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HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 65 of 2020

{Arising out of order dated 12.12.2019 passed by the learned Single Judge in Writ Petition (C) No. 4563 of 2019}

- Laxmi Narayan Agrawal S/o Late Shri Jagannath Agrawal Aged About 63 Years Resident of Baya Road, Village- Lahrod, Police Station And Tehsil- Pithora, District- Mahasamund Chhattisgarh.

---- Appellant

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, Ministry of Finance (Department of Revenue) Government of India, New Delhi, 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, Delhi
5. Laxman Sarthi S/o Shri Itwaru, Indra Aawas, Village- Chicharpali, District- Baloda Bazar Chhattisgarh.

---- Respondents

For Appellant	: Shri Sarfaraz Khan, Advocate.
For Respondent/Department	: Shri Amit Chaudhari and Ms. Naushina Afrin Ali, Advocates.
For Respondent/UOI	: Shri Vaibhav P. Shukla, Advocate on behalf of Shri B.Gopa Kumar, Assistant Solicitor General.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

02.03.2020

1. Challenge is against the correctness of the verdict passed by the learned Single Judge, whereby interference was declined and the writ petition was dismissed.

2. As a matter of fact, the writ petition was filed challenging the order dated 04.12.2019, causing provisional attachment of the immovable property in terms of the provisions of the Prohibition of Benami Property Transaction Act, 1988 (for 'the Act'). Various averments have been raised, both factual and legal, which have been sought to be rebutted by the Respondents by filing return.

3. After hearing both the sides, the learned Single judge observed that it is not a fit case to call for interference as the provisional attachment is only an arrangement to preserve the property until the authority completes the proceedings under the Act. Both the writ Petitioner as well as the 5th Respondent could appear before the authorities and can put forward their defence and establish that the property cannot be termed as a Benami property.

4. When the matter came up for consideration before this Court on 05.02.2020, Shri Sarfaraz Khan, the learned counsel appearing for the Appellant pointed out that, there is a legal infirmity insofar as no proper approval in terms of sub-section (3) of Section 24 of the Act was obtained. It was accordingly, that we passed an order on that day, in the following terms:

> "The learned counsel for the Appellant submits that the challenge against Annexure-P/1 order dated 04.12.2019 passed under Section 24(3) of the Prohibition of Benami Property Transactions Act, 1988 (for short, 'the Act, 1988') is mainly on two grounds. Firstly that, no proper notice in terms of sub- section (1) of Section 24 of the Act, 1988 was issued and further that no prior approval in writing was obtained from the Approving Authority in terms of sub- section (3) of Section 24 of the Act, 1988. With regard to the first ground, a reply has been filed from the part of the Department also producing a copy of the notice, which is stated as served on 06.12.2019; correctness of which is disputed, however stating that it will be taken

up by a separate proceeding. With regard to the second ground, it is stated that no prior approval of the Approving Authority was obtained in writing as envisaged under Section 24(3) of the Act, 1988.

The learned standing counsel for the Department says that in paragraph 14 of Annexure-P/1 order, which is the same as Annexure-R/3 produced along with reply, it is stated that, the said order has been passed with the prior approval of the Joint Commissioner, Income Tax (DPO) Raipur, who is the Approving Authority under the Act, 1988. It is pointed out that factual aspect has been asserted in the reply supported by an affidavit. This however shows that the approval taken from the Approving Authority on 10.10.2019 is only an approval in terms of proceedings under Section 23 of the Act, 1988, which is different from the approval as contemplated under sub-section (3) of Section 24 of the Act, 1988. The learned counsel for the Department seeks for time to get instructions and to produce copy of the approval in terms of sub-section (3) of Section 24 of the Act, 1988 or to produce the file to substantiate the facts and figures.

Post on 10.02.2020."

5. When the matter was taken up for consideration on 05.02.2020, the learned counsel appearing for the Respondent submitted that, the approval was obtained as discernible from the materials already brought on record. But on pointing out that, the approval mentioned in the proceedings already brought on record, referred only to the provisions of Section 23 and that, that approval envisaged under Section 24(3) was something else, time was sought for to get instructions and to place the entire materials on record. It was accordingly that, the position was clarified on 10.02.2020 as to the obtaining of approval under Section 24(3) of the Act as well. I. A. No. 03 of 2020 producing additional documents and it was brought to the notice of this Court on 24.02.2020 that as per the additional documents produced, proper sanction was obtained before ordering the provisional attachment; which hence was within the four walls of law. The matter was adjourned on the request of learned counsel for the Appellant for getting further

clarifications/instructions.

6. Today, when the matter is taken up for consideration, it is noted that no further proceedings have been filed from the part of the Appellant disputing the correctness or otherwise of Annexures R/4 and R/5. On going through the above documents, it is seen that the version of the Respondents that, the proceedings were pursued after getting approval in terms of sub-Section 3 of Section 24 is established by the Respondents and as such, this Court does not find any merit in the appeal. It stands dismissed.

7. Before parting with the case, Mr. Amit Choudhari, the learned Standing counsel for the Respondents referred to the wild allegations levelled against the authorities/department, particularly, under paragraph 9.6 of the writ petition alleging 'corruption', without producing any material to substantiate it. It remains a fact that no materials have been produced from the part of the Appellant in support of the allegations levelled against the Respondents therein. Reckless allegations, when raised without testing the correctness, are liable to be acted upon seriously. However, because of the magnanimity expressed on the part of the learned Standing counsel, alerting the writ Petitioner/Appellant of the consequences and to be careful in future. We leave it there and no further order is being passed in this regard.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Hem