IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.07.2018
CORAM
THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM
W.P.Nos.12848, 13160 & 13161 of 2018 &
W.M.P. Nos.15473 & 15474, 15099 & 15100 of 2018 &
19457 to 19460 of 2018

Dinesh Chand Surana
... Petitioner in all WPs

v.

1. Deputy Commissioner of Income Tax
(Benami Prohibition)
Room No.104, 1st Floor
Income Tax Investigation Wing Building
108 M.G.Road, Nungambakkam
Chennai - 600 034 ... 1st Respondent in all WPs

2. Deputy Director of Income Tax
(Investigation Wing) Unit-4(1)
Chennai Income Tax Investigation Wing
Building 108. M.G.Road Nungambakkam
Chennai-600 034.
... 2nd Respondent in

W.P.No.12848/2018

W.P.No.12848/2018 Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first respondent to provide the entire set of documents referred by the petitioner in his letters dated 23.03.2018 and 21.05.2018

W.P.No.13160/2018 Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent contained in order No. 1/ DCIT(BP) 2018-2019 dated 23.05.2018 passed under section 24(4) of the Benami Property Transactions Act, 1988. and to quash the same as arbitrary unjust and illegal.

W.P.No.13161/2018 Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent contained in order No. 2/ DCIT(BP) 2018-2019 dated 23.05.2018 passed under section 24(4) of the Benami Property Transactions Act, 1988. and to quash the same as arbitrary unjust and illegal .

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

Heard Mr.R.Sivaraman, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the Revenue.

2. The petitioner has filed three writ petitions. In W.P.No.12848 of 2018, the petitioner seeks for issuance of a Writ of Mandamus to direct the 1st respondent, the Deputy Commissioner of Income Tax (Benami Prohibition) to furnish the entire set of documents referred by the petitioner in his letters dated 23.03.2018 and 21.05.2018 and in W.P.Nos.13160 and 13161 2018, the petitioner has challenged the order passed under section 24(4) of the Benami Property Transactions Act, 1988.

3. The petitioner is stated to be the beneficial owner of the property in question. First, I take up W.P.No.12848 of 2018. The petitioner has made two representations, the latest of which being 21.05.2018. Pursuant to the earlier representation dated 23.03.2018, the Department has furnished copies of the following materials:-

(i) Copy of sworn statement recorded from Shri Anand Parekh dated 16.03.2018;

(ii) Copies of the Inspection Reports in case of M/s.Surana Corporation Limited, conducted by the consortium of banks led by State Bank of India, Overseas Branch, Chennai, on 05.06.2014, 05.01.2015 and 12.10.2015 which clearly establish the fact of no stock of gold and no activities at factory/shop;

(iii) copy of the Joint Inspection Report for working capital conducted by Central Bank of India & Bank of India conducted on 21.11.2014;

(iv) Sumission dated 19.04.2018 received from TANGEDCO in Lr.No.CFC/GL/FC/ACCTS/DFC/AO/TAX/F.MISC/ D.8/2018 which establishes the fact that the amount payable to TANGEDCO by M/s.Surana Green Energy Limited can be adjusted against the due amount of the M/s.Surana Corporation Limited;

(v) Deleted word document having name "20995736" found during the forensic analysis of the Apple Mac Book Pro (S.No.CO2J1EV8DEY3), seized vide annexure ANN/TM/B&D/S dated 09.11.2017 from the residential premises of Shri. Dinesh Chand Surana and Shri.Rahul Surana. This shows the involvement of Shri. Dinesh Chand Surana/Shri.Rahul Surana with the companies Sayso Exim Private Limited, Vinayaga Infra Limited, Natural Coal Private Limited, Thribovan Enterprises Private Limited & M/s. Bell Tower Enterprises LLP (CD enclosed)."

On receipt of those documents, the petitioner has given representation dated 21.05.2018 in which, the following have been sought for:-

"Any such other sworn statements taken during the survey proceedings on 09.03.2017."

4. In my considered view, the request for any other sworn statements taken during the survey proceedings on 09.03.2017 is absolutely vague. Apart from that, the proceedings were not conducted by the 1st respondent but by the 2nd respondent. Therefore, to seek any other sworn statements recorded by the 2nd respondent from the 1st respondent is not maintainable and therefore, such request has to be rejected and accordingly, rejected.

5. The petitioner also requests copy of sworn statement recorded from him. This statement was also recorded by the 2nd respondent during the course of survey proceedings. This court is inclined to entertain the request made by the petitioner for the reason that statement which was recorded from the petitioner by the 2nd respondent during the course of survey proceedings shown to be prima facie used for issuing notice under the provisions of Benami Property Transactions Act. Therefore, this court is of the view that the provisions of natural justice is met. This statement is given especially when the matter has already culminated in an order under section 24(4) of the Act, therefore, to the said extent alone, the petitioner would be entitled for the relief. Accordingly, the 1st respondent is directed to provide the certified copy of the statement given by the petitioner in the survey proceedings

which was admitted, within a period of one week from the date of receipt of a copy of this order.

6. The petitioner has filed W.P.Nos.13160 & 13161 of 2018 challenging the order dated 23.05.2018 under section 24(4) of the Act. In my considered view, the prayer sought for by the petitioner is not maintainable, since the order passed under section 24(4) of the Act is being an order of provisional attachment and the petitioner cannot be stated to have been aggrieved over such order, especially, when the adjudicating authority under the Benami Act has already initiated proceedings under section 24(4) of the Act, which is only a provisional attachment and cannot be permitted to stall the adjudication under the Act by the adjudicating authority. Therefore, the relief sought for by the petitioner in W.P.Nos.13160 & 13161 of 2018 cannot be granted.

7. In the result W.P.No.12848 of 2018 is disposed of by directing the 1st respondent to furnish certified copy of sworn statement recorded from the petitioner during course of survey proceedings, within a period of one week from the date of receipt of a copy of this order and the order of interim stay granted in this writ petition is vacated.

8. For the reasons stated, above, the relief sought for in W.P.Nos.13160 & 13161 of 2018 cannot be granted and therefore, the writ petitions are dismissed and the order of interim stay granted in these writ petitions are vacated.

9. The adjudicating authority under the Act has issued show cause notice and fixed the hearing on 02.08.2018. It is well open to the petitioner to raise all contentions before the adjudicating authority and the matter shall be proceeded in accordance with law.

10. For the reasons stated above, the prayer to implead the parties cannot be acceded to. Accordingly, impleading petitions, W.M.P.Nos.19457 to 19460 of 2018 are dismissed. Consequently, connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. Deputy Commissioner of Income Tax
   (Benami Prohibition)
   Room No.104, 1st Floor
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2. Deputy Director of Income Tax
   (Investigation Wing) Unit-4(1)
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   Chennai-600 034.

+1cc to Mr.R.Sivaranan, Advocate, S.R.No.42585
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.42494

W.P.Nos.12848, 13160 & 13161 of 2018 &
W.M.P. Nos.15473 & 15474, 15099 & 15100 of 2018 &
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SS(CO)
GSP(16/07/2018)