

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8889 of 1989

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Laxmi Narain.Singh, S/o Late Satyadeo Singh, resident of Village-Bhagwanpur Kamla, P.S. Ujiarpur, District-Samastipur.

.... (Vendee) —Petitioner.

Versus

1. The Addl. Member Board of Revenue, Bihar, Patna.
2. The Collector, Samastipur.
3. The D.C.L.R., Dalsinghsarai, District-Samastipur.
4. Abdul Ghani @ Gonau, Son of Late Sheikh Zahiruddin, resident of Village-Chandchaur Tola, Mathurapur, P.O.- Mathurapur, P.S. Ujiarpur, District-Samastipur (Pre-emptor).
5. Sri Umesh Kant Choudhary, Son of Late Sri Krishna Deo Chaudhary (Vendor).
6. Sri Ram Jan Choudhary, Son of Late Ram Rakesh Choudhary (Objector at appellate State).

5 and 6 are residents of Village-Chand Chour, Tola-Mathurapur, P.O. Mathurapur, P.S. Ujiarpur, District-Samastipur.

.... Respondents

WITH

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Civil Writ Jurisdiction Case No. 8871 of 1989

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Bishnu Pd.Singh, S/o Laxmi Narain Singh, resident of Village-Bhagwanpur Kamla, P.S. Ujiarpur, District-Samastipur.

.... Petitioner

Versus

1. The Addl. Member, Board of Revenue, Bihar, Patna.
2. The Collector, Samastipur.
3. The D.C.L.R., Dalsinghsarai, District-Samastipur.
4. Abdul Ghani @ Gonau, Son of Late Sheikh Zahiruddin, resident of Village-Chandchaur Tola, Mathurapur, P.O.- Mathurapur, P.S. Ujiarpur, District-Samastipur (Pre-emptor).
5. Sri Umesh Kant Choudhary, Son of Late Sri Krishna Deo Chaudhary (Vendor).



6. Sri Ram Jan Choudhary, Son of Late Ram Rakesh Choudhary
(Objector at appellate State).
5 and 6 are residents of Village-Chand Chour, Tola-
Mathurapur, P.O. Mathurapur, P.S. Ujiarpur, District- Samastipur
.... Respondents

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Appearance :
(IN BOTH CASES)

For the Petitioner : Mr. Keshav Shrivastava, Sr. Adv.
Mr. Sarbottam Kumar, Advocate.
For the Respondents : Mr. A.R.Pandit, A.A.G. 15.
Mr. Rakesh Kumar Singh, AC to AAG 15.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE JUSTICE SMT. ANJANA MISHRA
And
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date: 17-01-2017

Whether re-examination of the view, expressed by the
Full Bench of this Court, in the case of Yugal Kishore Singh vs.
State of Bihar (AIR 1985 Patna 265: 1985 PLJR 554) is necessary,
in the light of the provisions of The Benami Transactions
(Prohibition) Act, 1988, being the core 'issue' formulated by the
Division Bench of this Court, which necessitates this reference to
the Full Bench.

2. These two writ petitions are closely connected on facts



and ‘matter in issue’, thus both of the writ petitions have been placed before the Full Bench, under reference, for analogous hearing.

3. Since the petitioners have raised plea of Benami ownership regarding the transferred land, therefore, the Division Bench of this Court taking into consideration the ‘Prohibitions’, envisaged under Benami Transactions (Prohibition) Act, 1988, has referred the matter for adjudication of ‘issue’ indicated above.

4. Primarily, we would like to take notice of the ‘view’ expressed by the Full Bench of this Court in the case of Yugal Kishore Singh (Supra), in respect of, scope of adjudication of ‘Benami ownership’ under the proceedings of Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred as to ‘the Act’) and necessity of impleadment of real owner in addition to ostensible owner of the property in a proceeding under Section 16 (3) of the Act.

In the case of Yugal Kishore Singh (supra) His Lordship S.S. Sandhwalia, C.J. (as he then was) formulated three issues as under:

- (1) Can be issue of Benami ownership be raised and investigated in the pre-emption proceedings Under Section 16 (3) of the Bihar Land Reforms (Fixation of



Ceiling Area and Acquisition of Surplus Land) Act, 1961?

(2) Whether the case of Narendra Kumar Ghosh @ Pheli Ghosh and another vs. Shivdeni Ram and others (AIR 1972 Patna Page-1) answering the aforesaid question in the affirmative has been correctly decided.

(3) Whether it is incumbent for the court or for the pre-emptor to implead and bring on the record the real owner of the property sought to be pre-empted (despite the presence of the ostensible owner) in a proceeding Under Section 16 (3) of the Act aforesaid.

5. The facts of Yugal Kishore's case require notice, in short. By a registered deed, petitioner no.2, Devendra Mahto purchased Plot No. 415 situated in village- Chainpur from the respondent nos.5 to 7. The Deed was executed on 17th March, 1979. The petitioners made out a case of Benami Transactions. Petitioner no.1 Yugal Kishore Singh was the real purchaser, whereas the ostensible purchaser, petitioner no.2, was his domestic servant. One Ganesh Mahto respondent no.4 filed a pre-emption case in respect of the transferred land, impleading petitioner no.2, initially but later on in the proceeding of pre-emption case, he pleaded that Yugal Kishore Singh was the real purchaser. It was the admitted position that petitioner no.1 was not formally impleaded as party in the proceeding. The Deputy Collector, Land Reforms, Muzaffarpur, allowed the pre-emption case. The



petitioner no.2 preferred appeal against the order of the Deputy Collector, Land Reforms, Muzaffarpur. In the Appellate proceeding, petitioner no.1 was arrayed as respondent no.5. the said appeal was, however, allowed by the Additional Collector, Muzaffarpur, setting aside the order of pre-emption passed by the Deputy Collector, Land Reforms, Muzaffarpur, mainly on the ground that the real owner (petitioner no.1) had not been impleaded as a party and remanded the matter back to the court below to investigate the issue of Benami Transaction and, thereafter to dispose it of in accordance with law. Admittedly the petitioner no.1 had not preferred any appeal against the pre-emption order. The pre-emptor preferred a Revision before the Board of Revenue. By the impugned order of the Board of Revenue, it was held that unless the real purchaser himself volunteers and becomes a party to the proceeding in pre-emption case, the ostensible owner has to be treated as a real purchaser and neither the pre-emptor nor the court has any legal obligation to add the real purchaser as a party and consequently the decree or order against the ostensible owner is wholly binding upon the real owner as well. The Revision application was allowed, aggrieved thereby the writ petition was preferred by both the ostensible and real



owner.

6. In the case of Yugal Kishore Singh (Supra) His Lordship S. S. Sandhwalia, C.J., (as he then was) speaking on his behalf and on behalf of S.K. Chouhdary, J. answered the 'issue' as under:

"10. Therefore, on principle, on the language of the statute and on previous precedent it must be held that the well established and well entrenched concept of Benami Transaction is not ousted or abolished for the purpose of Section 16 of the Act. No meaningful challenge could be laid on the observation in Narendra Kumar Ghose's case (supra). As it will be manifest from the above from independent and added reasons, I would concur with the view.

One may now advert to the ancillary but equally important question no.3, namely whether it is incumbent for the Court or the pre-emptor to implead the real owner despite the presence of ostensible owner on the record of the proceeding Under Section 16 (3) of the Act. The Board of Revenue for cogent reasons has come to the conclusion that the onus lies on the real owner himself to intervene and become a party to the proceeding and it is neither for the court nor for the pre-emptor to compel him to appear. In case the real owner chooses to stay away he must take the consequences and has only himself to blame because the order or decree against the ostensible owner would be wholly binding upon him, both on principle as also on settled precedent. This would apply equally to the investigation and the finding with regard to the issue of Benami ownership and it cannot possibly be urged that the absence of real owner as a party to the proceeding would introduce any infirmity therein. The issue seems to be so well settled on principle that it is unnecessary to labour the point. Way back



in Gur Narayan vs. Shiv Lal Singh (AIR 1918 Privi Council 140) it was authoritatively held as follows:

“The bulk of judicial opinion in India is in favour of the proposition that in a proceeding by or against the Benamidar, the person beneficially entitled is fully affected by the rules of res-judicata. With this view their Lordships concur. It is open to the latter to apply to be joined in the action; but whether he is made a party or not, a proceeding by or against his representative in its ultimate result is fully binding on him. In case of a contest between an alleged Benamidar and on alleged real owner, other consideration arises with which their Lordships are not concerned in the present case”

The aforesaid view has been accepted and reiterated by the final Court and was expressly referred by Untwalia, J. in Narendra Kumar Ghose’s case (supra).

Now once the principle is clearly established whether the real purchaser is a party to the proceeding or not, he is bound by the order or decree against the ostensible owner, then it would necessarily follow that no duty can possibly be cast either on the pre-emptor or on the court to compel the impleading of the real owner. Whatever investigation into the question of transaction being Benami has, therefore, to be conducted. It can lawfully be done in presence of the ostensible owner alone. This is not to say that the court or the pre-emptor would not have the discretion or the option to implead the real owner but only to hold that the real



owner would be bound by any finding given in the proceedings against the ostensible owner despite his absence. Equally it must be notice that notice to the ostensible owner in the proceeding would be in the eye of law be notice to the real owner as well, and, therefore, the decision on the question of Benami ownership either in presence of real owner or in his absence made against the ostensible would undisputably be binding. An identical view has been taken by a Division Bench of this Court in Sk. Halaluddin and others vs. Nabi Hassan and others (1982 BBCJ 552:1983 PLJR 16) wherein S.K. Choudhary J. speaking for the Bench has observed as follows:

“I fully agree with the view taken in Narendra Kumar Ghose’s case (supra). As it is now settled that the Benami question can be entertained by the Revenue Authority in the absence of the real owner and the decision would be binding upon the latter, it cannot be argued that the decision of D.C.L.R. on the score is without jurisdiction”.

11. To finally conclude: the answer to question no.1 is rendered in the affirmative and it is held that the issue of Benami Ownership can be raised and investigated into in a pre-emption proceeding under Section 16 (3) of the Act.

Question No.2 – Narendra Kumar Ghose’s case (supra) on this point is correctly decided and its ratio is hereby affirmed.

The answer to the question no.3 is rendered in the negative and it is held that it is not obligatory for the court or the pre-emptor to implead the real owner of the property sought to be pre-empted in



presence of the ostensible owner and the order and decree against the latter would be equally binding upon the former.”

7. In the Yugal Kishore Case His Lordship P.S. Mishra, J., (as he then was) who was also party to the said Full Bench, speaking on his behalf held thus:

“22. I have no difference to the conclusion that the answer to question no.1 is in the affirmative and the issue of Benami Ownership can be raised and investigated into in a pre-emption proceeding Under Section 16 (3) of the Act and the answer to question no.3 is in the negative that it is not obligatory for the Court or the pre-emptor the implead the real owner and the property sought to be pre-empted in presence of the ostensible owner and the order and decree against the latter would be equally binding upon the former. But in my view in answer to question no.2 it should be clarified that Narendra Kumar Ghose’s case (supra) has correctly decided the points except to the extent it creates the impression that ostensible owner can make and file the declaration before the Registering Authority under the Indian Registration Act, 1908. I am in fully agreement with the judgment of the C.J. except what I have said above.”

8. The Benami Transactions (Prohibition) Act, 1988 was enacted to prohibit Benami Transactions and right to recover property held Benami and for matters connected therewith or incidental thereto.

9. We notice that the Benami Transactions (Prohibition) Act, 1988 was made enforceable with a deeming provision from a



retrospective date since 19th of May, 1988, except Section 3, 5 and 8, which came into force at once on 5th of September, 1988.

10. Under Section 3 of the Act, there is a prohibition of Benami Transactions but such prohibition has prospective operation. In the case of S. Sankara Hali and Sankara Institute of Philosophy and Culture vs. Kishori Lal Goenka, reported in (1996) 7 SCC 55, the Hon'ble Supreme Court held that any transaction entered into prior to the coming force of the Act, between the ostensible owner and real owner is not voided by any provision whatsoever.

11. Under Section 4 of the Act, there is another prohibition regarding the right to recover property held Benami. It contemplates that against the ostensible owner of the property or against any other person, no suit, claim or action to enforce any right in respect of Benami property by or on behalf of the real owner, would be maintainable. Section 4 (2) of the Act also puts a rider that one who claims to be the real owner of Benami property shall not be allowed in any suit, claim or action to take defence against the ostensible owner to the effect that the property being Benami.

12. From the facts of the present case, it is quite



apparent that by virtue of Registered Deed dated 08.10.1987, the respondent no.5 sold the land in question in the name of the petitioners, and in respect of the 'transferred land' the respondent no.4 filed pre-emption case before the D.C.L.R. Dalsingsarai, Samastipur on 05.01.1988. Therefore, the significant question arises for our consideration is that whether prohibitions envisaged under Section 3 and 4 of the Act, 1988, would be applicable in the present case by retrospective operation.

13. That section 3(13) of General Clauses Act 1897 says that "Commencement" used with reference to an Act, means the day on which the Act, comes into force.

Section 5 of the General Clauses Act 1897 says that unless provided otherwise, a central Act comes into operation on the day it receives the Presidential assent and is construed as coming into operation immediately on the expiration of the day preceding its commencement.

14. In the Keshvan Vs State of Bombay AIR 1951 SC 128, the Hon'ble Supreme Court held :

" It is a Cardinal principle of Construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation ".



15. Another principle flowing from presumption against retrospectivity is that one does not expect rights conferred by the statute to be destroyed by events which took place before it was passed.

16. The Hon'ble Supreme Court, in the case of S.S Gadgil Vs Lal & Company AIR 1965 SC 171, followed the view, expressed in the case of Reid Vs Reid (1886) 31 Ch D 402 that “As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary”.

17. In the case of R. Rajagopal Reddy vs. Padmini Chandrasekharan, reported in (1995) 2 SCC 630, the Hon'ble Supreme Court was called upon to interpret the Benami Transactions (Prohibitions) Act, 1988. A Bench of three judges of the Supreme Court overruled the judgment of Mithilesh Kumari vs. Prem Behari Khare (1989) 2 SCC 95 and arrived at the conclusion that the Benami Transactions (Prohibition) Act 1988, was prospective and not retrospective. Paragraph 21 of the said



judgment reads thus:

“21. As a result of the aforesaid discussion it must be held, with respect that the Division Bench erred in taking the view that Section 4 (1) of the Act could be pressed in service in connection with suit filed prior to coming into operation of that Section. Similarly the view that Under Section 4 (2) in all suits filed by persons in whose names properties are held, no defence can be allowed at any future stage of the proceedings that the properties are held Benami, cannot be sustained. As discussed earlier Section 4 (2) will have a limited operation even in cases of pending suits after Section 4 (2) came into force if such defences are not already allowed earlier. It must, therefore, be held, with respect, that the decisions of this Court in Mithilesh Kumari case does not lay down correct law so far as the applicability of Section 4 (1) and Section 4 (2) to the extent hereinabove indicated, to pending proceedings when these Sections came into force, is concerned. Accordingly, the question for consideration is answered in the negative. Registry will now place all these matters before an appropriate Division Bench for disposing them of on merits in the light of the answer given by us.”

18. Now, we are of the opinion that the Benami Transactions (Prohibitions) Act, 1988, is prospective and not retrospective. The Prohibitions envisaged under section 3 of the Act, shall not have any application, relating to such Benami transaction made prior to coming into force the Benami Transaction (Prohibition) Act 1988, and the Bar of section 4 (1) & (2) of the Act shall not apply in respect of pending claims/suit,



appeals and other pending proceedings.

It is not in dispute that in the present Writ Petitions, since the land under sale transaction were transferred vide two registered sale deeds dated 08.10.1987 in the name of Writ Petitioners, and the Pre-emptor (respondent-4) had already filed case of Pre-emption on 05.01.1988 before the D.C.L.R Dalsinghsarai, Samastipur, prior to commencement of the Benami Transaction (Prohibition) Act 1988, therefore, we are of the considered view that there being no appropriate occasion for us as to re-examine the view expressed by the full bench of this Court rendered in the case of Yugal Kishore Singh (supra). The issue, referred before us by the Division Bench of this Court is, accordingly, answered.

19. Now, we would like to consider the merits of the present case. The facts, giving rise to these writ petitions are mostly similar. Except for the petitioners, party position of the respondents are identical in both the writ petitions. Respondent no.5 Umesh Kant Choudhary transferred a piece of land in favour of Lashmi Naraian Singh (petitioner of CWJC No. 8889 of 1989) having an area of 3 katha and 4 dhur, bearing R.S. Plot No. 6068 appertaining to Khata No. 404, through a Registered Sale Deed



dated 08.10.1987 and the said Umeshkant Choudhary also transferred a piece of land in favour of Bishnu Prasad Singh (petitioner of CWJC No. 8871 of 1989), happens to be the Son of Lakshmi Narain Singh, having an area of 3 katha, 4 dhur bearing the same R.S. Plat No. 6068, appertaining to the same Khata No. 404, through a Registered Sale Deed on the same day i.e. 08.10.1987. Both the above referred piece of land are situated in village- Chand Chour, Ujiarpur, Samastipur.

Respondent no.4 namely Abdul Ghani on 05.01.1988 filed Land Ceiling Case No. 24/87-88 and 25/87-88 before the Land Reforms Deputy Collector, Dalsinghsarai, Samastipur, claiming right of pre-emption, in respect of the land transferred in favour of the petitioners, Under Section 16 (3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,1961. The respondent no.4 claimed himself to be a raiyat of adjoining land to the transferred land. The respondent no.4 contended that he having land adjoining to the transferred land from North, East and West side. The case of the petitioners before the court below was to the effect that one Ram Jan Choudhary (respondent no.6) was the real purchaser of the transferred land and was also an adjacent raiyat of the transferred



land. The learned court below did not consider the case of the petitioners, on the ground that plea of Benami transactions cannot be considered under the pre-emption proceeding. The Land Reforms Deputy Collector, Dalsighsarai also rejected both the pre-emption case mentioned above, vide order dated 29.07.1988, on the ground that respondent no.4 failed to prove his case of adjoining raiyat to the transferred land. The respondent no.4 filed Land ceiling Appeal before the Additional Collector, Samastipur, impugning the common order dated 29.07.1988 passed by the L.R.D.C. Dalsingsarai. The petitioners also filed cross appeal against the said order. The learned Additional Collector, Samastipur taking note of the fact that the pre-emptor never denied that the real purchaser respondent no.6 had land adjoining to the transferred land thus the learned court below dismissed the pre-emption appeal, setting aside also the finding that petitioners were real purchaser. The learned Additional Collector, Samastipur vide order dated 20.01.1989 dismissed the appeal of the pre-emptor respondent no.4 and allowed cross appeal of the petitioners, holding that the real purchaser was the respondent no.6 and the petitioners were ostensible purchaser.

The respondent no.4 filed two revision cases bearing



nos. 46/89 and 47/89 before the Board of Revenue, Bihar and both the revision cases were directed against the common order dated 20.01.1989 passed by the Additional Collector, Samastipur, affirming the order of the L.R.D.C. Dalsingsarai to the extent, indicated above. The learned Member, Board of Revenue considering the facts and documents available on record, was of the view that the Survey Plot No. 6070 adjoins West of the 'transferred land' and in the Revisional Survey the Plat No. 6070 being recorded in the name of respondent no.4. Therefore, the respondent no.4 holds a land bearing R.S. Plot No.6070 towards West of the transferred land, therefore, the pre-emptor has been able to substantiate his claim of the adjoining raiyat of the transferred land. Accordingly, the learned Member, Board of Revenue, set aside the Impugned order passed by the D.C.L.R. Dalsingsarai as well as the Additional Collector, Samastipur and allowed both the revision applications vide Order dated 09.06.1989, filed by the respondent no.4.

20. Being aggrieved by the common order dated 09.06.1989, passed by the Member, Board of Revenue, Bihar, Patna in Revision Case No.46/1989 and 47/1989, the petitioner namely Lakshmi Narain Singh filed CWJC No.8889 of 1989 and



the petitioner namely Bishnudeo Prasad Singh filed CWJC No. 8871 of 1989 before this Court. The petitioners have contested the claim of pre-emption of the respondent no.4. On two grounds as set out in Paragraph No. 9 of the Writ Petition, which read thus:-

“(i) the pre-emptor had not proved that his share in the plot mentioned in Scheduled-II, adjoined the plot in dispute (ii) Vendee petitioners were the Benamidar of one Ramjan Choudhary, respondent no.6, who was in the Southern boundary of the vended plot.”

21. One of the main contention of the petitioners is that the Respondent No. 6 Ramjan Choudhary is the real owner of the land transferred, whereas, these petitioners are only ostensible owner and the next contention is that the respondent No. 6 is himself adjacent raiyat, holding land adjoining to the land in question. But we fail to understand, why the real owner respondent no. 6, did not himself choose to contest against the claim of pre-emption of Respondent No. 4, before the statutory forum, and has not challenged the impugned Order passed by the Member, Board of Revenue, Bihar, by which per-emptory right of Respondent No. 4 over the land in question has been confirmed.

We further notice that in spite of valid service of notice upon the Respondent No. 6, in the present proceeding, he did not enter his appearance even.



22. We are of the opinion that the petitioners have not been able to dislodge the specific finding of the Member, Board of Revenue, that the Pre-emptor holding land bearing R.S. Plot No. 6070, adjoining west to the land transferred, thus having right of Pre-emption.

23. We, therefore, find no valid reason to interfere with the impugned Orders.

24. Both the Writ Petitions are, accordingly, dismissed.

(Hemant Gupta, ACJ)

(Anjana Mishra, J)

Amit/-

(Sudhir Singh, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.03.2017.
Transmission Date	N/A

