

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 3819 of 2019****Reserved on : 11/11/2019****Delivered on : 15/11/2019**

1. Tulsiram S/o Shri Ganeshram Aged About 68 Years, R/o Village Barekel, Police Station And Tehsil - Pithora, District - Mahasamund Chhattisgarh
2. Manki Bai W/o Shri Tulsiram Aged About 59 Years R/o Village Barekel, Police Station And Tehsil - Pithora, District - Mahasamund Chhattisgarh

---- Petitioners**Versus**

1. Assistant Commissioner Of Income Tax (Benami Prohibition), Room No. 201, First Floor, Central Revenue Building, Civil Lines, Raipur Chhattisgarh
2. Initiating Officer, PBPT Act, Assistant Commissioner Of Income Tax (Benami Prohibition), Room No. 201, First Floor, Central Revenue Building Civil Lines, Raipur, Chhattisgarh
3. Union Of India, Through Its Secretary, Income Tax Department, Government Of India, New Delhi
4. Adjudication Officer Under The Prohibition Of Benami Property Transactions Act, 1988, Room No. 26, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi

---- Respondents

For Petitioner	:	Mr. Surfaraj Khan, Advocate
For Respondents 1 & 2	:	Ms. Naushina Afrin Ali with Mr. Ajay Kumrani, Advocates

Hon'ble Shri Justice P. Sam Koshy

CAV Order

1. The challenge in the present writ petition is to the order of provisional attachment of immovable properties Annexure P-1 dated 31.07.2019 under Section 24(4)(b)(i) of the Prohibition of Benami Property Transactions Act, 1988 (in short "the Act of 1988") and also to the notice Annexure P-2 dated 27.08.2019 under Section 24 (5) of the said Act in respect of confirmation of the order of provisional attachment dated 31.07.2019 Annexure P-1.
2. The core issue raised by the petitioners in the present writ petition is "whether the provisions of the Act of 1988 providing for confiscation of properties found to be 'Benami' could be applied in respect of the transactions carried out prior to 01.11.2016".
3. The brief facts which led to the filing of the present writ petition are that the respondents have initiated a proceeding under the Act of 1988 against the petitioners who are husband and wife. It is alleged that the petitioners are in possession of more than 200 acres of land in Tahsil Pithora in villages Patewa, Jhalap, Lahrod, Barekel and in village Baya (Kasdol) and also in village Sankara, Basana and Bagbahara. According to the respondents, all these properties in fact are of one Shri Laxminarayan Agrawal @ Punnu Seth Son of Jagannath Agrawal R/o Pithora, District Mahasamund (CG). According to the respondents, the petitioners herein are basically villagers who do not have sufficient source of income to have such large chunk of land. As per the notice and the order of the respondents, on verification, it was found that the petitioners could not provide sufficient details in respect of their income on the basis of which they had acquired or purchased these properties. According to the respondents, the petitioners have not been

able to show or recollect the details of the properties that they own in different villages. The petitioners have also not been able to provide the details of the loan that they had taken from different relatives or friends for the purpose of purchase of these properties and therefore the said properties are nothing but Benami properties.

4. The solitary ground of challenge to these orders i.e. Annexure P-1 & P-2 by the petitioners is that the proceeding drawn is without any authority and force of law. The simple contention that the petitioners raise is that all the properties which are said to be recorded in the name of the petitioners in fact are all purchased prior to 01.11.2016. According to the petitioners, on the date when the petitioners had purchased these properties, the provisions of Section 24 of the Act of 1988 were not in existence. Since on the date of purchase of the properties the law under Section 24 of the Act of 1988 was not in force, the proceeding drawn under Section 24 subsequent to its enactment w.e.f. 01.11.2016 could not be attracted upon the petitioners.
5. The contention of the petitioners is that the applicability of Section 24 of the Act of 1988 would not have a retrospective effect and it would only be prospective w.e.f. 01.11.2016 onwards, therefore, the issuance of the order Annexure P-1 and the proceeding drawn vide Annexure P-2, both are per se illegal and bad in law.
6. The petitioners also contended that most of the properties cited in the notice in fact are not owned by the petitioners but are owned by someone else and therefore also, the petitioners could not have been prosecuted in respect of the properties which they do not own. The petitioners relied upon a judgment rendered by the Rajasthan High Court in respect of their

contention in a batch of writ petitions leading among which being S.B.C.W. No. 2915/2019 Niharika Jain Vs. Union of India and other connected writ petitions which stood decided vide judgment dated 12.07.2019. In addition, counsel for the petitioners relied upon the judgment of the Supreme Court recently passed in the case of Mangathai Ammal in Civil Appeal No. 4805/2019 decided on 09.05.2019.

7. Per contra, counsel appearing for the respondents opposing the petition submits that the contention of the petitioners of the provisions of law being not applicable to the petitioners is totally baseless. According to the counsel for the respondents, the amendment brought into the Act of 1988 by way of amendment Act, 2016 is only amending and incorporating the procedural provisions and by way of the amendment Act, 2016, the original Act of 1988 has not been either superseded or replaced a new provision of law. According to the respondents, the original Act of 1988 is still in operation and also in force and by way of Amendment Act of 2016, certain additional provisions have been incorporated in respect of the procedures to be adopted and also in respect of making the provisions more stringent and deterrent. Therefore, the proceedings initiated by the respondents cannot be said to be without force of law or beyond purview of the Act of 1988.
8. It was also the contention of the respondents that the present writ petition in its present form is premature insofar as it is only at notice stage and whatever contentions that the petitioners indent to raise so far as the applicability of the Act of 1988 is concerned, it can still be raised by the petitioners before the authorities concerned and thereafter the provision of law itself has a remedy of appeal before whom also the petitioners can raise all these grounds and therefore the writ petition deserves to be

rejected.

9. Having heard the contentions put forth on either side and on perusal of record, the undisputed fact of the present writ petition is that whatever properties that are in the name of the petitioners are all which have been purchased or acquired prior to 01.11.2016 i.e. the date on which the amended provision of law by virtue of Amendment Act, 2016 came into force.
10. Now, the issue involved in the present case or the question raised by the petitioners is whether the provisions of the Act of 1988 being made applicable upon the petitioners was justified or not, particularly when it is undisputed that the petitioners have acquired or purchased the properties before the Amendment Act of 2016 came into force.
11. The Act originally was known as “The Benami Transactions (Prohibition) Act, 1988”. In the year 2016, the Parliament enacted the Benami Transactions (Prohibition) Amendment Act, 2016. By virtue of amendment Act, certain provisions of the original Act of 1988 stood amended and substituted. In addition to the amendments made in Chapter-I so far as Section 1 to 3 are concerned, Chapter III to VII were newly inserted to the Act of 1988. Chapter III deals with the authorities under the said Act, Chapter IV deals with the procedure regarding attachment, adjudication and confiscation, Chapter V provides for establishment of Appellate Tribunal, Chapter VI deals with the constitution of Special Courts, Chapter VII deals with penalties for the offences and prosecution under the Act and Chapter VIII deals with repealing of certain acts.
12. What has to be understood at this juncture is that the original Act of 1988 does not stand repealed or superseded in any manner. The Act of

1988 is in operation with full force. The Parliament in its wisdom did not find the original Act of 1988 to be effective enough to control the menace of Benami properties being acquired in the country. The Parliament found certain discrepancies and loopholes and also did not find the original Act to be stringent and deterrent enough to achieve the object behind the enactment of the Act of 1988. With an intention to make the Act or the law more effective, forceful and stringent, certain new amendments were made making the law stringent and also prescribing the procedure and the manner in which the proceedings were to be drawn while initiating proceeding to attach and confiscate the Benami properties.

13. To decide the core issue whether the amended Act of 2016 can be made applicable for initiating proceedings against the petitioner in respect of the properties which were purchased or acquired prior to 01.11.2016, it would be necessary to read the Act of 1988 as a whole including the Provisions inserted by way of Act of 2016.

14. Sub Section 3 of Section 1 reads as under:

“(3) The provisions of Sections 3, 5 and 8 shall come into force at once, and the remaining provisions of this Act shall be deemed to have come into force on the 19th day of May, 1988.

The aforesaid section clearly indicates that the law as it stands shall be deemed to have come into force on the 19th day of May, 1988.

15. Sub sections (2) and (3) of Section 3 reads as under:

(2) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) whoever enters into any benami transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016, shall, notwithstanding anything contained in sub-section (2), be

punishable in accordance with the provisions contained in Chapter VII.

16. Both these provisions of law have been inserted by way of the amendment Act of 2016 w.e.f. 01.11.2016. A plain reading of both these provisions makes it evident that Sub Section 2 would be applicable upon any Benami Transactions made prior to 01.11.2016 and Sub Section 3 would be applicable upon only those properties or Benami Transactions made on or after the commencement of the Amendment Act, 2016 i.e. 01.11.2016. This again leads us to draw a safe inference that the proceedings under the Act of 1988 could very well be initiated against a person who has entered into a Benami transaction irrespective of the date when the amendment act came into force.
17. So far as Chapter IV particularly Section 24 is concerned, the same is only a procedural law or procedural provision inserted in the original Act of 1988 by way of amendment w.e.f. 01.11.2016. Plain reading of the impugned order Annexure P-1 shows that the petitioners have in fact been given a fair and reasonable opportunity of hearing before the same was passed.
18. Reading the impugned order Annexure P-1 that is the order of provisional attachment, it reveals that petitioners have given an extensive explanation to the show cause notice which was duly considered by the Initiating Officer and taking into consideration the explanation and statements made by the petitioners the Provisional order of attachment has been issued. So far as Annexure P-1 is concerned, the same is purely in accordance with the provisions of Section 24 of the Act of 1988. So also Annexure P-2 again is a proceeding drawn strictly in accordance with the said provisions and as such the two orders cannot be said to have been

passed without jurisdiction or authority of law. The proceedings drawn is only to determine whether the property standing in the name of the petitioners are a Benami property or not?. The final adjudication is yet to be done. Petitioners have been called upon in the said proceedings and it is only pending the final adjudication of whether the properties in the name of the petitioners are Benami Properties or not, the authorities concerned as a matter of precaution passed an order of provisional attachment until the dispute is finally resolved.

19. So far as the judgment of the Supreme Court in the case of Mangathai Ammal(Supra) relied upon by the petitioners is concerned, the said judgment by the Hon'ble Supreme Court has been delivered in an entirely different contextual background and facts of the said case also is entirely different as compared to the facts of the present case.

20. Moreover, the said judgment has been passed in a Civil Appeal assailing the judgment and decree passed from the Appeal decided by the High Court affirming the judgment of decree passed by the Civil Court in a suit for partition. In addition, the said judgment so far as referring to the provisions of amended Act of 2016 is concerned, was keeping in view the Provisions of unamended Sub sections (2) of Section 3 which stood omitted by the Act of 2016, dealing with the property purchased by a person in the name of his wife or unmarried daughter. Thus, the principles or ratio laid down in the said judgment would not be applicable in the given facts and circumstances of the present case. If we take into consideration, the provisions Sub Section 3 of Section 1 and read it along with other amendments which have been brought in the Act of 1988 vide Amendment Act of 2016, this Court is compelled to reach to the conclusion that

proceedings drawn against the petitioners in the given factual matrix of the case cannot be found fault with. It can also not to be said that provisions of the Amended Act of 2016 could not have been made applicable in respect of properties which were acquired prior to 01.11.2016. The whole Act of 1988 as it stands today inclusive of the amended provisions brought into force from 01.11.2016 onwards applies irrespective of the period of purchase of the alleged Benami property. Amended Act of 2016 does not have an existence by itself. Without the provisions of the Act of 1988, the amended provisions of 2016 has no relevance and the amended Provisions are only laying down the proceedings to be adopted in a proceeding drawn under the Act of 1988 and the penalties to be imposed in each of the cases taking into consideration the period of purchase of Benami property.

- 21.** Given the facts, this Court does not find any strong case made out by the petitioners calling for an interference with the impugned orders and writ petition thus being devoid of merits deserves to be and accordingly stands rejected.

**Sd/-
P. Sam Koshy
Judge**