

(2003) 12 DEL CK 0059**Delhi High Court****Case No:** CW 3040 of 2003

Smt. Kamla Bai

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Dec. 18, 2003**Acts Referred:**

- Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 - Section 3, 4, 6(2), 7(1), 7(3)

Citation: (2004) 109 DLT 237 : (2004) 72 DRJ 613 : (2004) 92 ECC 376**Hon'ble Judges:** Badar Durrez Ahmed, J**Bench:** Single Bench**Advocate:** J.S. Arora, for the Appellant; Rajendra and R.K. Chaufla, for the Respondent**Final Decision:** Allowed**Judgement**

Badar Durrez Ahmed, J.

The quashing of the order dated 22.7.2002 passed by the Competent Authority, (New Delhi) under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as SAFEMA) is sought for in the present writ petition. The impugned order dated 22.7.2002 has been passed in respect of the property bearing No. 5/34, Ram Devaji Ghali, Takhatgarh, District Pali (Rajasthan). By virtue of the said order the said property has been forfeited u/s 7(1) and 7(3) of the SAFEMA to the Central Government. The petitioner is the wife of one Popat Lal who was a detenu under COFEPOSA and in view of his activities the said Shri Popat Lal was a person covered u/s 2(2)(b) of SAFEMA. The provisions of SAFEMA we are applied to the said Shri Popat Lal and, accordingly, the properties allegedly illegally acquired by the said person were sought to be forfeited in view of the provisions of Section 3 and 4 of SAFEMA. Admittedly, the property in question stands in the name of the petitioner and not in the name of her husband (Popat Lal). The Sale Deed also shows that the property was purchased in the name of the petitioner. There is no dispute with regard to this fact.

2. The issue in the present petition is whether the said property can be made the subject matter of forfeiture without the issuance of a notice u/s 6(2) of SAFEMA and without affording an opportunity of hearing to the petitioner as required u/s 7(1) of SAFEMA?

3. The respondents and in particular the Competent Authority under SAFEMA issued a show cause notice dated 20.9.2001 u/s 6(1) of SAFEMA to the said Shri Popat Lal. Thereafter, an order dated 22.7.2002 was passed by the Competent Authority u/s 7(1) and 7(3) of SAFEMA forfeiting the said property to the Central Government. In the said order dated 22.7.2002 which is impugned herein, it is clearly indicated as under:-

"" A perusal of the copy of the registered deeds filed by the advocates along with the letter dated 20.11.01 shows that a plot was purchased for Rs.25,000/- in Ramdevji Ki Gali, Takhatgarh, Distt Pali (Rajasthan) in the name of Kamlabai from Shri Naina Rai son of Choghaji on 10/15.10.84.....""

It was also recorded in the impugned order that it was not possible to verify the source of investment in the property in question. Paragraphs 23 and 25 of the impugned order read as under:-

""23. Therefore, it is not possible to verify the source of investment in the property mentioned in the schedule. I have gone through the records and have taken into consideration all the facts on record. I have carefully considered all the facts on record at the monitoring stage and also after the issue of notice u/s 6(1) and 7(1) of the Act. Under the circumstances and keeping in view the non-cooperative attitude of the AP and the fact that the proceedings cannot be kept pending indefinitely I have no alternative but to decide the case to the best of my judgment on the basis of material available on record.

xxxx xxxx xxxx xxxx xxxx xxxx

25. In the absence of any supporting evidence, I have no other alternative but to forfeit the property of the AP as mentioned in the schedule to the notice u/s 6 (1) of the Act. Hence, in view of the provisions of Section 3(1) to (iv), the same are forfeited u/s 7(1) and (3) of the SAFEM (FOP) Act, 1976, without any encumbrances to the Central Government.""

From the above, it is clear that it is an admitted position that the property in question stands in the name of the petitioner and not in the name of the said Shri Popat Lal. It is also clear that it was not possible for the Competent Authority to verify the source of investment in the said property and that the decision of forfeiture taken by the Competent Authority was on the basis of his best judgment and in the absence of any supporting evidence. The learned counsel for the respondent has also pointed out, and, rightly so, that throughout the proceedings the said Shri Popat Lal, husband of the petitioner, held himself out as the owner of

the property. Be that as it may, the fact of the matter is that the property stands in the name of the petitioner who is the wife of the said Shri Popat Lal. She claims to be the actual owner thereof and not just a name-lender. It is clear that under SAFEMA only the properties of the convict/detenu are sought to be forfeited wherever they are. The idea is to each his properties in whosoever's name they are kept or by whosoever they are held. The independent property of relatives and friends which are not traceable to the convict/detenu are not sought to be forfeited nor are they within the purview of SAFEMA. This has been clearly held by the Supreme Court in the case of Attorney General for India and Others Vs. Amratlal Prajivandas and Others. It is for the purposes of ascertaining whether the property was actually one which belonged to the said Shri Popat Lal and whether it was merely held by the petitioner on his behalf, that the provisions of Section 6 and 7 have been enacted. It is, Therefore, necessary to examine these provisions. Section 6 and 7 of SAFEMA are set out hereinbelow:-

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 of material available to it as a result of action taken u/s 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 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 informations and particulars, and to show cause why all or any of such properties as the case may be should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act.

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

7. Forfeiture of property in certain cases -

(1) The competent authority may, after considering the Explanation, if any, to the show cause notice issued u/s 6, 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 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 illegally acquired properties but is not able to

identify 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 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.

(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."'''

4. From the aforesaid provisions, it becomes clear that u/s 6(1), a notice is required to be given to the person to whom the Act applies, in this case Shri Popat Lal. u/s 6(2), a notice is also required to be served upon such other person who holds the property in question on behalf of the person to whom the Act applies. This clearly means that notice u/s 6 ought to have been issued both to Shri Popat Lal as well as to the petitioner in whose name the property stood. Learned counsel for the respondent argued that no notice was necessary in respect of the petitioner inasmuch as their stand was that the property in question belonged to Shri Popat Lal and that through out he had admitted the same. This, however, is not acceptable in view of the fact that it is quite possible that the property may be admitted by the detenue to belong to him when, in fact, it did not. There are many instances under which a person may claim that the property belongs to him when in point of fact it does not actually do so. It is for this reason that specific statutory provisions have been made and incorporated u/s 6(2) whereunder a copy of the notice is specifically to be served to the person who allegedly holds the property of the detenue on the latter's behalf. Admittedly, in this case, no notice u/s 6(2) of the SAFEMA had been issued to the petitioner i.e. the person in whose name the property stands. Section 7 also fortifies this line of reasoning inasmuch as it makes it abundantly clear that before an order of forfeiture can be made under the said Section the person affected and, in the case where the person affected holds any property specified in the notice through any other person, then, such other person must also be given a reasonable opportunity of being heard. Admittedly, no notice has been issued to the petitioner and obviously no opportunity of hearing has been given to the petitioner. In this view of the matter, the mandatory provisions of Section 6 and 7 of SAFEMA have not been complied with before the passing of the impugned order dated 22.7.2002 whereby, the property which stands in the name of the petitioner has been forfeited to the Central Government without notice and opportunity of hearing to the petitioner. It may be that the petitioner is Shri Popat Lal's wife. Yet, mandatory provisions have to be complied with, particularly, when such provisions incorporate rules of natural justice. The Supreme Court in the case of West Bengal

Electricity Regulatory Commission Vs. C.E.S.C. Ltd. etc. etc., has categorically held as under:-

"" That apart, when a statute confers a right which is in conformity with the principles of natural justice, in our opinion, the same cannot be negatived by a court on an imaginary ground that there is a likelihood of an unmanageable hearing before the forum concerned. As noticed above, though, normally price fixation is in the nature of a legislative function and the principles of natural justice are not normally applicable, in cases where such right is conferred under a statute, it becomes a vested right, compliance of which becomes mandatory. While the requirement of the principles of natural justice can be taken away by a statute, such a right when given under the statute cannot be taken away by courts on the ground of practical inconvenience, even if such inconvenience does in fact exist. In our opinion, the statute having conferred a right on the consumer to be heard in the matter pertaining to determination of the tariff, the High Court was in error in denying that right to the consumers."""

5. Thus, in view of the clear observations of the Supreme Court when the statute itself gives an opportunity of being heard that opportunity cannot be whittled or taken away. In the present case, the facts are very clear. No notice u/s 6(2) was issued to the petitioner and obviously, no opportunity of hearing was given to the petitioner although the same was required to be done under the statute. In this view of the matter the impugned order dated 22.7.2002 cannot be sustained insofar as the petitioner and her said property is concerned and the same is quashed and set aside.

6. The said property be released from forfeiture and be handed back to the petitioner. The writ petition is accordingly allowed. There shall be no order as to costs.