Chain Mfg. Co. at Girgaum, Mumbai within a period of thirty days.

13. The appeal filed by the Petitioner against the above order was dismissed by the Appellate Tribunal on 14<sup>th</sup> August 2000. The Appellate Authority held as under:

(i) The forfeiture order dated 12<sup>th</sup> July 1995 was set aside only because the underlying detention order dated 3<sup>rd</sup> June 1991 had been set aside and had no effect on the proceedings under the detention order dated 5<sup>th</sup> October 1995 and the consequential forfeiture order of 22<sup>nd</sup> November 1999.

(ii) The question of nexus had no relevance as the property in question had been held by the detenu himself and not a relative. Under Section 8 SAFEMA, the burden of proof for property held by the detenu rested squarely on him.

(iii) In regard to documents seized by the Enforcement Directorate, the Petitioner was “assisted by very senior counsel at every step” and was aware that he could ask for copies or apply for inspection of documents. Further, from a perusal of the record it was plain that no such application was ever made nor this plea taken that the seizure of documents was a handicap in producing evidence.

(iv) The books of accounts produced had been freshly written and were incomplete in as much as neither the opening balances nor the closing balances were written in the cash book on any day. No ledger books or any list of suppliers of diamonds were ever produced.

(v) No evidence was produced to show that the cash deposits amounting to Rs. 5,20,94,900/- made in the bank account between 5<sup>th</sup> May 1995 and 9<sup>th</sup> June 1995 came from legitimate export earnings.

(vi) It was earlier stated that the only immovable property ordered to be forfeited, the flat at Tirath Apartments, was bought from the proceeds of the sale of the flat at Jasmine apartments. However, this sale was subsequent in time. Later, the Petitioner changed his stand stating that the earlier stand was “based on memory” and that the Tirath Apartment flat was acquired “from the sale proceeds of a commercial property and withdrawal from the business M/s Calcutta Art Jewellers”. However, this business was closed in 1984 and no evidence was produced to show how and from where the cash was provided by M/s Calcutta Art Jewellers.

(vii) The wealth tax returns for assessment years 1985-86, 1986-87 and 1987-88 were all filed within three weeks in November/December 1987. Even before that very nominal amounts were paid as income tax. For the year 1983-84 no income tax returns were filed. In 1984 he was put behind bars in a customs case and till the case concluded in 1987, M/s Calcutta Art Jewellers did not undertake any substantial business.

(viii) The forfeiture of the lockers was provisional and only after they were opened would the Competent Authority be able to ascertain whether they contained any property which required forfeiture.

14. The present writ petition was filed by the Petitioner challenging the order of the Appellate Authority. While notices were directed to be issued on 29<sup>th</sup> September 2000, this Court directed that the Petitioner would not, in the meanwhile, be dispossessed from the residential premises, i.e., from the flat at Tirath Apartments.

15. One of the grounds raised in the writ petition was that the detention order



dated 5<sup>th</sup> October 1995, which had been unsuccessfully challenged by the Petitioner before the Bombay High Court, was pending consideration in the Supreme Court, with leave having been granted in SLP (Cri) No. 974 of 1998 (subsequently registered as Crl. Appeal No. 354 of 1998) by an order dated 20<sup>th</sup> March 1998 and therefore, the show cause notice as well as the final order could not be said to have been validly made. It was submitted that the “reason to believe” recorded in the show cause notice dated 31<sup>st</sup> December 1997 was not *bona fide* and was based on surmises and suspicion that the properties were illegally acquired. The Petitioner claimed to have discharged the initial burden of proof to explain the sources with which the above properties were acquired. He maintained that there was no evidence to link the properties acquired by him and any alleged activities of the affected person. It was submitted that the second detention order dated 5<sup>th</sup> October 1995 was not based on any fresh material but on the same material on which the earlier detention order was based, based on which the forfeiture order of 12<sup>th</sup> July 1995 had been passed which in any event had been set aside by the Appellate Tribunal on 10<sup>th</sup> December 1997. It was, accordingly, submitted that the Petitioner could not have been proceeded against twice on the same set of allegations.

16. In reply to the writ petition, it is maintained that there was no procedural irregularity in the proceedings before the Competent Authority. It is submitted that under Section 8 SAFEMA the burden of showing that the properties listed in the show cause notice were not illegally acquired was on the person affected. Reliance is placed upon findings of the Competent Authority in the order dated 22<sup>nd</sup> November 1999.

17. It appears that after the filing of the present writ petition there have been several developments which for some reason have not been brought to the attention of this Court by the Petitioner. One such development came to the notice of this Court by an application filed by the purchasers of the property Mr. Dharmendra S. Vagashia and Mr. Ashwin S. Vagashia in their applications being CM Nos. 16131 and 16132 of 2009. These applications were for restoration of the writ petition which was dismissed for default on 8<sup>th</sup> July 2009. They informed the Court that the Petitioner mortgaged the flat at 7-B, Tirath Apartments, Andheri (West) with the United Commercial Bank ('UCO Bank'), Churchgate Branch, Mumbai in the year 2000 while obtaining financial assistance to the extent of Rs. 1 crore by depositing the original title deeds in respect of the said flat with the said Bank. It is categorically submitted that the Petitioner "signed all the relevant papers and documents while obtaining the loan from the UCO Bank". The Petitioner failed to repay the loan. Therefore, in 2005 the UCO issued a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') calling upon the Petitioner to repay the loan within sixty days failing which the UCO Bank would enforce the mortgage and put the said flat to auction to recover the loan amount.

18. The applicants further stated that the Petitioner had also agreed to sell the flat to them and had executed an agreement and handed over the possession of the said flat to the applicants in the year 2008. This was followed by initiation of proceedings under SARFAESI Act by the UCO Bank by filing an application under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal-I, Mumbai ('DRT'). The applicants apparently purchased the flat by

making payment of Rs.1,30,36,436/- pursuant to the order passed by the DRT. It is stated that the entire consideration was paid to the UCO Bank which in turn issued a sale certificate in favour of the applicants. It appears that the sale certificate has been issued upon the said purchasers paying the stamp duty.

19. Obviously all the above proceedings happened without the applicants being aware of the fact that the very same flat stood already forfeited to the Central Government pursuant to the proceedings under SAFEMA. It is stated that on and around 25<sup>th</sup> August 2009, officials from the office of the Competent Authority SAFEMA visited the flat and informed the applicants of the above proceedings. The applicants were required to vacate the premises. It is stated that despite the authorities being informed of the fact that the applicants were *bona fide* purchasers, the possession of the flat was taken over by the officials of the Competent Authority under SAFEMA. The applicants attempted to recover the possession by issuing a notice through their counsel but that did not elicit any response. In the circumstances, the applicants filed the said application for recall of the order dated 8<sup>th</sup> July 2009 dismissing the writ petition in default and allowing the applicants to prosecute the petition.

20. The said applications were dismissed by this Court on 23<sup>rd</sup> December 2009 on the ground that the original Petitioner had by then already filed an application for restoration. It was noted that the applicants were neither Petitioners nor party to the writ petition and therefore, could not seek restoration. The applications were dismissed with costs of Rs. 5,000/-. It may be noticed that thereafter, the said applicants have not filed any further

application in this Court seeking intervention or impleadment. Be that as it may, what is significant is that the above facts have not been brought to the notice of this Court by the Petitioner.

21. On 27<sup>th</sup> April 2010 the Petitioner filed an application being CM No. 8853 of 2010 seeking amendment to the petition to add grounds to challenge the actions of Respondent No. 4 SBI for having sold the gold which was forfeited from the lockers of the Petitioner with the SBI. However, even at this stage the Petitioner did not inform the Court of the above developments including mortgage of the flat to UCO Bank and its subsequent sale pursuant to the orders passed by the DRT-I Mumbai.

22. In the written submissions dated 17<sup>th</sup> July 2010 also, the Petitioner has not informed the Court of the above subsequent developments whereby he appears to have first mortgaged the property with the UCO Bank for an amount of Rs. 1 crore and thereafter sold the property to the applicants in CM Application No. 16131 of 2009. The above conduct of the Petitioner should by itself disentitle him from any relief in these proceedings.

23. Nevertheless, this Court shall proceed to examine the merits of the contentions raised by the Petitioner challenging the impugned orders of the Competent Authority and the Appellate Tribunal under the SAFEMA. The Petitioner has sought to place reliance upon decisions in *Attorney General v. Amratlal Prajivandas 1994 (5) SCC 54*, *Shanti Devi v. Union of India 1998 (73) DLT 477*, *Ashok Kumar v. Competent Authority 2001 (3) AD Delhi 121* and *Ghanshyam Dass Vaswani v. Union of India 167 (2010) DLT 434*. It is

sought to be contended that the earlier forfeiture order having been set aside by the Appellate Tribunal, there could not be a fresh round of forfeiture on the same facts. Secondly, it is contended that the Respondent was not able to establish any link between the alleged illegal activities and the holding of the property by the Petitioner. It is claimed that all the payments for the purpose of purchase of the flat No. 7-B, 3<sup>rd</sup> Floor, Tirath Apartments, Andheri (West) were made through the proprietorship concern M/s. Calcutta Art Jewellers and the documents evidencing such purchase were purportedly annexed at pages 116-117 of the paper book. The Petitioner also sought to justify sources of the other properties mentioned in the show cause notice.

24. In the first place, it requires to be noticed that the second round of forfeiture notice came to be issued under the SAFEMA consequent upon the second detention order against the Petitioner dated 5<sup>th</sup> October 1995 under the COFEPOSA. That detention order was unsuccessfully challenged by the Petitioner before the Bombay High Court. The criminal appeal filed by the Petitioner against the said order of the Bombay High Court was dismissed on 1<sup>st</sup> March 2006 by the Supreme Court by the following order:

“Heard learned counsel for the parties.

Learned counsel for the appellant submits that as the period of detention is over and the detenu is released, the appeals have become infructuous, so he may be permitted to withdraw these appeals as any consequential steps adopted pursuant to the detention order can be challenged independently by him in accordance with law. In view of the said course of the learned counsel, we dismiss these appeals as withdrawn.”

25. Consequently, with the detention order dated 5<sup>th</sup> October 1995 having

become final, it validly formed the basis for initiation of the forfeiture proceedings. Unless and until the detention order was successfully challenged by the Petitioner, he could not be heard to question the basis of the subsequent forfeiture order. This is consistent with the legal position explained in the decision of the Supreme Court in *Amratlal Prajivandas*. The decisions in *Shanti Devi v. Union of India*, *Ashok Kumar v. Competent Authority* and *Ghanshyam Dass Vaswani v. Union of India* also do not come to the assistance of the Petitioner since those cases were concerned with the forfeiture of the properties of the relatives of a detenu whose detention order stood quashed by the High Court. However, in the present petition, the Petitioner unsuccessfully challenged his detention order. The present proceedings concern his properties which were forfeited as a result thereof.

26. As explained in *Amratlal Prajivandas*, the burden of showing the sources from where the Petitioner was able to legally acquire the property in question had to be initially discharged by the Petitioner. This Court under Article 226 of the Constitution cannot possibly sift through the evidence and come to the conclusion whether such evidence produced by the Petitioner was sufficient to discharge the initial burden or not. The documents now sought to be produced by the Petitioner hardly constitute an explanation of sources of income for the purpose of purchase of the flat in question. Be that as it may, the detailed orders passed by the Competent Authority and the Appellate Tribunal on facts, have not been shown by the Petitioner to be either perverse or not based on relevant material. Given the limited scope of the powers of this Court under Article 226 of the Constitution, it is not possible to accept the submission of learned counsel for the Petitioner that the impugned orders of

the Competent Authority and the Appellate Tribunal are perverse or contrary to law.

27. This Court finds no ground to interfere in the matter. The writ petition and the pending applications are dismissed. The interim order stands vacated.

**S. MURALIDHAR, J**

**JULY 26, 2010**  
**rk**