Dl 9. September 8, 2021

<u>Through Video Conference</u>

W.P.L.R.T. 31 of 2020

State of West Bengal & ors.
Vs.
Sri Prasanta Kudmar Pal & ors.

Mr. T. M. Siddiqui,
Mr. Nilotpal Chatterjee,
…for the petitioners.

Mr. Anil Jana,
Mr. Bibekananda Tripathy,
…for the respondents.

This writ petition is at the instance of the State of West Bengal and its land revenues department of the district of Purba Medinipur. The petitioners are aggrieved by the order passed by the West Bengal Land Reforms and Tenancy Tribunal in Original Application No. 452 of 2008.

The applicants before the tribunal preferred an appeal before the District Land and Land Reforms Officer, Purba Medinipur, by invoking provisions of Section 54 of the West Bengal Land Reforms Act against an order passed by the Block Land and Land Reforms Officer, Nandigram, Purba Medinipur, in a proceeding being 7AA Case No. 52 of 1996 under Section 14T read with Sections 14M and 14S of the West Bengal Land Reforms Act as also the order dated June 11, 1997 passed in the proceeding being 14T(5) Case No. 3 of 1997 under Section 14T(5) read with Section 14(T)9 of the West Bengal Land Reforms Act, challenging the legality, validity and correctness of the orders.

The tribunal set aside the orders passed by the Block Land and Land Reforms Officer, Nandigram on the ground that the authorities concerned shifted the onus of proving the benami transaction upon the applicants and that the authorities concerned arrived at their conclusion only on the basis of surmise and conjecture. The tribunal observed that there is no evidence to substantiate that the applicants were the mere name lender or a mask or a faced whereas the father of the applicants, namely, Iswar Chandra Pal, was the real owner. The tribunal, on the contrary, came to a finding that no evidence of any kind is on record to show that the transaction was actuated with the intention to defeat the object of vesting. The tribunal was of the opinion that Iswar Chandra Pal could not have foreseen that there would be an amendment in the West Bengal Land Reforms Act and the quantum of immovable properlty held by him would come within the mischief of vesting and with a view to defeat the purpose of vesting he executed the settlement deed.

On such consideration, the orders passed by the authorities concerned were set aside and the parties were directed to maintain status quo with regard to recording of the land as particularized in the schedule of the original application and in consonance with the earlier choice of retention of land by each raiyat.

Mr. T. M. Siddiqui, learned advocate appearing on behalf of the petitioners submits that the impugned order has disregarded the fact that in the Big Raiyat Case No. 740 of 1969, the said Iswar Chandra Pal did not disclose about the deed of

Nirupan Patra, which alleged to have been registered in the office of the Sub-Registrar, Nandigram, Midnapore on December 7, 1967. Apart from the aforesaid, the daughter of Iswar Chandra Pal, namely Muktakeshi Hazra, in a proceeding before the authority concerned on June 11, 1997 has stated that her father enjoyed the entire property till his death. The authority concerned had also taken into consideration the certificate issued by the Pradhan of the concerned gram panchayet, which alleged to have stated that the father and the sons and daughters were living separately since 1964. On such consideration, the transaction was held to be benami and illegal, which finding is emphatically supported by Mr. Siddiqui by relying on a decision of a co-ordinate bench of this courtin the case of Bibhuti Bhusan Bankura & ors. vs. State of West Bengal & ors. reported in 1994 (II) C.H.N. 408.

Mr. Anil Kumar Jana, learned advocate appearing on behalf of the respondents, has supported the findings arrived at by the tribunal and submits that there is no iota of evidence to suggest that the transaction was benami. In fact, the recitals in the Nirupan Patra would show that the settlement was made in the year 1951, when the sons and daughters of Iswar Chandra Pal were minors and the said settlement was made for their benefits. Such recital in the Nirupan Patra has been completely ignored by the authority concerned and arrived at the said finding. It is submitted that in deciding whether the transaction was benami or not, the authority concerned has to find out the intention behind the transaction. The intention has to be gathered on a holistic review of the evidence on record and not merely on the basis of picking up one or two sentences. The source of money is one of the relevant considerations along with the age of the persons to be benefited by the Nirupan Patra. It is submitted that once the said deed was registered in the year 1967, it relates back to the date of actual transaction that was happened in the year 1951 and in the absence of anything to show as to the true state of affairs existing in the year 1951, the authority concerned is bound to accept the said settlement as a fact and proceed with the matter not in a fanciful thought.

Mr. Jana, in support of his argument, has relied upon a decision of the Hon'ble Supreme Court in the case of Binapani Paul vs. Pratima Ghosh & ors. reported in 2007 (6) S.C.C. 100. Mr. Jana has further relied upon a decision of this court in the case of Pratima Paul & ors. vs. Rupa Paul & ors. reported in 2010 (2) C.L.J. 313 in reiteration of what he submitted earlier.

We have heard the learned advocates appearing for the parties. The invocation of jurisdiction by the authority concerned under Section 14T(5) of the West Bengal Land Reforms Act, 1955 was by virtue of an amendment introduced by the West Bengal Land Reforms (Amendment) Act, 1981, which came into effect on and from March 24, 1986. Sub-section (5) is newly introduced provision in Section 14T which reads as follows :-

> "(5) The Revenue Officer, on his own motion or upon any information, may, after giving the persons interested an opportunity of being heard, enquire and decide any question of benami in relation to any land and any question of title incidental thereto or any interest therein or any matter of transaction made, on

being satisfied that such enquiry and decision are necessary for the purpose of preparation, correction or revision of record-of-rights and all matters incidental or consequential thereto or detection and vesting of surplus land over the ceiling area."

The said sub-section makes it clear that the Revenue Officer, either on his own motion or upon any information, can enquire into and decide any question of benami in relation to any land, after giving the persons interested an opportunity of being heard. This is a newly introduced provision. The said provision makes it clear that there has to be some basis of foundation for initiating an enquiry and deciding any question of benami in relation to any land.

By the alleged deed of Nirupan Patra executed by Iswar Chandra Pal, 20.88-1/2 acres of land in non-irrigated area was gifted/settled in favour of his three sons and three daughters in the year 1951. However, by the time the said deed was registered all the three sons became major and all the daughters were got married. On April 18, 1969, Big Raiyat Case No. 740 of 1969 under Section 6 of the West Bengal Estate Acquisition Act, 1953 was initiated by the Revenue Officer, Nandigram-I, Purba Medinipur, against the said Iswar Chandra Pal. The said case was disposed of on May 26, 1969 by the Revenue Officer allowing the raiyat, namely, Iswar Chandra Pal, to retain 24.60 acres of agricultural land, 1.67 acres of non-agricultural land and 0.28 acre of homestead land. However, 8.55 acres of agricultural land and 0.25 acre of non-agricultural lands were vested in the State. On the basis of the order dated May 26, 1969, the State mutated the names of the transferees in the government record and accepted rents for months together from the said transferees. It was only on March 5, 1997, the proceeding under Section 14T(3) of the West Bengal Land Reforms Act, 1955 was started by the Revenue Officer followed by a proceeding under Section 14T(5) of the said Act initiated on June 3, 1997 against the said Iswar Chandra Pal alleging the transaction is benami. On June 16, 1997, the proceeding under Section 14T(3) of the West Bengal Land Reforms Act was disposed of by the Revenue Officer whereby 17.90 acres of land was vested in the State, which was subject matter of challenge in a writ petition before this court. The said writ petition was ultimately transferred to the West Bengal Land Reforms and Tenancy Tribunal after coming into force of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 and it was in such proceeding, the impugned order was passed.

The West Bengal Land Reforms Act, 1955 does not define the benami transaction. Section 14T(5) is also silent as to the yardstick or criterion to be applied in determining whether a transaction is genuine or benami. In the absence of the aforesaid, one has to fall back on the general law and can apply the principles that will govern a benami transaction as mentioned in the Prohibition of Benami Property Transactions Act, 1988. It is elementary that he, who alleges the fact, has to prove the said fact. Initially the burden lies on him to establish the said fact before the onus be shifted on the other side. However, in respect of certain facts, which are within the special knowledge of the party or the law requires the reverse burden to prove, the burden of proof may vary depending upon the situation or as the legislation would command. The onus to prove the fact that the transaction being benami primarily is on the authority concerned. Such burden cannot be shifted on the sons and daughters of Iswar Chandra Pal. Iswar Chandra Pal died in the year 1975. Until such period, the authority concerned did not find such transaction to be illegal or void or tainted as benami. The authority concerned is required to consider the primary intention behind the execution of the document in question and to carefully consider the recitals in the said document. The authority shall also take into consideration the legitimacy of the power and jurisdiction conferred under Section 14T(5) of the West Bengal Land Reforms Act, 1955 at the relevant point of time. The authority concerned did not find such transaction to be illegal or entered into with a purpose of avoiding any legislative compulsion or to by pass any legislative competence. The said transaction was not considered to be a fraud or entered into for the purpose of avoiding any obligation to be discharged. If the intention of executing the deed of Nirupan Patra was for the welfare and benefit of his children, it cannot be said that it is a benami transaction. There is no finding that sons and daughters of Iswar Chandra Pal did not possess and enjoy the properties as owners. The intention to create a benami transaction must be proved at the first instance. Admittedly, the sons and daughters except Muktakeshi Hazra were absent at the time of hearing on June 11, 1997. The recording of the statement of Muktakeshi Hazra contradicts the recital in the registered instrument. Whether the other heirs and heiresses of Iswar Chandra Pal were bound by such admission is also an issue to be considered prior to arriving at any finding on the deed in question.

It is true that the co-ordinate bench of this court in the case of Sri Bibhuti Bhusan Bankura (supra) has held that the nature of enquiry as to benami as envisaged in Section 14T(5) of the West Bengal Land Reforms Act, 1955 is not at all covered by the prohibition of any enquiry as to benami as contemplated in Section 4 of the Prohibition of Benami Property Transactions Act, 1988 and, as such, the enquiry under Section 14T(5) of the West Bengal Land Reforms Act is not barred by Section 4 of the Prohibition of Benami Property Transactions Act, but for determining the criterion to be applied in ascertaining whether a transaction is benami, one has to fall back on certain fundamental principles governing the law on this point. The co-ordinate bench in paragraphs 30 and 31 of the said decision has discussed the concept of benami which we also adopt and follow in this case. The said principle of benami is required to be applied in finding out whether the alleged transaction is benami or not. The said paragraphs 30 and 31 are reproduced below :-

> **"30. To the second point next. It had been urged on behalf of the Appellants that enquiry into Benami transaction under s. 14T(5) of the L.R. Act is prohibited under s. r of the B.T.P. Act. this submission also seems to us to be of little force for the reasons we shall presently state. The Supreme Court in Bhim Sinch vs. Kan Singh, AIR 1980 SC 727, has held that two kinds of benami transactions**

are generally recognised in India. Where a person buys a property with his own money but in the name of another person without any intention to benefit such other person, transaction is called Benami. In that case, the transferee holds the property for the benefit of the person who has contributed the purchase money; and he is the real owner. The second case which is loosely termed as a Benami transaction is a case where a person who is the owner of the property executes a conveyance in favour of another without the intention of transferring the title to the property thereunder. In this case, the transferor continues to be the real owner. the question whether a transaction is a benami transaction or not mainly depends upon the intention of the person who has contributed the purchase money in the former case and upon the intention of the person who has executed the conveyance in the latter case. the principle underlying the former case is also statutorily recognised in s. 82 of the Indian Trusts Act, 1882.

31. **In line with the aforesaid decision of the Supreme Court, a Single Judge of our lHigh Court in *Sambhunath Pal* vs. *The State of West Bengal and others*, 87 CWN 695, HAS HELD THAT THE WORD 'Benami' is used to denote two classes of transactions which differ from each other in their**

legal character and incidence. In one sense, it signifies a transaction which is real. Such a sale is genuine but the Purchaser is a *Benamdar* of another person. The word *Benami* is also occasionally used to refer to a sham transaction, as for example, when one purports to execute a deed of transfer without intending that his title should cease or pass to the ostensible transferee. In the former class of transaction the enquiry is made to find out who paid the consideration of the transfer. In the latter class of cases when the question is whether the transfer is genuine or sham, the point for decision would be not who paid the consideration but whether any consideration was paid."

The retrospective operation is likely to cause undue hardship to the respondents having regard to the fact that the settlement deed was executed in the year 1951 and there was no bar operating at the relevant time in settling the properties in favour of the children of the settlor and the provision under which the said deed is now sought to be impinged was not born prior to 1986. By giving effect to the said provisions retrospectively it is likely to cause serious prejudice and undue hardship at this stage to unsettle the past transfer. The settlement has been acted upon by and between the parties and have been given effect to by the writ petitioners contemporaneously. However, we are not expressing any final view on this, since we found the order impugned to be flawed for more than one reason and there has been violation of principles of natural justice.

We are thus, inclined to set aside the order and remand the matter with the direction upon the authority concerned to decide the matter de novo after giving sufficient opportunity of hearing to the legal heirs of Iswar Chandra Pal, since deceased, and dispose of the matter by passing a reasoned order.

Needless to mention that notices sufficiently in advance should be given to all the applicants.

The concerned authority, namely, the Block Land and Land Reforms Officer, Nandigram-I, Purba Medinipur, shall consider the matter de novo and conclude the proceeding within twelve weeks from the date of communication of this order by either of the parties. The authority shall communicate his decision to the applicants within one week from the date of taking his decision.

The writ application is, thus, disposed of without, however, any order as to costs.

Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.

(Hiranmay Bhattacharyya, J.) **(Soumen Sen, J.)**

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