

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 4563 of 2019**

Laxmi Narayan Agrawal S/o Late Shri Jagannath Agrawal Aged About 63 Years R/o Baya Road, Village Lahrod, Police Station And Tahsil Pithora, District Mahasamund Chhattisgarh....(Petitioner)

---- Petitioner**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 On India Through Its Secretary , Ministry Of Finance Department Of Revenue, Government Of India , New Delhi
4. Adjudicating Officer Under The Prohibition Of Benami Property Transactions Act , 1988, Room No. 26, 4th Floor, Jeevan Deep Building , Parliament Street, New Delhi
5. Laxman Sarthi S/o Shri Itwaru Indra Aawas , Village Chicharpali, District Baloda Bazar Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Surfaraj Khan, Advocate
For Respective Respondents	:	Mr. Amit Choudhary & Ms. Naushina Afrin Ali, Advocates.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****12/12/2019**

1. Aggrieved by the order of provisional attachment of the immovable property under the provisions of the The Prohibition of Benami Property Transactions Act, 1988 (in short ' PBPT Act') dated 04.12.2019 the present writ petition has been filed.

2. Brief relevant facts for proper disposal of the writ petition is that the respondent on the basis of certain information in respect of the property situated at Khasra No.42 at Village Dighepur, Pithora has been purchased by the present petitioner as benami property in the name of respondent No.5. The respondents on verification of facts found that the said information was correct and it was revealed that the aforementioned properties have been purchased in the name of respondent No.5 by the present petitioner.
3. After verification the authorities decided to initiate proceedings under PBPT Act and after taking due approval as is required under Section 23. That a show cause notice of provisional attachment under Section 24 was issued to the petitioner on 02.12.2019. That subsequently vide the impugned order the initiating officer PBPT Act i.e. the ACIT (Benami Prohibition) Raipur has passed an order of provisional attachment of the aforesaid property. It is this order of the Initiating Officer of provisional attachment which is under challenge in the present writ petition.
4. The main contention of the petitioner in challenging the impugned order is that the impugned order has been passed without giving any opportunity of hearing, without issuance of the show cause notice, without complying with the mandatory provisions of Section 24 of the PBPT Act. It was also the contention of the petitioner that the said impugned order is also without proper approval from the approving authority or at least the reasons for grant of approval is not disclosed from the impugned order. It was further contention of the petitioner that the alleged show cause notice was issued under Section 24 in fact has never been served upon the petitioner nor was there sufficient time of it to be served upon the petitioner and even if it is issued. That even otherwise, no reasonable time was granted to the petitioner to reply to the show cause notice and before a reasonable time is granted to the petitioner, the respondents

have passed the impugned order of provisional attachment. For the aforesaid reasons, the impugned order Annexure P-1 is bad in law, arbitrary and illegal.

5. Per contra, learned standing counsel for the department opposing the petition submitted that the whole petitioner is premature, misconceived and without any sufficient and cogent reasons and deserves to be rejected. According to the respondents the whole action has been purely in accordance with the provisions of law and that there has been no violation of any provision of law and that the entire proceeding drawn including the issuance of impugned order is strictly in accordance with law with there being no scope of any interference for this Court. According to the counsel for the department, there is no such requirement of law for issuance of a show cause notice and calling for a reply of the concerned person before passing of the order of provisional attachment. It was also the contention of the respondent that the impugned notice itself both the show cause as well as the impugned order would reveal that the same has been initiated after proper approval as is required from the approving authority has been obtained. According to the learned counsel for the department it is only an order of provisional attachment which has been passed under Section 24(3) which is only with an intention that the said property may not be alienated by the Benamidar or by the Beneficial owner pending the final adjudication of the proceedings, hence the action on the part of the respondents cannot be said to be in any manner illegal.
6. Having heard the contentions put forth on either side and on perusal of the record , it would clearly reveal that the department had initiated a show cause notice on 02.12.2019 under Section 24(1) calling upon the explanation from the petitioner who has been held to be the beneficial owner and respondent No.5 as a Benamidar. The show cause notice was

seeking for explanation as to why the property should not be treated as benami property and why the respondent No.5 should not be treated as benamidar so also as to why the present petitioner be not held the beneficial owner. It is necessary at this juncture also to refer to the Sub Section 3 of the Section 24 which for ready reference is reproduced hereinunder :-

(i)

(ii)

“iii) Where the Initiating Officer is of the opinion that the person in possession of the property held benami may alienate the property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property in the manner as may be prescribed, for a period not exceeding ninety days from the date of issue of notice under sub-section (1)”

(iv).....

7. Plain reading of the aforesaid provisions it is evidently proves that the order of provisional attachment is nothing but an interim arrangement till the finalization of the proceedings. It is also evident that the said order is of interim nature with an intention that property should not get alienated and beneficial owner or the benamidar may not dispose of the property creating further complications for the department for proceeding further with the matter.

8. Perusal of Section 24 of the PBPT Act as also on perusal of the content of the impugned order this Court has no hesitation in reaching to the conclusion that order of provisional attachment has a statutory backing under Section 24(3) of the Act. The reading of the content of the notice would also reveal that order has been passed only as an interim measure

calling upon the petitioner to give his response at the earliest failing which the authorities would be compelled to pass an order under Sub Section 4 of the Section 24 which is for continuing of the provisional attachment till the final order is not passed. What also has to be seen is that Sub Section 2 and Sub Section 3 clearly discloses the inherent powers that has been conferred upon the authorities under the Act to pass such orders so as to preserve all that affects a *lis* or adjudication and to ensure that the status quo exists until the dispute is resolved. Moreover, the plain reading of the content of the notice dated 02.12.2019 as also the order impugned dated 04.12.2019, it clearly reflects that the final adjudication is yet to be concluded and for which the petitioner has been called upon and it is only as an interim measure that the provisional attachment has been made and same has been done too with a purpose that the property does not to get further sold and it remains intact.

9. What has also to be appreciated is that the provisional attachment is only an arrangement done to preserve the property until the authority completes the proceedings under the Act. What cannot be lost sight is the fact that the petitioner as well as the respondent No.5 also can appear before the authorities and can put forward their defence and establish the fact that the property cannot be termed as a benami property.
10. What also is revealed from the proceedings drawn is that the petitioner has been held to be the beneficial owner of the property and which if he is not he only has to deny the contentions and leave it for the authorities to decide the matter on merits as he is not going to loose anything. On the contrary, if he claims to be the beneficial owner then the prohibition of the department becomes relevant rather it would make the case of the department stronger of the property being a benami property in the name of respondent No.5.

11. Given the aforesaid facts and circumstances of the case, this Court does not find any strong case made out by the petitioner calling for an interference with the impugned order. The writ petition therefore fails and accordingly stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Rohit