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LAWS(GJH) 2014 7 198

HIGH COURT OF GUJARAT

Coram :- AKIL KURESHI, MOHINDER PAL, JJ.

Decided on 2014 July 21

Hotel Sunrise Pvt. Ltd

VERSUS

Chairman And Managing Director Guj. Indu. Develop. Corpn

Advocates:

R. S. SANJANWALA, A. S. VAKIL, NAVIN PAHWA, PRATIK THAKKAR, DIGANT POPAT,
K. T. DAVE, M. B. GANDHI

[-] Referred Judgments (1)

[WINSTON TAN VS. UNION OF INDIA \[2012 10 SCC 222\] \[REFERRED TO\]](#)

Citations:

GLR 2015 2 971, LAWS(GJH) 2014 7 198,

Expert View:

- A. **In all 2250 shares of the company were allotted to four persons in the following manner : i) Haribhai Naranbhai Tandal 750 shares ii) Preminben Haribhai Tandal 1320 shares iii) Babubhai parshottambhai Patel 90 shares iv) Smt___ . SubPage section(1) of section 6 authorises the competent authority to issue notice to a person to whom the Act applies, calling upon him to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property and the evidence that he relies and other relevant information and to show cause why such properties should not be declared to be illegally acquired properties and forfeited to the Central Government___ . - (1) The competent authority may, after considering the explanation, if any, to the showcause notice issued under section 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___ .**
- B. **Section 11 of SAFEMA pertains to certain transfers of properties to be null and void and reads as under : "(11) Certain transfers to be**

null and void___ . - (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 subsection (1) of section 9 within the time allowed therefor under subsection (3) of that section, the competent authority may order the 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___ . If therefore, after creation of the mortgage, the owner of the property himself suffered some legal handicap visavis the property, as in the present case by virtue of the provisions of SAFEMA, the mortgagee cannot avoid its effect on him, particularly, in view of overriding effect given to the provisions of SAFEMA under section 24 and looking to the aim and objects for which the Act was enacted___ . When the detenues held virtually the total shares issued by the company, the competent authority could have pierced the corporate veil and asserted that creation of company is mere camouflage or smoke screen to defeat the provisions of the Act and in fact, the properties acquired in the name of company are nothing but benami properties of detenues and source of funds flowing from them___ .

- C. HPPL was unable to repay its dues to GSFC and GSFC therefore, issued a recall notice dated 12___ 1995, the authority under SAFEMA passed an order under section 19(1) of SAFEMA, with respect to various properties movable as well as immovable of Preminben Haribhai Tandal including shares held by her in HPPL stating that said properties stood forfeited in the Central Government from from encumbrances and, therefore, he directed Preminben Haribhai Tandal or any other person who may be in possession of such property to surrender or deliver possession thereof to him___ Merely because therefore, the plot in question was acquired before SAFEMA came into force or for that matter, the transaction of releasing loan in favour of HPPL by mortgaging the leasehold rights of the company in favour of GSFC before SAFEMA was enacted, would not be a ground to oppose the effect of orders passed under SAFEMA___ If therefore, after notice under section 6 or 10, as the case may be, is issued and if the property referred to in such notice is thereafter, transferred, such transfer would be ignored till passing of final order under section 7 of SAFEMA___ If therefore, after creation of the mortgage, the owner of the property himself suffered some legal handicap visavis the property, as in the present case by virtue of the provisions of SAFEMA, the mortgagee cannot avoid its effect on him, particularly, in view of overriding effect given to the provisions of SAFEMA under section 24 and looking to the aim and objects for which the Act was enacted___ If the competent authority was desirous, it could have proceeded against the properties of the company since the detenues being directors of such private company, the company would therefore, be covered as associate of a person as mentioned in clause(d) of subsection(2) of section 2___**

1995, the authority under SAFEMA passed an order under section 19(1) of SAFEMA, with respect to various properties movable as well as immovable of Preminben Haribhai Tandal including shares held by her in HPPL stating that said properties stood forfeited in the Central Government from from encumbrances and, therefore, he directed Preminben Haribhai Tandal or any other person who may be in possession of such property to surrender or deliver possession thereof to him__ When the detenues held virtually the total shares issued by the company, the competent authority could have pierced the corporate veil and asserted that creation of company is mere camouflage or smoke screen to defeat the provisions of the Act and in fact, the properties acquired in the name of company are nothing but benami properties of detenues and source of funds flowing from them__

D. This judgement is therefore, stayed to the extent of direction for refund of amount already deposited by the appellants under interim order dated 5.11.2009 which was subsequently continued during the pendency of Letters Patent Appeals, till 25.9.2014. -- All Letters Patent Appeals as well as Civil Applications stand disposed of accordingly.

JUDGMENT / ORDER

1. These appeals arise out of a common judgement of the learned Single Judge dated 13.12.2013 in Special Civil Application No.6595/2009 and connected writ petitions.

2. The writ petitions arose out of the proceedings instituted by the authorities under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 [hereinafter referred to as "SAFEMA"]. There is a long and chequered history to this litigation. We may record the bear necessary facts.

2.1. A private limited company by name Hotel Purab Paschim Private Limited ("HPPL" for short) was incorporated on 3.1.1973. As per the Memorandum of Association of the company, the authorised share capital of the company was divided into 5000 equity shares of Rs.100/each.

Haribhai Naranbhai Tandal and his wife Preminben Haribhai Tandal were the directors of the company. In all 2250 shares of the company were allotted to four persons in the following manner :

- i) Haribhai Naranbhai Tandal 750 shares
- ii) Preminben Haribhai Tandal 1320 shares
- iii) Babubhai parshottambhai Patel 90 shares
- iv) Smt. Niruben Nanubhai Patel 90 shares

2.2. On 31.1.1974, Gujarat Industrial Development Corporation ("GIDC" for short) executed a lease deed in respect of a plot of land admeasuring 8241 sq. mtrs. forming part of GIDC Vapi for a period of 99 years in favour of HPPL.

2.3. On 16.12.1973, Gujarat State Financial Corporation ("GSFC" for short) had sanctioned a loan of Rs.4 lakhs to HPPL. Such loan was released in favour of the borrower by mortgaging leasehold rights of the said land of GIDC Surat, by a deed dated 29.3.1974.

2.4. HPPL was unable to repay its dues to GSFC and GSFC therefore, issued a recall notice dated 12.12.1974 to HPPL.

2.5. SAFEMA was enacted in the year 1976 but was given effect from 5.11.1975.

2.6. On 26.8.1976, GSFC filed a Civil Misc. Application No.45/1976 before the Civil Court under section 31 of the State Financial Corporation Act ("the SFC Act" for short).

2.7. On 13.3.1979, the Civil Court passed its order on Civil Misc, Application No.45/1976 permitting sale of leasehold rights. Pursuant to such order, auction was held on 26.3.1979. The highest bidder, one Keshav Tandel, promoter/Director of one Hotel Sunrise Private Limited ("HSPL" for short) was declared as successful bidder. His price offer of Rs.3.30 lakhs for the plot in question was accepted. On 31.7.1979, sale in favour of highest bidder Keshav Tandel as a nominee of HSPL was confirmed. The respondents contend and there is no serious opposition by the appellant that said Keshav Tandel is a nephew of Haribhai Naranbhai Tandal and his wife Preminben Haribhai Tandal. Be that as it may, it is undisputed that sale consideration of Rs.3.30 lakhs was paid by him to GSFC. GSFC appropriated such amount towards dues from HPPL. Case of the appellants is that in the meantime HSPL was incorporated and sale was also executed in name of HSPL by the Superintendent of the District Court on 6.8.1979.

2.8. Thus on one hand the proceedings for recovery of dues of GSFC were going on in the manner mentioned above, on the other hand SAFEMA proceedings were instituted and proceeded parallelly. On 22.2.1977 the competent authority issued notice under section 6(1) of the SAFEMA to Haribhai Naranbhai Tandal stating that said Haribhai had been detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1975 under an order dated 19.12.1974. He was thus the person who fell within the category mentioned under section 2(2)(b) of the SAFEMA. Any illegally acquired property held by him would be liable to be forfeited by the Central Government. The notice listed various movable and immovable properties held by him. In the list of movable properties, there was a mention of 750 shares of HPPL valued approximately at Rs.75,000/-. The notice stated that the authority had the reason to believe that the property mentioned in paragraph 2 were illegally acquired properties. He therefore, called upon the noticee to show cause why such properties should not be forfeited to Central Government. Similar notice was also issued under section 6(1) of SAFEMA to Preminben Haribhai Tandal proposing to forfeit her various properties including 1320 shares in HPPL .

2.9. On 19.4.1978, the competent authority passed two separate orders under section 7 of SAFEMA against Haribhai Naranbhai Tandal and his wife Preminben Haribhai Tandal forfeiting into Central

Government various properties held by them including 750 and 1320 shares respectively of HPPL. Both the said persons preferred separate appeals before the Appellate Tribunal challenging the said order dated 19.4.1978. Preminben Haribhai Tandal additionally approached Bombay High Court seeking stay against the execution of the order. On 21.6.1978, Bombay High Court in such petition passed the order in terms of minutes presented by the parties. As per such arrangement, the petitioner agreed and undertook to the High Court not to dispose of, alienate, encumber or part with the right, title and interest in the said 1320 shares in HPPL. In turn, the respondents agreed and undertook to the High Court that pending the proceedings before the Court, they shall not take possession of or confiscate 1320 shares of HPPL.

2.10. By passing two separate orders dated 16.2.1986 and 23.2.1993, the Tribunal allowed the appeals of Haribhai Naranbhai Tandal and Preminben Haribhai Tandal partially and remanded the proceedings back to the competent authority for deciding the issues afresh. On 18.6.1993, the competent authority passed fresh orders of forfeiture with respect to 1320 shares of Preminben Haribhai Tandal. Likewise, the said authority passed another order dated 27.3.1995 forfeiting 750 shares of Haribhai Naranbhai Tandal. On 27.3.1995, the authority under SAFEMA passed an order under section 19(1) of SAFEMA, with respect to various properties movable as well as immovable of Preminben Haribhai Tandal including shares held by her in HPPL stating that said properties stood forfeited in the Central Government from from encumbrances and, therefore, he directed Preminben Haribhai Tandal or any other person who may be in possession of such property to surrender or deliver possession thereof to him. In the said notice, it was stated that in case Preminben Haribhai Tandal or any other person on her behalf fail to deliver such properties within the time stipulated, the Collector of Daman would be entitled to recover the same by sale/auction or any coercive method.

2.11. Preminben Haribhai Tandal preferred appeal to the Tribunal which was dismissed on 1.12.1994. The Misc. Petition filed before the Bombay High Court by her was dismissed for default on 13.6.1995. No steps for restoration was taken thereafter.

2.12. Heirs of deceased Haribhai Naranbhai Tandal preferred appeal before the the Appellate Tribunal against order dated 27.3.1995 passed by the competent authority under the SAFEMA. They also prayed for condonation of delay. The Tribunal however, by an order dated 1.4.1997 dismissed the delay condonation application and resultantly the appeal filed by the heirs of deceased Haribhai Naranbhai Tandal.

2.13. No further proceedings were carried by heirs of Haribhai Naranbhai Tandal or Preminben Haribhai Tandal. Substantive proceedings under SAFEMA thus attained finality. Orders passed by the competent authority under SAFEMA forfeiting 750 and 1320 shares of Haribhai Naranbhai Tandal and Preminben Haribhai Tandal respectively of HPPL into the Central Government, thus became final.

2.14. On the other hand, on the strength of purchase of leasehold rights of the plot at GIDC Vapi, HSPL

applied to GSFC for sanction of plan for construction sometime in May 2000. It appears that actual construction of various shops and offices were also carried out on the said land.

2.15. On 12.11.2008, HSPL applied to GIDC for transfer of property (leasehold rights therein) to respondent no.4 M/s. Saikrupa Associates. It further appears that large number of shops and offices so constructed on the plot in question were allotted to individual owners. We are informed that today there are close to 400 occupants of various such offices and shops. On account of the SAFEMA proceedings, GSFC was unable to accept the request of HSPL to transfer the property to M/s. Saikrupa Associates. The appellant herein therefore, filed writ petition before this Court being Special Civil Application No.6595/2009 and prayed for a direction to GIDC to transfer the said plot in favour of M/s. Saikrupa Associates. Pending the petition, the authority of SAFEMA initiated proceedings under section 19(1) and 19(2) of SAFEMA. On 13.7.2009, a common order under section 19(2) of SAFEMA was passed with respect to Preminben Haribhai Tandal and heirs of Haribhai Naranbhai Tandal not only forfeiting 2070 shares but on basis of such forfeiture, seeking to take possession of immovable property of the company namely, the said land of GIDC, Vapi.

2.16. On 14.7.2009, SAFEMA authority assisted by the police came to the site and undertook the process of sealing the premises. The petitioner therefore, amended the petition with the leave of the Court by including the challenge to the order dated 13.7.2009 passed by the Competent Authority and Administrator, SAFEMA. In the said order dated 13.7.2009, reference was made to the proceedings of Bombay High Court by Preminben Haribhai Tandal and undertakings given by both the sides not to alienate the property. It was recorded that without bringing the facts to the notice of the Bombay High Court or the authority, such plots were sold in auction. The property was purchased though by none other than the nephew of the detenu. Reference was made to the provision of section 11 of SAFEMA and the orders passed for forfeiture of the properties. It was finally directed as under :

"So I, D.S. Negi, Competent Authority, appointed under Section 5 of SAFEMA, hereby direct the above named affected person (through legal heirs) or any other person who is having possession of the property bearing Commercial Plot No.492, on revenue survey no.492/1, 2 & 3p & 491/2 at GIDC Vapi and any superstructure thereon u/s.19(2) r.w.s 19(3) of the SAFEMA, to surrender and to deliver possession of the property as detailed above to the undersigned through Shri Siddhartha Majumdar, Inspecting Officer, SAFEMA, Ahmedabad immediately.

10. I hereby advise and direct Shri Siddhartha Majmudar, Inspecting Officer, SAFEMA, Ahmedabad u/s 19(2) of SAFEMA to take possession of the said property by using the necessary force, if the AP or any other persons in possession of the property fails to give the possession of said property to the undersigned immediately on receipt of the copy of the order."

2.17. Various occupiers of the shops and offices in the complex situated in the disputed land filed writ

petitions before the learned Single Judge challenging the action of the respondents by passing order dated 13.7.2009. During the pendency of these petitions, learned Single Judge provided for an interim arrangement requiring the petitioners to make regular payment of license fee of Rs. 3 lakhs per month to the Central Government upon which their possession would be protected.

2.18. The writ petitions came to be decided by learned Single Judge by common judgement impugned in these appeals. In a detailed judgement, learned Single Judge dismissed all the petitions. Learned Judge was concerned about the undertaking filed before the Bombay High Court. He was of the opinion that in auction proceedings, the property was purchased by Keshav Tandel, nephew of detenues. Here again, a company was incorporated only by way of camouflage. Interalia on such grounds the writ petitions were dismissed.

3. These appeals therefore, have been filed by HSPL and other occupiers of the premises in the constructed commercial complex.

4. Learned advocate Shri Vakil for the HSPL raised the following contentions :

1) What was ordered to be forfeited by the competent authority under section 7 of SAFEMA was the shares of detenues in a private company and not the assets of the company. Such order could not form the basis of action under section 19 of SAFEMA taking over possession of the property of the company

2) The SAFEMA Act came into existence after the property was acquired by the company by way of lease. Such leasehold rights were mortgaged by HPPL in favour of GSFC. This also happened before SAFEMA was enacted. Subsequent provisions contained in SAFEMA therefore, cannot override the transactions which had already taken place earlier.

3) No action was taken under section 7(4) of SAFEMA to register the Central Government as a transferee of the shares without which it was not possible in any case, to either effectively forfeit the shares or the properties of the company.

4) No order was passed in case of Preminben Haribhai Tandal or the subsequent occupants of the premises.

5) There was gross delay in initiation of proceedings under section 19 of SAFEMA. After the Appellate Tribunal dismissed the appeals of the detenues in the year 1994 and 1997 against such fresh orders passed by the competent authority under SAFEMA, proceedings under section 19 were undertaken in the year 2009 which suffered from gross delay and latches.

5. Learned counsel Shri Sanjanwala appearing for the occupants contended that such occupants were sought to be evicted without any notice to them. No notice under section 19(1) was issued. Any order under section 19(2) which would have effect of their eviction, was therefore, bad in law. He further submitted that even if by virtue of provisions contained in section 11 of the SAFEMA, any subsequent transfer of property is rendered void, the same shall have to be declared so by some authority

empowered to do so. In the present case, at no stage, such formal order was passed after hearing the persons likely to be affected by such decision. He further submitted that in any case, any such action must be taken within reasonable period which was not done in the present case.

6. On the other hand, learned counsel Shri K.T. Dave for the authorities opposed the appeals contending that the learned Single Judge has given detailed cogent reasons for dismissing the writ petitions. The plot in question was purchased in auction by Keshav Tandel who was nephew of detenues. Present appellant HSPL in any case, was not even the purchaser. The grounds urged by them are therefore, not available to them. This is not a case of bona fide purchase without notice. In any case, no such defence would be available in case of transfer of property after notice under section 6 of SAFEMA is issued. In this context, he relied on the decision of the Supreme Court in case of Winston Tan and another v. Union of India and another, 2012 10 SCC 222. He further submitted that the detenues were the majority shareholders in the private company. They were the directors of the company. It was held by the competent authority that their shares were acquired by them through illgotten means. Such orders had achieved finality. The Central Government therefore, fortified such shares. By virtue of such shareholding, the Central Government became the owner of the properties of the company.

7. Having thus heard learned counsel for the parties and having perused the documents on record, we may summarise few relevant facts.

7.1. The detenues were the directors of the private limited company HPPL. Out of a total share of 2250 shares allotted by the said company, a total of 2070 shares were held by the detenues between them. Remaining 180 shares were allotted to two other shareholders. The said company acquired leasehold rights in a landed property situated at GIDC, Vapi. Such leasehold rights were mortgaged in favour of GSFC for securing loan of Rs. 4 lakhs released on 29.3.1974. The company could not repay the dues of GSFC and, therefore, proceedings for recovering the outstanding amounts were initiated by GSFC by making application under section 31 of the SFC Act. Parallely, the proceedings under SAFEMA were initiated and pursued against various properties of the detenues. Such properties included their shares in HPPL. After one round of remand, the competent authority passed order under section 7 of SAFEMA declaring such shares as tainted properties and ordering their forfeiture in the Central Government. Such orders were challenged by both the detenues before the Tribunal. These appeals were dismissed. No further challenge was made.

7.2. In the meantime, GSFC sold the plot in question through auction. The offer of highest bidder at Rs. 3.30 lakhs was accepted. Sale was confirmed. Sale deed was executed. It appears that construction was carried out on such plot and allotments were made to various individual occupiers of shops and offices. At that stage, the Central Government desired to take possession of the said property in exercise of powers under section 19 of SAFEMA.

8. In light of such facts, we need to examine the contentions raised by both the sides. In order to do so, we may peruse the provisions contained in SAFEMA. Preamble to the Act, provides interalia for an act to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto,

Act was enacted. It was felt that for effective prevention of smuggling activities and foreign exchange manipulations which have a deleterious effect on the national economy, it is necessary to deprive persons engaged in such activities and manipulations of their illgotten gains. The statement of objects and reasons for enacting the Act read as under :

"Statement of Objects and Reasons :Smuggling activities and foreign exchange manipulations are having a deleterious effect on the national economy. Persons engaged in such malpractices have been augmenting their illgotten gains by violation of laws relating to incometax, wealthtax or other laws. In many cases, such persons have been holding properties acquired through illgotten gains in the names of their relatives, associates and confidants. This accumulation of illgotten wealth gives increasing power, influence and resources to those who carry on such clandestine activities and even tend to confer social status and prestige which is quite contrary to the health sociocultural norms. These activities pose as serious threat to the economy and the security of the nation. In connection with various steps taken by the Government in recent months for cleansing the social fabric and resuscitating the national economy, it became necessary to assume powers to deprive such persons of their illegally acquired properties so as to effectively prevent the smuggling and other clandestine operations, The President promulgated on the 5th November, 1975, the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinance, 1975."

As per subsection(1) of section 2, the provisions of the Act would apply only to the persons specified in subsection(2).

Clauses (a) to (e) of subsection(2) of section 2 lists the persons to which the Act would apply. Clause (a) pertains to persons who have been visited with conviction under the Sea Customs Act, the Customs Act, or Foreign Exchange Regulation Act, etc. Clause(b) pertains to every person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Clause(c) pertains includes every person who is a relative of a person referred to in clause(a) or clause(b). Clause(d) pertains to every associate of a person referred to in clause(a) or clause(b). Clause(e) pertains to any holder of property which was previously held by a person referred to in clause(a) or clause(b), unless such holder acquired the property in good faith for adequate consideration. Terms 'relative' and 'associate' are defined in explanation2 and 3 respectively. Clause(iii) of Explanation 3 provides that for the the purpose of clause(d), associate in relation to a person means any association of persons, body of individuals, partnership firm or private company within the meaning of the Companies Act, 1956 of which such person had been or is a member, partner or director. Section 3 which is a definition section of the Act, defines the term 'illegally acquired property' in clause(c) of subclause(1) and would include property satisfying such description whether acquired after or before the commencement of the Act. Section 4 of SAFEMA pertains to prohibition of holding illegally acquired property. As per subsection(1) of section 4, from the commencement of this Act, it shall not be lawful for any person to to whom the Act applies to hold any illegally acquired property either by himself or through

any other person on his behalf. Subsection(2) of section 4 further provides that where any person had acquired illegal property in contravention of the provisions of of subsection(1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of the Act.

Section 6 of SAFEMA provides for notice of forfeiture. SubPage section(1) of section 6 authorises the competent authority to issue notice to a person to whom the Act applies, calling upon him to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property and the evidence that he relies and other relevant information and to show cause why such properties should not be declared to be illegally acquired properties and forfeited to the Central Government. Subsection(2) of section 6 provides that where a notice under subsection (1) to the person specifies property as being held on behalf of such person by any other person, a copy of such notice shall also be served on such other person. Section 7 of SAFEMA pertains to forfeiture of property in certain cases and reads as under :

"7.Forfeiture of Property in certain cases.-

(1) The competent authority may, after considering the explanation, if any, to the showcause notice issued under section 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 showcause 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 subsection (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." Section 11 of SAFEMA pertains to certain transfers of properties to be null and void and reads as under :

"(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." Section 13 of SAFEMA provides that no notice issued or served, no declaration made, and no order passed, under the Act shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein if such property or person is identifiable from the description so mentioned. Section 14 of SAFEMA pertains to bar of jurisdiction of Civil Court with respect to matters which the Appellate Tribunal or the competent authority is empowered under the Act to determine.

Section 19 pertains to power to take possession and reads as under :

"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 subsection (1) of section 9 within the time allowed therefor under subsection (3) of that section, the competent authority may order the 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.

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

(3) notwithstanding anything contained in subsection (2), the competent authority may, for the purpose of taking possession of any property referred to in subsection (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."

Section 21 of SAFEMA provides that no finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under the Act. Section 24 of the SAFEMA gives the Act an overriding effect by providing that provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

9. It can thus be seen that provisions made in SAFEMA are drastic in nature with a view to fulfilling certain specific purposes, especially to provide for forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators whose activities would have a deleterious effect on the national economy. To deprive such persons of their illgotten gains, the Act was enacted.

10. We may also recall that definition of 'illegally acquired property' contained in section 3(1)(c) of SAFEMA includes any property which specifies the description provided in clauses(i) to (iv), whether such property has been acquired before or after the commencement of the Act.

11. Merely because therefore, the plot in question was acquired before SAFEMA came into force or for that matter, the transaction of releasing loan in favour of HPPL by mortgaging the leasehold rights of the company in favour of GSFC before SAFEMA was enacted, would not be a ground to oppose the effect of orders passed under SAFEMA. Section 24, we may recall, gives overriding effect to the provisions of the Act. We have noticed that section 11 declares certain transfers of properties to be null and void. The section provides for two terminal points. The first starting point is notice under section 6 of SAFEMA (or under section 10, if the properties involved are trust properties) and the end point is an order passed by the competent authority forfeiting such properties to Central Government under section 7 of SAFEMA. Any transfer made between these two terminal points, is deemed to be null and void upon order under section 7 being passed, by virtue of section 11 of SAFEMA. In essence when section 11 provides that after issuance of notice under section 6 or 10, any property referred to in notice is transferred, for the purpose of proceedings of the Act, be ignored, it essentially provides for suspension of effect of transfer till final order under section 7 is passed. Ultimately, when order under section 7 of SAFEMA is passed forfeiting the property in the Central Government, transfer is deemed to be null and void. If therefore, after notice under section 6 or 10, as the case may be, is issued and if the property referred to in such notice is thereafter, transferred, such transfer would be ignored till passing of final order under section 7 of SAFEMA. If the notice is dropped and no order of forfeiture is passed, the transfer would be cleared of the stigma flowing from section 11 of SAFEMA. If on the other hand, if the proceedings culminates into order of forfeiture of property, transfer has to be treated as null and void.

12. In the present case, admittedly the transfer of the property took place after the notice was issued under section 6 of SAFEMA. Eventually the notice culminated into order of forfeiture being passed under section 7 of SAFEMA. The forfeiture of the shares was thus complete. Had this therefore been the only fact, we would have had no hesitation in upholding the action undertaken by the authority. The action undertaken under section 19 of SAFEMA was merely in the nature of consequential steps. As held by the Supreme Court in case of *Winston Tan and another*, provisions of SAFEMA are stringent and drastic in nature. They are designed to discourage law breaking and directed towards forfeiture of illegally acquired properties. 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. In such cases, the holder of the property cannot set up a plea that he is transferee in good faith or bona fide purchaser for adequate consideration. Such a plea is not available to a transferee who has purchased the property during pendency of forfeiture proceedings. It is true that the land was mortgaged prior to notice under section 6(1) of SAFEMA. But the auction was held for sale of the property after the notice. If therefore, after creation of the mortgage, the owner of the property himself suffered some legal handicap visavis the property, as in the present case by virtue of the provisions of SAFEMA, the mortgagee cannot avoid its effect on him, particularly, in view of overriding effect given to the provisions of SAFEMA under section 24 and looking to the aim and objects for which the Act was enacted.

13. The facts in the present case are somewhat peculiar and different. What was the subject matter of SAFEMA proceedings was the shares held by the two detenués. Such shares comprised majority of the shares issued by the company. All along SAFEMA authority proceeded against such shares of the detenués. Starting from notice under section 6(1) of SAFEMA and culminating into order passed under section 7(1), entire focus was on the forfeiture of shares of the detenués. Notice called upon the detenués to explain the source of their acquisition of shares. Such notice included several properties of detenués movable as well as immovable. Shares in question formed part of the movable property. Final order of forfeiture was passed with respect to several properties including these shares. By virtue of orders passed under section 7 of SAFEMA by the competent authority, which attained finality when the appeal of the detenués came to be dismissed by the Tribunal, the Central

Government became the owner of the shares. Much was stated by the counsel for the appellant that consequential entering of name of Central Government in the Register of the company under section 7(4) of SAFEMA not having taken place, such transfer was incomplete. We cannot accept such contention. What was required to be done under section 7(4) was a consequential and procedural step of entering the name of Central Government as the owner of the share in the Register of the company. Whether such formality was completed or not would have no impact on the order of forfeiture of shares which was passed by the competent authority under section 7 of SAFEMA. By virtue of such order, the Central Government became the owner of the shares and would step in shoes of the original shareholders. Merely because procedural step of entering name of Central Government was not undertaken as provided in section 7(4), would not annul the order of competent authority forfeiting the shares.

14. Even then in the eventual analysis what was thus brought about was that the Central Government became the owner of the shares which was previously held by the detainees. By virtue of such title, the Central Government could have disposed of the shares and appropriated the proceeds thereof. The Central Government perhaps also could have acted as a shareholder and perhaps influenced the functioning and decisions of the company also. Section 291(1) of the Companies Act, 1956 provides that subject to the provisions of the Act, the Board of directors of a company shall be entitled to exercise all such powers and to do all such acts and things as the company is authorised to exercise and do. Nevertheless, the company and the shareholders were different and distinct entities. Shareholding in a company may be majority or virtually total holding, would not automatically make the Central Government owner of the property of the company as if the property was held by the shareholders and not the company.

15. Under the circumstances, the authorities committed a serious error in directing the proceedings against the property under section 19 of SAFEMA merely on the basis of forfeiture of the shares of the detainees.

16. We are conscious that the properties of company was subsequently purchased by person none other than nephew of detainees. This would have no bearing in our opinion so far as present transaction is concerned. If the competent authority under SAFEMA was of the opinion that such acquisition of the property of company by nephew of the detainees was also hit by any other provisions of SAFEMA or nephew being a related person to the detainees, his acquisition also had to be examined, it was open for the competent authority to do so. If the property in sale did not fetch the full sale consideration to its maximum potential value, it was for the GSFC to take appropriate steps for safeguarding its financial interest. These facts however, would not validate the action of the Central Government of proceeding against the property of the company through forfeiture of the shares of detainees.

17. We are not unmindful of the provisions contained in section 13 of SAFEMA which as noticed above, provides that no notice, declaration or order under the Act would be invalid by reason of any error in the description of the property or the person mentioned therein if such property or person is identifiable from the description so mentioned. In the present case, it was not a mere error in description of the property. It was a case of proceeding against the property which was not the subject matter of forfeiture at all. Section 11 of SAFEMA, we may recall, is specific and it provides that after issuance of notice under section 6 or 10, any property referred to in the said notice is transferred and ultimately order is passed forfeiting such property under section 7, transfer of such property shall be null and void. Reference therefore, at all stages is on the properties referred to in notice under section 6 or 10 and subsequent order of forfeiting under section 7 of such properties. In such a case, transfer of such property would be null and void. In the present case, what was the subject matter of notice under section 6 was the shares of

the detenués and under section 7 forfeiting such shares into the Central Government. If there had been any transfer of said shares between the date of notice under section 6 and order of forfeiture under section 7, such transfer would be hit by section 11 of SAFEMA. By virtue of section 11 of SAFEMA, transfer of property of company cannot be targeted since the property of the company was not the subject matter of notice under section 6 or order of forfeiture under section 7.

18. Section 2(2) of the Act as noted lists persons to whom as per subsection(1) would apply. Clause(d) makes every associate of a person referred to in clauses (a) or (b) also covered under SAFEMA. As per clause (iii) of explanation 3 the term 'associate' would mean any association of persons, body of individuals partnership firms or private company within the meaning of the Companies Act, 1956 of which such person has been or is a member, partner or director. When the detenués held virtually the total shares issued by the company, the competent authority could have pierced the corporate veil and asserted that creation of company is mere camouflage or smoke screen to defeat the provisions of the Act and in fact, the properties acquired in the name of company are nothing but benami properties of detenués and source of funds flowing from them. In fact, clause(d) of subsection(2) of section 2 read with explanation 3(iii) provides an instance where the statutorily corporate veil can be lifted or pierced. If the competent authority was desirous, it could have proceeded against the properties of the company since the detenués being directors of such private company, the company would therefore, be covered as associate of a person as mentioned in clause(d) of subsection(2) of section 2.

Unfortunately, this was not done.

19. In absence of any action against the company, in absence of any proceedings against the properties of the company, we are afraid the action of the respondent authorities under section 19 of SAFEMA would not be valid in law. Section 19 provides that action of taking possession of property would be permissible against the property which has been declared to be forfeited to the Central Government and the person affected as well as any other person who is in possession of property or failed to deliver possession thereof to the competent authority within the time prescribed.

20. In the present case, the leasehold rights of the company were never part of the proceedings of forfeiture under SAFEMA. Mere forfeiture of shares of company would not automatically result into forfeiting of the properties of the company into the Central Government. The two are distinct and separate aspects. The action of the authority proceeds on the basis that the company and the detenués were legally the same persons, completely ignoring and obliterating the legal distinction between the the company and the shareholders or even the directors.

21. Contention that Premiben acted in contravention of the undertaking given to the Bombay High Court is also not correct. It was not Premiben who had sold the properties. It was sold by GSFC in distress sale. Further, the undertaking pertained to her shares in the company and not to the property of the company.

22. In the result, appeal of HSPL is allowed. Judgement of the learned Single Judge is reversed.

23. Rest of the appellants claim right, title and interest through title of HSPL. No separate order therefore, would be necessary in their favour except to set aside the judgement of learned Single Judge dismissing their petitions.

24. Insofar as prayer of the appellants for transfer of property by GIDC is concerned, now that SAFEMA hitch is eliminated, GIDC would proceed further in accordance with law subject, ofcourse, to the petitioners fulfilling all other procedural

requirements for transfer of the property.

25. By virtue of this judgement, when we have declared the action of the authority under section 19 of SAFEMA as bad in law, the amount deposited by the appellants with the competent authority by way of possible license fee under interim order dated 5.11.2009, passed by the learned Single Judge shall become refundable. The competent authority shall refund the same to HSPL with respect to which learned advocates for rest of appellants raise no objection.

26. At this stage, learned counsel Shri K.T. Dave for the authorities prayed for stay of this judgement for a period of two months to enable the authorities to prefer further appeals. Now that the appeals are allowed, it would not be appropriate to direct the appellants to continue to deposit sum of Rs. 3 lakh every month as was done during the pendency of these proceedings before the learned Single Judge as well as Letters Patent Appeals. However, the direction for refund of amounts already deposited could be stayed. This judgement is therefore, stayed to the extent of direction for refund of amount already deposited by the appellants under interim order dated 5.11.2009 which was subsequently continued during the pendency of Letters Patent Appeals, till 25.9.2014.

27. All Letters Patent Appeals as well as Civil Applications stand disposed of accordingly.

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