REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8592-8593 OF 2010

THE INCOME TAX OFFICER, CIRCLE I (2), KUMBAKONAM & ANR. ...APPELLANTS

VERSUS

V. MOHAN & ANR. ...RESPONDENTS

J U D G M E N T

A.M. KHANWILKAR, J.

1. The conundrum in these appeals is: when the Competent Authority claims that the subject property (to be forfeited) is that of the convict (V.P. Selvarajan) and ostensibly held by the relatives of the convict (respondents herein), whether it is mandatory to serve a primary notice under Section 6(1) of the 1976 Act upon such convict with copy thereof to his relatives under Section 6(2) of the

. under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (for short, "1976 Act")

1976 Act, and non-service of such primary notice upon the convict would vitiate the entire proceedings initiated only against his relatives?

2. The High Court of Judicature at Madras vide impugned judgment held that Section 6 of the 1976 Act leaves no room for doubt that the primary notice must be served on the convict, wherein the convict is required to indicate the sources of his income, earnings or assets, out of which or by means of which he had acquired the properties sought to be forfeited; and non-service of such notice upon the convict would vitiate the action initiated against his relatives, even if the forfeited properties are ostensibly held by or in the name of the relatives. The High Court rejected the argument of the appellants herein (Competent Authority) that only the person in whose name the property is held is required to be called upon to offer explanation regarding the sources of his income, earnings or assets, out of which or by means of which he had acquired such property including the evidence on which he

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. for short, "Madras High Court"

. in Writ Petition Nos. 1149 & 1150 of 2001 decided on 24.3.2008 reported in 2008 SCC OnLine Mad 244

would rely and other relevant information and particulars. If the property in question is ostensibly held by the relatives in his name or through any other person on his behalf, the convict or detenu is not expected to nor can offer any explanation in that regard. The High Court also rejected the argument of the appellants herein that no prejudice is likely to be caused to the noticees (respondents herein) being the relatives of the convict, who had held the forfeited properties in their name. The High Court opined that the action against the respondents initiated by the Competent Authority was vitiated for lack of notice to the convict and it was, thus, pleased to set aside the entire action initiated against the respondents by the Competent Authority.

3. A contra view has been taken by at least two other High Courts. The first is of the High Court of Kerala in ***Sajitha & Ors. vs. Competent Authority & Ors:*** wherein after analysing the relevant provisions, it held as follows:

> "**11.** Section 2(c) refers to every person who is a relative of a person referred to in clause (a) or clause (b). Section 2(e) refers to any holder of any property which was at

. 2005 SCC OnLine Ker 101

any time previously held by a person referred to in clause (a) or clause (b). **When we read Section 6(1) and 6 (2) along with Section 2 (2)(e) it is evident that notice contemplated under Section 6(2) is to any other person if the property does not stand in the name of the detenu. So far as this case is concerned, property stands in the name of wife and brothers. Admittedly notices have been issued to them as contemplated under Section 6(1). We are of the view, non issue of notice to the detenu will not vitiate the proceedings as against their relatives.**

12. Petitioners also have raised a contention that more than six years have elapsed and the proceedings have not been initiated within a reasonable period. **No time limit has been prescribed under the Act**. The Apex Court in *Attorney General for India* v. *Amratlal Prajivandas* has dealt with the scope and ambit of the Act which requires no reiteration. However we may refer to the recent decision of the apex court in *Kesar Devi* v. *Union of India*. **The apex court while dealing with Section 2(2)(c) of the Act has categorically held that the burden of proving that such property is not illegally acquired property will be upon the person to whom notice has been issued**. On facts petitioners could not establish that the properties were legally acquired. Competent authority and the Tribunal concurrently found so and this court in writ jurisdiction will not be justified in a taking a different view in the absence of any contra evidence. We therefore find no infirmity in the orders passed by the competent authority. The writ petition lacks merits and the same would stand dismissed."

(emphasis supplied)

. (1994) 5 SCC 54 : AIR 1994 SC 2179

. (2003) 7 SCC 427

The second decision is of the Calcutta High Court in ***The Competent Authority & Administrator & Anr. vs. Manilal Jalal & Anr.***[.]. Even in this case, notice was issued only to the wife of the detenu and not to the detenu. The question was specifically dealt with by the Calcutta High Court after analysing the relevant provisions in the following words:

> "…..
> **A bare perusal of Section 2 of the Act would show that the Act not only applies to the detenu but also to the relations and/or associates of such detenu. Nowhere the said provision of law mandates that a proceeding against a relative of a detenu can be initiated only if such detenu is proceeded against under SAFEMA. Such right to proceed against the relative/associate is independent of any action taken against the detenu under SAFEMA. It is wholly fallacious to argue that the detenu must be proceeded against under SAFEMA as a condition precedent for any action against a relative of such detenu. The properties and/or assets which were sought to be forfeited were standing in the name of Sarbani Devi Jalan herself and therefore respondent authorities rightly issued a notice under Section 6 of the Act upon her as "person affected" for the purpose of initiating a proceeding of forfeiture of such property. There is nothing in the law that the property standing in the name of a relation of a detenu which is sought to be proceeded against must require a notice to be issued upon the detenu**

[.] 2013 SCC OnLine Cal 12911

> **also. To infer such a requirement when the same is not provided in law would amount to rewriting the statutory provision which is unwarranted**. This submission of the appellants being unfounded must therefore fail.
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> ....."
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> (emphasis supplied)

4. In view of the above, these appeals not only involve question regarding interpretation of Section 6 read with other provisions of the 1976 Act, but also call upon us to expound the stated question authoritatively and resolve the conflicting view taken by different High Courts.

5. Reverting to the facts of the present case, one V.P. Selvarajan (convict) — brother-in-law of respondent No.2 and paternal uncle of respondent No.1, was convicted for an offence punishable under the Customs Act, 1962 on 23.11.1969. As a result of his conviction, he came within the ambit of the expression "person" or "such person" occurring in the 1976 Act — Section 2 in particular. Respondents being the relatives of the convict in terms of Section 2(2) read with *Explanation 2* also came within the ambit of

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. for short, "1962 Act"

expression "person" defined in the 1976 Act to whom the Act applies.

6. The 1976 Act came into force with effect from 5.11.1975, pursuant to which the Competent Authority under the Act resorted to inquiry, investigation or survey under Section 18 of the Act and on the basis of the information collated had reason to believe that certain properties are illegally acquired properties having nexus to the unlawful activities of the convict. As a result, a notice under Section 6(1) of the 1976 Act was issued to the convict on 2.2.1980. In the present appeals, we are not concerned with the said notice or for that matter illegally acquired properties of the convict referred to therein.

7. The Competent Authority, however, on the basis of information gathered had reason to believe that some of the properties were held by the respondents herein by themselves, which were illegally acquired properties within the meaning of Section 3(1)(c) of the 1976 Act. Accordingly, notice under Section 6(1) of the 1976 Act dated 19.1.1994 was issued to V. Mohan, respondent No.1 herein being nephew of the convict, calling upon

him to disclose the sources of his income, earnings or assets, out of which or by means of which he had acquired the properties referred to in the stated notice by himself. The description of the properties had been given in the Schedule, which reads thus:

"**SCHEDULE**

S. No.	**Description of the Property**	**Name of the present holder of property**
1	2	3
1.	Investment in the firm M/s V.P.V. Jewellery Mart, Kumbakonam	
2.	Investment in the Proprietary Concern M/s V.P.V. Gold Palace Kumbakonam	
3.	Residential Property in the form of house - being land and building at No.113, Sarangapani East Street, Kumbakonam	
4.	Agricultural Lands - 1 Acre & 8 cents at south pattam, Paganasam Taluk 1 Acre & 75 Cents at Thepperumal -nallur village."	

8. Similarly, a notice dated 28.2.1994 was issued to Smt. V. Padmavathy, respondent No.2 herein being the relative of the convict in respect of properties referred to in the said notice purportedly illegally acquired properties. The Schedule reads thus:

"**SCHEDULE**

S. No.	**Description of the Property**	**Name of the**

		present holder of property
1	2	3
1.	Residential house which includes land and building at No.123. Big Street, Kumbakonam.	V. Padmavathy
2.	Agricultural lands at Thepprumalnallur Village at Kumbakonam as specified below.	-do-
3.	Investment in the firm of M/s V.P.V. Prema Jewellery, Kumbakonam.	-do-
4.	Jewellery disclosed under Voluntary Disclosure Scheme (i.e.) 518 gms of gold and 28 ets. of diamond."	-do-

9. The Competent Authority after giving opportunity to the respondent(s) eventually passed separate forfeiture order(s) on 30.4.1998 against Smt. V. Padmavathy, respondent No.2 and on 28.5.1998 against V. Mohan, respondent No.1 in exercise of powers under Section 7(1) of the 1976 Act. It held that an order of forfeiture of the stated properties had become inevitable as the respondent(s) had failed to produce any credible evidence or explanation to discharge the burden of proving that the properties referred to in the impugned notice were legally acquired properties by them.

10. Being aggrieved, the respondents took the matter in appeal bearing Nos. F.P.A.No.31/MDS/98 (of respondent No.2) and F.P.A.No.32/MDS/98 (of respondent No.1) before the Appellate Tribunal for Forfeited Property, New Delhi-II, Camp: Bangalore. These appeals came to be dismissed by the Appellate Tribunal vide common order dated 15.11.2000. Resultantly, the order of forfeiture of subject properties passed by the Competent Authority was upheld.

11. The respondents then carried the matter before the Madras High Court by way of Writ Petition No.1149 of 2001 (of respondent No.1) and Writ Petition No.1150 of 2001 (of respondent No.2). Both these writ petitions came to be allowed by common judgment and order dated 24.3.2008 passed by the Division Bench of the Madras High Court taking the view that the action initiated against the respondents had vitiated owing to lack of notice to V.P. Selvarajan (convict), which in its view was mandatory requirement under Section 6 of the 1976 Act.

. for short, "Appellate Tribunal"

12. The appellants, being aggrieved by the said decision, have approached this Court by way of present appeals. According to the appellants, the view taken by the Madras High Court vide impugned judgment on the interpretation of Section 6 of the 1976 Act is untenable. Whereas, the issue has been rightly concluded in favour of the appellants by two other High Courts, namely, High Court of Kerala and Calcutta High Court.

13. It is urged that notice under Section 6 of the Act is required to be given to the person to whom the 1976 Act applies in respect of properties held by him, either by himself or through any other person on his behalf, being illegally acquired property within the meaning of the Act and proposed to be forfeited by the Central Government under the Act. It does not require issuing notice to the convict or detenu, as the case may be, if the properties are not held by him or in his name. Indeed, if the properties in question are held in the name of any other person on his behalf, the notice is required to be given to such person. To buttress this submission, reliance has been placed on Section 2 of the Act providing for application of the Act to the persons specified in

Section 2(2). The spouse of the brother of the convict as well as the son of the brother of the convict are plainly covered within the expression "relative" as clarified in *Explanation 2* of Section 2 of the 1976 Act and for which reason, the Act applies to the respondents as well. Emphasis is placed on the expression "held" occurring in Section 6 of the 1976 Act in particular which in terms of definition in P. Ramanatha Aiyar's The Major Law Lexicon would cover (i) those entitled to possession of property; and (ii) those in possession thereof.

14. It is urged that respondents were admittedly holding the properties in their name and thus, they were entitled to possession of such property and in fact they were in physical possession thereof. Therefore, they alone were expected to offer explanation and discharge the burden of proving that the properties are their legally acquired properties. They were, in fact, the persons directly affected by the proposed action of forfeiture and, hence, notice under Section 6 was required to be issued to the respondents alone. There is no mandate in Section 6 that a primary notice be

. 4th Edition, Vol. 3 at pages 3050-51

served on the convict to require him to indicate his sources of income as noted by the Madras High Court. More so, the convict is not expected to offer explanation with regard to the properties held by his relatives and not by him.

15. As regards the purport of Section 6(2) of the 1976 Act, it is urged that the plain and literal interpretation does not mandate issuing notice to the convict even if the property proposed to be forfeited is not held by him at the relevant time. It is a different matter that the convict can also be issued notice, but it is not a mandatory requirement when the properties proposed to be forfeited were held by the relatives of the convict at the relevant time when the action is initiated.

16. The appellants have placed reliance on the decisions of the High Court of Kerala and Calcutta High Court referred to earlier. In addition, reliance has also been placed on the *dictum* of the Constitution Bench of this Court in ***Amratlal Prajivandas***, which has decoded the intent of the legislation and all relevant provisions while rejecting the argument regarding constitutional validity of the

. Supra at Footnote No. 5

enactment. It held that the burden of establishing that the properties mentioned in Section 6 notice held on that date by a relative or an associate of the convict or detenu are not illegally acquired properties, lies upon such relative or associate. Further, the Act is intended to frustrate all attempts at screening properties irrespective of how the relatives/associates hold the property (whether benami or as name-lender or through transferee) and wherein the said relative/associate cannot disclose that the properties have not been acquired with the monies or assets belonging to a detenu/convict, but the failure to discharge the burden would justify their forfeiture there being a prohibition on any person to whom the Act applies from holding illegally acquired properties.

17. Reliance has also been placed on the *dictum* in ***Shobha Suresh Jumani vs. Appellate Tribunal, Forfeited Property & Anr.***, wherein a show-cause notice under Section 6 was issued to the detenu Suresh Manoharlal Jumani and his wife Shobha Suresh Jumani. Right to file appeal by Shobha Suresh Jumani

. (2001) 5 SCC 755

was questioned by the competent authority. Nevertheless, this Court upheld the action initiated against the relative (wife) of the detenu as the properties were held by her. It is submitted that the impugned judgment be set aside and the contra view taken by the High Court of Kerala and Calcutta High Court be affirmed.

18. Per contra, learned counsel for the respondents has supported the view taken by the Madras High Court in the impugned judgment and would urge that the appellants had all throughout proceeded against the respondents on the assumption that the respondents are only ostensible owners and the properties in question, in fact, belonged to the convict. Further, the respondents were holding the subject properties on behalf of the convict. In that context, the Madras High Court examined the purport of Section 6 and the interplay of two sub-sections therein to conclude that primary notice to the convict was a mandatory requirement, in such a fact situation. Now, in the present appeals, the appellants have taken a completely different position, namely, that the respondents are, in fact, the recorded owners of the

subject properties and, therefore, no notice is required to be given to the convict.

19. The respondents have invited our attention to the definition of "persons" and *Explanation 2* in Section 2 of the 1976 Act. It is also urged that the properties referred to in the impugned notices issued to the respondents were not made subject matter of notice under Section 6 issued to the convict on 2.2.1980. In other words, no notice had ever been given to the convict in respect of properties referred to in the impugned notices issued to the respondents as being his illegally acquired properties held through other person on his behalf.

20. As a matter of fact, it is urged by the respondents that Section 6(1) posits that when a notice is issued to a relative, it is imperative upon the Department to allege and establish a nexus between the properties of the relative sought to be forfeited and the convict or detenu. In that, the forfeited properties must be traceable to the illegal sources of income, earnings or assets of the convict or detenu. The personal properties of relative or associate of the

convict or detenu having no connection with the convict or detenu, cannot be made subject matter of forfeiture under the 1976 Act as held in ***Amratlal Prajivandas; Kesar Devi; Fatima Mohd. Amin (Dead) through LRs. vs. Union of India & Anr.;*** and ***Aslam Mohammad Merchant vs. Competent Authority & Ors.***.

21. It is then urged that the subject properties cannot be forfeited without substantiating the link or nexus between the properties of the relatives with the activity of the convict or detenu and more so when the relatives are not his immediate relatives such as parents or children or spouse. For lack of nexus between the properties sought to be forfeited being that of the convict, the statutory presumption is not attracted; and it must follow that Section 8 requiring burden of proof to be discharged by the noticee being the relative of the convict, would not come into play. Moreover, the notice contains a bald unreasoned averment — that the properties in question were acquired during the time when the convict was

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. supra at Footnote No. 5 (para 44)

. supra at Footnote No. 6 (paras 11 and 12)

. (2003) 7 SCC 436 (paras 7 to 9)

. (2008) 14 SCC 186 (para 45)

engaged in gold smuggling, the only inescapable conclusion is that the said properties were acquired by the funds of such convict. As a matter of fact, the respondents had furnished copious materials before the Authorities to establish that the properties in question are, in fact, personal properties purchased by them out of their business earnings, gifts, etc. The plea so taken by the respondents has been completely discarded.

22. It is urged that neither the Competent Authority nor the Appellate Tribunal took into account that no reasons have been recorded on the basis of which it was believed that the properties of the respondents were illegally acquired. Relying on the *dictum* in ***Nazir Ahmad vs. Emperor*** and ***Chandra Kishore Jha vs. Mahavir Prasad & Ors***:, it is urged that when a statute provides something to be done in a particular manner it ought to be done in that manner alone and in no other manner. Whereas, the Competent Authority failed to record proper reasons to believe as stipulated in Section 6 of the 1976 Act.

. AIR 1936 PC 253

. (1999) 8 SCC 266

23. It is then contended that on account of inordinate and undue delay, the proceedings suffer from the vice of arbitrariness and irrationality. In that, the convict was convicted on 23.11.1969 for an offence punishable under the 1962 Act. The properties in question belonging to the respondents were acquired between 1959 till 1980. Whereas, the impugned notices were issued on 19.1.1994 and 28.2.1994. Further, as aforesaid, the stated properties have not been referred to in the criminal proceedings against the convict nor in the notice issued to him on 2.2.1980. No explanation has been offered or forthcoming from the Competent Authority about the delay in issuing notice after 25 years, calling upon the respondents to explain and account for the sources of funds from which the properties in question have been acquired by them. This is not only unjustified, but also impractical and not meet the test of a reasonable period of time. Now, further period of 25 years has lapsed. Thus, to reopen and re-adjudicate the entire proceedings afresh at this distance of time would not only be iniquitous, but also result in serious irreparable harm and injury to the respondents and persons claiming through them.

24. It is urged that this Court may lean in favour of closure of the proceedings inasmuch as even the appellants succeed, the parties may have to be relegated to the High Court for consideration of all other aspects raised by the respondents in the writ petitions and not dealt with by the High Court being of the view that initiation of the action against the respondents without primary notice to the convict vitiated the entire proceedings. As a matter of fact, the High Court in paragraph 21 of the impugned judgment had left it open to the Authorities to initiate fresh proceedings in accordance with law, which the appellants have not chosen to initiate despite the fact that there was no interim stay given by this Court in that regard.

25. We have heard Mr. Aman Lekhi, learned Additional Solicitor General of India, Mr. A.K. Srivastava, learned senior counsel for the appellants and Mr. Atul Shankar Vinod, learned counsel for the respondents.

26. Before we proceed to examine the different viewpoints in reference to the provisions of the 1976 Act, it is essential to notice

the legislative intent for enacting the 1976 Act. That can be discerned from the Preamble of the Act and also exhaustively dealt with by the nine-Judges Constitution Bench of this Court, in ***Amratlal Prajivandas***.

27. The Preamble of the 1976 Act reads thus:

> "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.
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> WHEREAS for the effective prevention of smuggling activities and foreign exchange manipulations which are having a deleterious effect on the national economy it is necessary to deprive persons engaged in such activities and manipulations of their ill-gotten gains;
>
> AND WHEREAS such persons have been augmenting such gains by violations of wealth-tax, income-tax or other laws or by other means and have thereby been increasing their resources for operating in clandestine manner;
>
> **AND WHEREAS such persons have in many cases been holding the properties acquired by them through such gains in the names of their relatives, associates and confidants**;"
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> (emphasis supplied)

28. This Court dealt with the legislative intent in *extenso*. It also analysed the relevant provisions of the 1976 Act which would

. Supra at Footnote No. 5

reinforce the legislative intent. While dealing with the definition of "illegally acquired properties" (re: question No.4 in paragraph 43), it had noticed that the stated expression is quite expansive. It not only takes within its ambit the property acquired after the Act, but also the property acquired before the Act, "whatever be the length of time". Secondly, it takes in the property which may have been acquired partly from out of illegal activity — in which case, of course, the provision of Section 9 would be attracted. Further, illegal activity is not confined to violation of the laws mentioned in Section 2 of the 1976 Act but all laws which Parliament has power to make, such as if a smuggler has acquired some properties by evading tax laws or by committing theft, robbery, dacoity, misappropriation or any other illegal activity prohibited by the Indian Penal Code or any other law in force. All that would be liable to be forfeited.

29. The Constitution Bench negatived the challenge to the expansive definition of expression "illegally acquired property" on the grounds of unreasonableness, arbitrariness or for that matter

on any of the grounds relatable to Part III of the Constitution as not being available. The Constitution Bench then noted as follows:

> "Question No.4
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> **43**. .....We can take note of the fact that persons engaged in smuggling and foreign exchange manipulations do not keep regular and proper accounts with respect to such activity or its income or of the assets acquired therefrom. If such person indulges in other illegal activity, the position would be no different. The violation of foreign exchange laws and laws relating to export and import necessarily involves violation of tax laws. **Indeed, it is a well-known fact that over the last few decades, smuggling, foreign exchange violations, tax evasion, drugs and crime have all got mixed-up. Evasion of taxes is integral to such activity. It would be difficult for any authority to say, in the absence of any accounts or other relevant material that among the properties acquired by a smuggler, which of them or which portions of them are attributable to smuggling and foreign exchange violations and which properties or which portions thereof are attributable to violation of other laws (which Parliament has the power to make). It is probably for this reason that the burden of proving that the properties specified in the show-cause notice are not illegally acquired properties is placed upon the person concerned. May be this is a case where a dangerous disease requires a radical treatment. Bitter medicine is not bad medicine**. In law it is not possible to say that the definition is arbitrary or is couched in unreasonably wide terms. Further, in view of clear and unambiguous language employed in clause (*c*) of Section 3, it is not possible or permissible to resort to the device of reading down. The said device is usually resorted to save a provision from being declared unconstitutional, incompetent and ultra vires. We are, therefore, of the opinion that neither the constitutional validity of the said definition can be

> questioned nor is there any warrant for reading down the clear and unambiguous words in the clause. So far as justification of such a provision is concerned, there is enough and more. **After all, all these illegally acquired properties are earned and acquired in ways illegal and corrupt — at the cost of the people and the State. The State is deprived of its legitimate revenue to that extent. These properties must justly go back where they belong — to the State**. ....."
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> (emphasis supplied)

30. After having said that while dealing with the ambit of Section 2(2) of the Act, the Court observed thus:

> "Question No. 5
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> **44.** It is contended by the counsel for the petitioners that extending the provisions of SAFEMA to the relatives, associates and other 'holders' is again a case of overreaching or of over-breadth, as it may be called — a case of excessive regulation. It is submitted that the relatives or associates of a person falling under clause (*a*) or clause (*b*) of Section 2(2) of SAFEMA may have acquired properties of their own, may be by illegal means but there is no reason why those properties be forfeited under SAFEMA just because they are related to or are associates of the detenu or convict, as the case may be. It is pointed out that the definition of 'relative' in Explanation (2) and of 'associates' in Explanation (3) are so wide as to bring in a person even distantly related or associated with the convict/detenu, within the net of SAFEMA, and once he comes within the net, all his illegally acquired properties can be forfeited under the Act. **In our opinion, the said contention is based upon a misconception. SAFEMA is directed towards forfeiture of "illegally acquired properties" of a person falling under clause (*a*) or clause (*b*) of Section 2(2). The relatives and associates are brought in only for the purpose of ensuring that the illegally acquired properties of the convict or**

detenu, acquired or kept in their names, do not escape the net of the Act. It is a well-known fact that persons indulging in illegal activities screen the properties acquired from such illegal activity in the names of their relatives and associates. Sometimes they transfer such properties to them, may be, with an intent to transfer the ownership and title. In fact, it is immaterial how such relative or associate holds the properties of convict/detenu — whether as a benami or as a mere name-lender or as a bona fide transferee for value or in any other manner. He cannot claim those properties and must surrender them to the State under the Act. Since he is a relative or associate, as defined by the Act, he cannot put forward any defence once it is proved that that property was acquired by the detenu — whether in his own name or in the name of his relatives and associates. It is to counteract the several devices that are or may be adopted by persons mentioned in clauses (*a*) and (*b*) of Section 2(2) that their relatives and associates mentioned in clauses (*c*) and (*d*) of the said sub-section are also brought within the purview of the Act. The fact of their holding or possessing the properties of convict/detenu furnishes the link between the convict/detenu and his relatives and associates. Only the properties of the convict/detenu are sought to be forfeited, wherever they are. The idea is to reach his properties in whosoever's name they are kept or by whosoever they are held. The independent properties 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[*]. We may proceed to explain

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[**] **That this was the object of the Act is evident from para 4 of the preamble which states: "And whereas such persons have in many cases been holding the properties acquired by them through such gains in the names of their relatives, associates and confidants." We are not saying that the preamble can be utilised for restricting the scope of the Act, we are only referring to it to ascertain the object of the enactment and to reassure ourselves that the construction placed by us accords with the**

what we say. Clause (*c*) speaks of a relative of a person referred to in clause (*a*) or clause (*b*) (which speak of a convict or a detenu). Similarly, clause (*d*) speaks of associates of such convict or detenu. If we look to Explanation (3) which specifies who the associates referred to in clause (*d*) are, the matter becomes clearer. 'Associates' means — (*i*) any individual who had been or is residing in the residential premises (including outhouses) of such person ['such person' refers to the convict or detenu, as the case may be, referred to in clause (*a*) or clause (*b*)]; (*ii*) any individual who had been or is managing the affairs or keeping the accounts of such convict/detenu; (*iii*) any association of persons, body of individuals, partnership firm or private company of which such convict/detenu had been or is a member, partner or director; (*iv*) any individual who had been or is a member, partner or director of an association of persons, body of individuals, partnership firm or private company referred to in clause (*iii*) at any time when such person had been or is a member, partner or director of such association of persons, body of individuals, partnership firm or private company; (*v*) any person who had been or is managing the affairs or keeping the accounts of any association of persons, body of individuals, partnership firm or private company referred to in clause (*iii*); (*vi*) the trustee of any trust where (*a*) the trust has been created by such convict/detenu; or (*b*) the value of the assets contributed by such convict/detenu to the trust amounts, on the date of contribution not less than 20% of the value of the assets of the trust on that date; and (*vii*) where the competent authority, for reasons to be recorded in writing, considers that any properties of such convict/detenu are held on his behalf by any other person, such other person. It would thus be clear that the connecting link or the nexus, as it may be called, is the holding of property or assets of the convict/detenu or traceable to such detenu/convict. **Section 4 is equally relevant in this context. It declares that "as from the commencement of this Act, it shall not be lawful for any person to whom this Act applies to**

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said object.

(emphasis supplied)

hold any illegally acquired property either by himself or through any other person on his behalf". All such property is liable to be forfeited. The language of this section is indicative of the ambit of the Act. Clauses (*c*) and (*d*) in Section 2(2) and the Explanations (2) and (3) occurring therein shall have to be construed and understood in the light of the overall scheme and purpose of the enactment. The idea is to forfeit the illegally acquired properties of the convict/detenu irrespective of the fact that such properties are held by or kept in the name of or screened in the name of any relative or associate as defined in the said two Explanations. The idea is not to forfeit the independent properties of such relatives or associates which they may have acquired illegally but only to reach the properties of the convict/detenu or properties traceable to him, wherever they are, ignoring all the transactions with respect to those properties. By way of illustration, take a case where a convict/detenu purchases a property in the name of his relative or associate — it does not matter whether he intends such a person to be a mere name-lender or whether he really intends that such person shall be the real owner and/or possessor thereof — or gifts away or otherwise transfers his properties in favour of any of his relatives or associates, or purports to sell them to any of his relatives or associates — in all such cases, all the said transactions will be ignored and the properties forfeited unless the convict/detenu or his relative/associate, as the case may be, establishes that such property or properties are not "illegally acquired properties" within the meaning of Section 3(*c*). In this view of the matter, there is no basis for the apprehension that the independently acquired properties of such relatives and associates will also be forfeited even if they are in no way connected with the convict/detenu. So far as the holders (not being relatives and associates) mentioned in Section 2(2)(*e*) are concerned, they are dealt with on a separate footing. If such person proves that he is a transferee in

> good faith for consideration, his property — even though purchased from a convict/detenu — is not liable to be forfeited. **It is equally necessary to reiterate that the burden of establishing that the properties mentioned in the show-cause notice issued under Section 6, and which are held on that date by a relative or an associate of the convict/detenu, are not the illegally acquired properties of the convict/detenu, lies upon such relative/associate. He must establish that the said property has not been acquired with the monies or assets provided by the detenu/convict or that they in fact did not or do not belong to such detenu/convict**. We do not think that Parliament ever intended to say that the properties of all the relatives and associates, may be illegally acquired, will be forfeited just because they happen to be the relatives or associates of the convict/detenu. **There ought to be the connecting link between those properties and the convict/detenu, the burden of disproving which, as mentioned above, is upon the relative/associate. In this view of the matter, the apprehension and contention of the petitioners in this behalf must be held to be based upon a mistaken premise**. The bringing in of the relatives and associates or of the persons mentioned in clause (*e*) of Section 2(2) is thus neither discriminatory nor incompetent apart from the protection of Article 31-B."
>
> (emphasis supplied)

31. While examining the contention whether clauses (c) to (e) of Section 2(2) is a case of overreach or overbreadth, it held that this argument of excessive regulation was based on a misconception as the Act is only directed towards forfeiture of "illegally acquired properties of the person falling under clause (a) or clause (b) of Section 2(2)". The relative and associates are brought in only to

ensure that the 'illegally acquired properties' of the convict or the detenu, acquired or kept in the names of relatives or associates do not escape the net of the Act. There could be cases where the persons mentioned in clauses (a) and (b) could transfer 'illegally acquired properties' to their relatives and associates "and even further", with the intent to transfer the ownership and title. Therefore, it is immaterial how such relative or associate holds the illegally acquired property of the convict/detenu – whether as a benami, or as a mere name-lender or through transferee or in any other manner. The objective and purpose of the Act is to counteract devices that are or may be adopted by persons mentioned in clauses (a) or (b) of Section 2(2), hence, their relatives or associates mentioned in clauses (c) or (d) of the said sub-section are also brought within the purview of the Act. The relatives or associates holding or possessing the illegally acquired property of the convict/detenu is the link between the convict/detenu. The idea is to forfeit the properties of the convict/detenu wherever they are, and to reach properties in whosoever's name they are kept or held.

32. In the backdrop of the *dictum* of the Constitution Bench and the subsequent decisions of this Court, we may hasten to add that pivot of the 1976 Act is to reach the "illegally acquired properties" of the specified convict/detenu in whosoever's name they are kept or by whosoever they are held, whatever be the length of time.

33. Concededly, the dispensation under the 1976 Act applies only to persons specified in Section 2(2).

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

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

(a) every person—

(i) who has been convicted under the Sea Customs Act, 1878 (8 of 1878), or the Customs Act, 1962 (52 of 1962), of an offence in relation to goods of a value exceeding one lakh of rupees; or

(ii) who has been convicted under the Foreign Exchange Regulation Act, 1947 (7 of 1947), or the Foreign Exchange Regulation Act, 1973 (46 of 1973), of an offence, the amount or value involved in which exceeds one lakh of rupees; or

(iii) who having been convicted under the Sea Customs Act, 1878 (8 of 1878), or the Customs Act, 1962 (52 of 1962), has been convicted subsequently under either of those Acts; or

(iv) who having been convicted under the Foreign Exchange Regulation Act, 1947 (7 of 1947), or the Foreign Exchange Regulation Act, 1973 (46 of 1973), has been convicted subsequently under either of those Acts;

(b) 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:

34. Broadly stated, Section 2(2)(a) refers to the category of persons who are convicted under the specified enactments. Whereas, Section 2(2)(b) refers to persons detained under the specified detention law. The expression "person" to whom the 1976

Provided that—

(i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board or before making a reference to the Advisory Board; or

(ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or

(iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of that Act; or

(iv) such order of detention has not been set aside by a court of competent jurisdiction;

(c) every person who is a relative of a person referred to in clause (a) or clause (b);

(d) every associate of a person referred to in clause (a) or clause (b);

(e) any holder (hereafter in this clause referred to as the present holder) of any property which was at any time previously held by a person referred to in clause (a) or clause (b) unless the present holder or, as the case may be,

Act applies, has been broadened by including every person who is a relative of a person referred to in clause (a) being convict under the specified laws or clause (b) being detenu under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,

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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.

Explanation 1.— For the purposes of sub-clause (i) of clause (a), the value of any goods in relation to which a person has been convicted of an offence shall be the wholesale price of the goods in the ordinary course of trade in India as on the date of the commission of the offence.

Explanation 2.— For the purposes of clause (c), "relative" in relation to a person, means—

(i) spouse of the person;

(ii) brother or sister of the person;

(iii) brother or sister of the spouse of person;

(iv) any lineal ascendant or descendant of the person;

(v) any lineal ascendant or descendant of the spouse of the person;

(vi) spouse of a person referred to in clause (ii), clause (iii), clause (iv) or clause (v);

(vii) any lineal descendant of a person referred to in clause (ii) or clause (iii).

Explanation 3.—For the purposes of clause (d), "associate", in relation to a person, means—

(i) any individual who had been or is residing in the residential premises (including out houses) of such person;

(ii) any individual who had been or is managing the affairs or keeping the accounts of such person;

(iii) any association of persons, body of individuals, partnership firms, or private company within the meaning of the Companies Act, 1956, of which such person had been or is a member, partner or director;

1974. The expression "relative" has been further elaborated in *Explanation 2,* of Section 2, so as to expand the scope of taking corrective measures for reaching up to the illegally acquired properties of a convict or detenu, as the case may be.

(iv) any individual who had been or is a member, partner or director of an association of persons, body of individuals, partnership firm, or private company referred to in clause (iii) at any time when such person had been or is a member, partner or director of such association, body, partnership firm or private company;

(v) any person who had been or is managing the affairs, or keeping the accounts, of any association of persons, body of individuals, partnership firm or private company referred to in clause (iii);

(vi) the trustee of any trust, where,—

(a) the trust has been created by such person; or

(b) the value of the assets contributed by such person (including the value of the assets, if any, contributed by him earlier) to the trust amounts, on the date on which the contribution is made, to not less than twenty per cent. of the value of the assets of the trust on that date;

(vii) where the competent authority, for reasons to be recorded in writing considers that any properties of such person are held on his behalf by any other person, such other person.

***Explanation 4.*— For the avoidance of doubt, it is hereby provided that the question whether any person is a person to whom the provisions of this Act apply may be determined with reference to any facts, circumstances or events (including any conviction or detention) which occurred or took place before the commencement of this Act.**

(emphasis supplied)

35. As regards the respondents herein, it is obvious that they are covered under the ambit of relative — being son and wife of the brother of the convict, to whom the 1976 Act applied.

36. Section 2(2)(d) further expands the sweep so as to include associate of a convict or detenu, as the case may be; and Section 2(2)(e) takes within its ambit any holder (the present holder) of any property, which was at any time previously held by a person referred to in clause (a) or clause (b), namely, convict or detenu, as the case may be.

37. The objective and purpose of the enactment is reinforced in the encircling *Explanation* 4 as reproduced hereinbefore. Obviously, the intent is to ensure that the convict/detenu cannot get away by adopting camouflage or screening, including legal transfer of properties in the name of his relative, associate or any other person covered under clause (e) to Section 2(2) of the Act.

38. This expanded ambit of clauses (c) to (e) is to be interpreted in the context of the object and purpose of the Act, but the scope of the Act does not extend to include every property held by a relative

or an associate unless the link and the connection with the illegal activities of the convict/detenu is established. For, the Act is only directed to forfeiture of 'illegally acquired properties' of a person falling under clause (a) or clause (b) of Section 2(2) including their specified properties held by third party. Independent properties of the relatives and friends which are not traceable to the illegal activities of the convict/detenu are neither sought to be forfeited nor are they within the purview of the Act.

39. Section 3 is the definition clause. The expression "illegally acquired property" has been expounded in clause (c) of sub-Section (1) thereof.

. **3. Definitions.—** (1) In this Act, unless the context otherwise requires,

(a) and (b)....

(c) "illegally acquired property", in relation to any person to whom this Act applies, means,—

(i) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force relating to any matter in respect of which Parliament has power to make laws; or

(ii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets in respect of which any such law has been contravened; or

The other relevant definition clause is expression "property" in Section 3(1)(e).

40. As aforementioned, in ***Amratlal Prajivandas***, whilst interpreting the definition of "illegally acquired properties" in clause (c) of Section 3(1) of the Act, it was held that the definition is very wide as to include not only the property acquired after the

(iii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved and which cannot be shown to be attributable to any act or thing done in respect of any matter in relation to which Parliament has no power to make laws; or

(iv) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property referred to in sub-clauses (i) to (iii) or the income or earnings from such property;

and includes—

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings therefrom;

. (e) "property" includes any interest in property, movable or immovable;

. Supra at Footnote No. 5

enactment of the Act but also property acquired before the Act, whatever be the length of time, and further the illegal activity is not confined to the laws mentioned in Section 2 of the Act but also other laws which the Parliament is competent to make. At the same-time it is clarified that the definition of 'illegally acquired properties' does not include the properties of the relatives or associates covered under clauses (c) and (d) of Section 2(2) even if they have acquired the properties by illegal activities or in violation of the laws made by the Parliament. For, the Act applies only to 'illegally acquired properties' of the convict/detenu held by or in the name of the relative or associate or holder.

41. While answering Question No.5, the Constitution Bench held:

> "44...Section 4 is equally relevant in this context. It declares that "as from the commencement of this Act, it shall not be lawful for any person to whom this Act applies to hold any illegally acquired property either by himself or through any other person on his behalf". All such property is liable to be forfeited. The language of this section is indicative of the ambit of the Act. Clauses (*c*) and (*d*) in Section 2(2) and the Explanations (2) and (3) occurring therein shall have to be construed and understood in the light of the overall scheme and purpose of the enactment. The idea is to forfeit the illegally acquired properties of the convict/detenu irrespective of the fact that such properties are held by or kept in the name of or screened in the name of any

> relative or associate as defined in the said two Explanations. The idea is not to forfeit the independent properties of such relatives or associates which they may have acquired illegally but only to reach the properties of the convict/detenu or properties traceable to him, wherever they are, ignoring all the transactions with respect to those properties..."

On the issue of the applicability of the Act to holders mentioned in Section 2(2)(e) of the Act, this Court held that they fall in a different class from relatives and associates who are dealt with on a separate footing. If a person covered under clause (e) to Section 2(2) proves that he is a transferee in good faith without notice, for adequate consideration, his property — even though purchased from a convict/detenu — is not liable to be forfeited.

42. In the present judgment, it is not necessary for us to dilate on the definition of "illegally acquired property" as the sole issue involved is: whether it is mandatory to issue a primary notice under Section 6 of the 1976 Act to the convict and not merely to the relatives of the convict who hold the properties proposed to be

forfeited? Nevertheless, it may be useful to advert to Section 4[.] of the 1976 Act which prohibits holding of illegally acquired property.

43. On the literal construction of this provision, it must follow that it shall not be lawful for any person (as defined in Section 2(2) of the 1976 Act) to whom the Act applies to hold any illegally acquired property (as defined in Section 3(1)(c) of the 1976 Act) either by himself or through any other person on his behalf. It is well settled that when penalty (such as forfeiture of such property) is imposed by statute for the purpose of preventing something from being done on some ground of public policy, the thing prohibited, if done, will be treated as void, even though the penalty if imposed is not enforceable. Such acts of commission and omission become void even without express declaration regarding its voidness, because such penalty implies a prohibition[.] Be it noted that

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

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

[.] see Mannalal Khetan & Ors. vs. Kedar Nath Khetan & Ors., (1977) 2 SCC 424 (paras 18 to 22) and Asha John Divianathan vs. Vikram Malhotra & Ors.,

Section 4 of the Act posits a clear mandate that the person to whom the Act applies shall not hold any illegally acquired property and there is a corresponding duty on the Competent Authority to initiate process after due inquiry under Section 18 of the 1976 Act for forfeiture of such property — whether acquired before the commencement of the Act or thereafter.

44. That process has to be initiated by the Competent Authority by issuing notice under Section 6 of the 1976 Act to such person who holds the properties proposed to be forfeited being illegally

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. **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, and any other information or material available to it as a result of action taken under **section 18** or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon **such person (hereinafter referred to as the person affected)** calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act.

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

(emphasis supplied)

acquired properties. That person may hold the property either by himself or through any other person on his behalf. If the property is held by person concerned, the notice under Section 6(1) needs to be issued to such person to whom the Act applies calling upon him to disclose 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 information and particulars.

45. Before we proceed to analyse Section 6 of the 1976 Act, it would be apposite to reproduce Section 18 of the Act, which is referred to in Section 6(1), being the preceding procedural steps to

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. **18. Power of competent authority to require certain officers to exercise certain powers.—** (1) For the purposes of any proceedings under this Act or the initiation of any such proceedings, the competent authority shall have power to cause to be conducted any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account or any other relevant matters.

(2) For the purposes referred to in sub-section (1), the competent authority may, having regard to the nature of the inquiry, investigation or survey, require an officer of the Income-tax Department to conduct or cause to be conducted such inquiry, investigation or survey.

(3) Any officer of the Income-tax Department who is conducting or is causing to be conducted any inquiry, investigation or survey required to be conducted under sub-section (2) may, for the purpose of such inquiry, investigation or survey, exercise any power (including the power to authorise the exercise of any power) which may be exercised by him for any purpose under the Income-tax Act, 1961 (43 of 1961), and the provisions of the said Act shall, so far as may be, apply accordingly.

be taken by the Competent Authority before issuing notice under Section 6(1), upon having reason to believe that the concerned properties are illegally acquired properties held by the noticee, either by himself or through any other person on his behalf.

46. At this stage, we may also refer to the other relevant provision being Section 8 of the 1976 Act provisioning for burden of proving that the property referred to in the notice is legally acquired property of the noticee.

47. On plain as well as contextual reading of Section 6, it is crystal clear that the notice under Section 6(1) is required to be issued to any person to whom the Act applies. As is evident from Section 2(2) of the 1976 Act, the Act applies not only to convict or detenu, but also to their relative, associate including holder of any property being Section 2(2)(c), 2(2)(d) and 2(2)(e) respectively. The purpose of issuing notice is to enable the person concerned (noticee) to discharge the burden of proof as propounded in Section

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. **8. Burden of proof.—** In any proceedings under this Act, the burden of proving that any property specified in the notice served under section 6 is not illegally acquired property shall be on the person affected.

8 of the 1976 Act. It is then open to him to prove that the property referred to in the notice is his legally acquired property.

48. In a given case, however, if the property is held by a person owing to merely being in legal possession thereof, but the ownership of the property at the relevant time is that of the convict or detenu or his/her relative, as the case may be, it would become necessary for the Competent Authority to not only give notice to the person in possession of the property in question but also to the person shown as owner thereof in the relevant records. Similarly, in a case where the person shown as owner in the relevant records had purchased the subject property from the convict or detenu and is a subsequent purchaser, notice is required to be issued to both — the present owner and the erstwhile owner (convict or detenu), as the case may be. However, if the ownership of the property in the relevant records at the relevant time is that of the person in possession (as in these cases), and not being the convict or detenu, the question of issuing notice to the latter would serve no purpose. The convict or detenu cannot be heard to claim any right in such property including proprietary rights and for the same reason, he is

not expected to discharge the burden of proof under Section 8 of the 1976 Act as to whether it is his legally acquired property nor can he be said to be the person affected with the proposed action of forfeiture as such.

49. The expression "held" in Section 6 has to be understood to mean that the person is entitled to possession of property being owner of the property in the relevant record or even because he is in legal possession thereof. In other words, a person may be holding the property also when he (at the relevant time) is in legal possession of the stated property, even if he is not a recorded owner thereof. In either case, it would be a matter within the ambit of expression "held" occurring in Section 6 of the 1976 Act.

50. The third facet of Section 6(1) of the 1976 Act is the noticee may hold the property either by himself or through any other person on his behalf. As noted earlier, a primary notice under Section 6(1) can be issued only against person to whom the Act applies. If the relative of a convict or detenu has acquired property from the illegal sources of income, earnings or assets of the convict

or detenu, such person would be a person to whom the Act applies vide Section 2(2)(c) read with *Explanation 2.* Such person may be a recorded owner of the property — having acquired it wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to unlawful activity (whether indulged into before or after the commencement of the 1976 Act) of the convict or detenu which is prohibited by or under any law for the time being in force relating to any matter in respect of which Parliament has power to make laws.

51. In other words, going by the definition of "illegally acquired property" in Section 3(1)(c) and of "person" in Section 2(2) to whom the Act applies, if the property is held in the name of the relative of the convict or detenu before or after the commencement of the Act, the notice under Section 6(1) needs to be issued to such person (recorded owner as well as in possession), who alone can and is expected to discharge the burden of proof in terms of Section 8 of the 1976 Act — so as to dissuade the Competent Authority from proceeding further against such property. Indeed, if the illegally acquired property is held in the name of the relative, but the *de*

facto possession thereof is with some other person, who is not covered by the expression "person" as given in Section 2(2), in such a case primary notice under Section 6 is required to be issued to the relative of the convict or detenu and copy thereof served upon "such other person" who is in *de facto* possession thereof (*albeit* for and on behalf of the relative of the convict or detenu). Even in this situation, notice to the convict or detenu may not be necessary much less mandatory. For, the 1976 Act applies even to the relative of the convict or detenu holding illegally acquired property either by himself or through any other person on his behalf.

52. Learned counsel appearing for the parties had commended us with the purport of Section 6(2) of the 1976 Act. Different interpretation has been given by both sides to the expressions occurring therein. Section 6(2) merely refers to the requirement of issuing notice to "such other person".

53. The expression "such person" is found not only in Section 6(1), but in other provisions of the Act including the definition clause i.e., Section 3(1)(c) of illegally acquired property. The

expression "such person" and "such other person" occurring in Section 6(2) may have to be understood in the context and the setting in which it has been employed in the concerned provision. A harmonious construction thereof is imperative.

54. In the first part of Section 6(2), the expression used is "any person". That is a person to whom primary notice under Section 6(1) is addressed. This person can be none other than person referred to in Section 2(2) of the 1976 Act. He can be a convict or detenu, his relative or associate including the person who is a holder of the property in question at the relevant time. Section 6(2) then refers to the subject property in the notice and the *factum* of the property being held by concerned person (such person) — either the primary noticee to whom the Act applies himself or through "any other person" on his behalf. The latter is described as "such other person", in the concluding part of that sub-Section [Section 6(2)]. That, "such other person", is also covered within the ambit of expression "any other person" mentioned earlier and holding the property in question on behalf of the primary noticee. In other words, "such other person" will be a person other than a

person to whom the Act applies being merely a holder of illegally acquired property on behalf of the person to whom Act applies. Thus, he may be a person other than a person referred to in Section 2(2) of the 1976 Act. The legislative intent is to cover "such other person" so as to reach up to "illegally acquired property" of the convict/detenu and unravel/lift the veil created by the person to whom the Act applies. We may usefully recapitulate the enunciation of the Constitution Bench, wherein it is held that the legislative intent is to reach to all illegally acquired properties in whosoever's name they are kept or by whosoever they are held irrespective of the time period of such acquisition. This is to ensure that the persons to whom the Act applies referred to in Section 2(2), do not use mechanism to shield illegally acquired properties from the proposed action of forfeiture.

55. Be it noted that the expression "such person" employed in Section 6(2) is referable to the primary noticee, who is a person to whom the Act applies. If, however, the notice mentions that the properties referred to in the notice are held by the noticee through any other person on his behalf, that may be a case of holding of

physical possession of the illegally acquired property by person other than the person to whom the Act applies. In such a case, sub-section (2) triggers in enabling the Competent Authority to issue notice even to "such other person" — not covered by the definition of Section 2(2) of the Act. If that person is merely in possession of the property and not its owner, he may not be able to explain or prove the fact that the property is not illegally acquired property of the primary noticee. Indeed, if "such other person" is claiming ownership of the property through the relative of the convict or detenu in relation to illegally acquired property, who was earlier owner thereof upon receipt of notice under Section 6(2) can certainly impress upon the Competent Authority that he is a purchaser in good faith for adequate consideration of the stated property. Such a plea can be considered by the Competent Authority on its own merits.

56. Section 4 of the Act, which in sub-section (1) uses similar expression – "any person to whom this Act applies to hold any

illegally acquired property either by himself or through any other person on his behalf" – which is similar to the wordings/expressions used in Section 6 of the Act, reinforces the above interpretation.

57. Notice under Section 6(1) cannot be issued in respect of properties for which the Competent Authority has no evidence or material to record "reasons to believe" that the properties were acquired from the assets or money provided by the convict/detenu. The expression 'reasons to believe' is a phrase used in several enactments and interpreted by this court to mean not 'mere subjective satisfaction' based on surmise and conjecture, but a belief that is 'honest and based upon reasonable grounds'.[1] The satisfaction should be based upon objective material and not mere feeling or inkling.[2] The requirement is deliberately legislated as a check against frivolous and rowing inquiries based upon mere suspicion and pretence.[3] The reasons to believe to be valid should refer to facts that have a rational connection or relevant bearing to

[1] Tata Chemicals Ltd. v. Commissioner of Customs (Preventive), Jamnagar, (2015) 11 SCC 628

[2] Kewal Krishan v. State of Punjab, AIR 1967 SC 737

[3] Bar Council of Maharashtra v. M. V. Dabholkar & Ors., (1976) 2 SCC 291

the formation of belief and should not be extraneous or irrelevant for the purpose of initiation of inquiry under Section 6 of the Act.

58. Recording of the reasons to believe and satisfaction of the aforesaid conditions is an important condition precedent – a *sine qua non* – and its violation would have legal consequences. It is a jurisdictional requirement, which, unlike a procedural requirement, would affect the proceedings if not complied with. Therefore, in such cases, the question of no prejudice is unavailable as the provision for issue of notice and satisfaction of the precondition for the issue of notice, i.e., "reasons to believe", is mandatory and not optional or directory.

59. G.P. Singh, in *Principles of Statutory Interpretation*, 14th Edition, at page 430, has laid down principles and rules for ascertaining the mandatory or directory nature of provisions, and has noted that this depends on the intent of the legislature and not necessarily on the language that the intent is clothed in. The nature and design of the statute, the effects which would follow

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. S. Narayanappa & Ors. v. Commissioner of Income-tax, Bangalore, AIR 1967 SC 523

from construing it one way or the other, and the severity or triviality of consequences that flow therefrom have to be considered. At times, the courts examine whether the statute provides for the contingency of non-compliance and whether non-compliance is visited with some penalty etc., but this is not a necessary or sufficient basis for determining whether the provision is mandatory or directory in nature. Lastly, if a provision is mandatory, it must be obeyed and followed. This is especially so in case of jurisdictional requirements, i.e., pre-conditions that have to be fulfilled before any action is taken.

60. In the context of the present enactment, it is unnecessary to underscore that when a notice under Section 6 of the Act is issued, the consequences entail forfeiture of property or fine in lieu of forfeiture as envisaged by Sections 7 and 9, respectively, of the Act. We have not quoted Section 11, but the said provision postulates that transfer of property referred to in a notice under Section 6 is null and void. Therefore, transactions after issuance of notice under Section 6 or 10 (which applies to the procedure in respect of certain trust properties) are void and are to be ignored.

61. Section 8 of the Act predicates that when proceedings in respect of a property are initiated by way of notice under Section 6, the burden of proving that the property is not illegally acquired shall be on the person affected. The enactment, therefore, reverses the burden of proof but only after the notice under Section 6 has been validly issued. By virtue of Section 6, the enactment requires the Competent Authority to form reasons to believe, which must be rational and based upon some material which would show that the conditions mentioned in Section 2(2) as explained and expounded by this Court in ***Amratlal Prajivandas*** are satisfied. Section 8 does not apply at the initial stage or when the Competent Authority decides whether or not notice under Section 6 should be issued. The Competent Authority cannot, simply by relying upon Section 8, reverse the burden of recording of reasons to believe and mechanically issue notice under Section 6. For, Section 8 does not apply at the stage when the Competent Authority forms and records its reasons to issue notice.

. **8. Burden of proof.** In any proceedings under this Act, the burden of proving that any property specified in the notice served under section 6 is not illegally acquired property shall be on the person affected.

. Supra at Footnote No. 5

62. Section 7[.] of the Act, which is titled '*Forfeiture of property in certain cases*', supports the above interpretation as it envisages that the Competent Authority shall consider the explanation, if any, to the show-cause notice issued under Section 6 and the material before it. After giving notice to the person affected, and in case the person affected holds any property specified in the notice through any other person, then to such other person, a reasonable opportunity of being heard would be afforded to them. Thereafter, the Competent Authority may pass an order, recording findings

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. **7. Forfeiture of property in certain cases**. (1) The competent authority may, after considering the explanation, if any, to the show- cause notice issued under section 6, 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.

whether or not the listed properties are illegally acquired properties.

63. In ***Kesar Devi***, this Court held that the language of Section 6(1) does not indicate any requirement of mentioning any link or nexus between the convict or the detenu and the property ostensibly standing in the name of the person covered under clauses (c), (d) and (e) to Section 2(2) and also referred to Section 8 which incorporates reverse burden of proof. However, the said observations must be read in light of the Constitution Bench judgment in the case of ***Amratlal Prajivandas***, which is the authoritative and binding precedent. Indeed, ***Kesar Devi's*** judgment observes that in some cases where the relationship is close and direct, an inference can easily be drawn and no link or nexus has to be indicated and may itself indicate some link or nexus, which can be duly taken notice of and the reasons to believe can be recorded in writing. That, however, may depend on facts of the case and not be true in all cases.

. Supra at Footnote No. 6

. Supra at Footnote No. 5

. Supra at Footnote No. 6

64. A *priori*, we are of the considered opinion that Section 6(1) of the 1976 Act nowhere provides that it is "mandatory" to serve the convict or detenu with a primary notice under that provision whilst initiating action against the relative of the convict. Indubitably, if the illegally acquired property is held by a person in his name and is also in possession thereof, being the relative of the convict and who is also a person to whom the Act applies, there is no need to issue notice to the convict or detenu much less primary notice as held by the High Court in the impugned judgment. For, Section 6(1) posits that notice must be given to the person who is holding the tainted property and is likely to be affected by the proposed forfeiture of the property. The person immediately and directly to be affected is the person who is the recorded owner of the property and in possession thereof himself or through some other person on his behalf. In the latter case, the burden of proof under Section 8 is not to be discharged by the convict or detenu, but by the person who holds the illegally acquired property either by himself or through any other person on his behalf.

65. The expression "such other person" in Section 6(2) is, thus, referable to a person falling in class "through any other person on his behalf". That is the person to whom the Act applies, as noted in the opening part of Section 6(1) of the Act. In such a case, the convict or detenu is not expected to nor can be called upon to discharge the burden of proof under Section 8. Accordingly, we may lean in favour of the view taken by the High Court of Kerala and Calcutta High Court reproduced above, for independent reasons delineated hitherto. The view taken by the Madras High Court in the impugned judgment, therefore, does not commend to us and is reversed.

66. The parties had invited our attention to other judgments of this Court. However, those judgments have not dealt with the question that arise for consideration in the present appeals.

67. Having said this, we need to set aside the impugned judgment and relegate the parties before the High Court by restoring the writ petitions to the file to its original number for being heard afresh on all other issues and contentions as may be available to both sides

including the argument that there is an inordinate, undue and unexplained delay in initiating the action against the respondents (writ petitioners) and as a result of which it would be iniquitous to call upon the respondents to offer explanation by reopening the adjudication of the entire proceedings. We do not wish to dilate on any other plea in these appeals. Further, we may not be understood to have expressed any opinion either way on any other contention available to the parties. We say so because even the impugned judgment makes it amply clear that the writ petitions filed by the respondents were being allowed on the sole ground that the action against the respondents sans primary notice to the convict is vitiated. That view having been reversed, the matter needs to go back before the High Court for consideration of all other aspects on its own merits.

68. During the course of the hearing, an issue arose whether the convict, i.e., V.P. Selvarajan had expired before the issuance of notice under Section 6 on 19th January 1994. The counsel, at the time of argument, were not aware of the factual position. However, in the written submissions, the appellant and the respondents

have accepted that the convict V.P. Selvarajan had expired before impugned notices under Section 6 dated 19th January 1994 were issued.

69. Be that as it may, in the present case, the properties in question and subject matter of notice under Section 6 are in the name of and held by the two respondents. No entitlement or right has been claimed in these properties by the heirs of the deceased convict V. P. Selvarajan. If the properties were in the name of the deceased detenu or convict, then different considerations may have applied. In the context of the present case as the convict V.P. Selvarajan had expired before the issuance of notice under Section 6 on 19th January 1994, therefore, the need and requirement to serve notice on him would not arise.

70. Accordingly, these appeals succeed. The common impugned judgment and order dated 24.3.2008 passed by the Madras High Court in Writ Petition Nos.1149 and 1150 of 2001 is set aside. Instead, the writ petitions are restored to the file to its original number for being considered afresh on its own merits in

accordance with law on all other issues and contentions available to both sides except the question answered in this judgment. Thus, all other contentions available to both parties are left open. We request the High Court to expeditiously dispose of the remanded writ petitions. No order as to costs.

Pending applications, if any, stand disposed of.

.....J.
(A.M. Khanwilkar)

.....J.
(Sanjiv Khanna)

New Delhi;
December 14, 2021.