

State of Goa

Vs

Hirabhai Somabhai Tandel, Nani, Daman

(G. N. Ray, G. B. Pattanaik JJ)

05.11.1997

ORDER

1.The validity of the order dated 15th November, 1989 passed by the Division Bench of the Bombay High Court (Panaji Bench) Goa in Criminal Writ Petition No.27/89 is under challenge in this appeal.On 24th July, 1975 an order of detention under Section 3(I) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 was passed against the step father of the respondent.It is an admitted position that such respondent was kept on detention for more than a year but was released before the expiry of two years.On 29th October, 1979 a notice was issued to the respondent for forfeiture of the property held by the step father of the respondent under the provisions of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act 1976.No challenge was made against such notification and on 19th December, 1985 the competent authority under the said Act (hereinafter referred to as SAFEMA) passed order under Section 7 of the SAFEMA directing for forfeiture of the property of the respondent.No appeal or writ petition was filed by the respondent challenging such forfeiture.It may be stated that pursuant to the said order of forfeiture the property was sold in auction in August, 1989 to the Daman Administration for a sum of Rs.2,59,256/- and possession of the said property had been handed over to the said Daman Administration.The respondent filed that Criminal Writ Petition No.27/89 before the Goa Bench on 17th July, 1989 challenging the order of detention of her step father.The High Court entertained such writ petition and set aside the order of detention on the finding that the grounds for detention had not been served on the detenu.

2.Ms.A Subhashini the learned counsel appearing for the appellant has submitted that the said writ petition should not have been entertained by the High Court.After the order of forfeiture had been passed under SAFEMA validity of the order of detention was not to be scrutinised.In support of such contention, she has referred to the nine judges' Bench decision of this Court made in Attorney General for India and Ors.Vs.Amratlal Prajivandas and Ors.(1994(5) SCC 54).The ratio of the decision had been summarised in para 56 of the said decision and it has been clearly indicated that "56(b): An order of detention to which Section 12-A is applicable as well as an order of detention to which Section 12-A was not applicable can serve as the foundation, as the basis, for applying SAFEMA to such detenu and to his relatives and associates provided such order of detention does not attract any of the sub-clauses in the proviso to Section 2(2).If such detenu did not choose to question the said detention (either by himself or through his next friend) before the Court during the period when such order of detention was in force, or is unsuccessful in his attack thereon-he, or his relatives and associates cannot attack or question its validity when it is made the basis for applying SAFEMA to him or to his relatives or associates."In view of such decision of this Court, the said writ petition was not maintainable.We, therefore, set aside the impugned order by allowing this appeal.