

30.11.2022

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WPA 11123 of 2020

CAN/1/2021
Deific Abode LLP
Vs
Union of India & Ors.
With
WPA/11127/2020
CAN/1/2021
With
WPA/11132/2020
CAN/1/2021
With
WPA/11135/2020
CAN/1/2021
With
WPA/11136/2020
CAN/1/2021

Mrs. Manju Agarwal,
Mr. Bajrang Manot,
Ms. Surabhi Baid
... For the Petitioners.
Mr. Smarajit Roy Chowdhury
... For the Respondents.

Heard learned Advocates appearing for the parties.

Learned Advocate appearing for the petitioners submits that the issue involved in these writ petitions are covered in favour of the petitioners by a recent judgment of the Hon'ble Supreme Court dated 23rd August, 2022 in the case of Union of India & Anr. Vs. M/s. Ganpati Dealcom Pvt. Ltd., reported in Civil Appeal No.5783 of 2022 (@ Special Leave Petition © No.2784 of 2020) and petitioners rely on the same in support of their contention particularly on paragraphs 15.16, 15.17, 15.18 and 15.22 of the aforesaid judgment which are quoted as hereunder :

“15.16 Fourth, reading Section 2(a) with Section 3(1) would have created overly broad laws susceptible to be challenged on the grounds of manifest arbitrariness. If this Court reads criminal provisions of the Benami Act to have had force since 1988, then the following deleterious consequences would ensue:

- (i) Section 187C of the Companies Act, 1956 assured protection to nominal and beneficial holding of shares if the prescribed declaration duly made are at serious risk.
- (ii) Benami cooking gas connections which have been regularized from time to time are at risk.
- (iii) Hosing colonies and benami allotments of DDA flats which have been regularised from time to time are at risk.

15.16 The criminal provision under Section 3(1) of the 1988 Act has serious lacunae which could not have been cured by judicial forums, even through some form of harmonious interpretation. A conclusion contrary to the above would make the aforesaid law suspect to being overly oppressive, fanciful and manifestly arbitrary, thereby violating the ‘substantive due process’ requirement of the Constitution.

15.17 SComing to Section 5 of the 1988 Act, it must be noted that the acquisition proceedings contemplated under the earlier ACT were in rem proceedings against benami property. We may note that, jurisprudentially, such in rem proceedings transfer the guilt from the person who utilized a property which is a general harm to the society, to the property itself.

15.22 From the above, Section 3(criminal provision) read with Section 2(a) and Section 5(confiscation proceedings) of the 1988 Act are overly broad, disproportionately harsh, and operate without adequate safeguards in place. Such provisions were still-born law and never utilized in the first place. In this light, this Court finds that Sections 3 and 5 of the 1988 Act were unconstitutional from their inception.”

Learned Advocate appearing for the respondent/Income Tax Authority does not dispute the aforesaid contention of the petitioners.

In view of the facts and circumstances of the case as appears from record, submission of the parties and by taking into consideration the aforesaid judgment of the Hon'ble Supreme Court, all these writ petitions along with CAN being WPA 11123 of 2020, CAN/1/2021, WPA/11127/2020, CAN/1/2021, WPA/11132/2020, CAN/1/2021, WPA/11135/2020, CAN/1/2021 and WPA/11136/2020, CAN/1/2021 are disposed of by setting aside the impugned notices under Section 24(1) of the Prohibition of Benami Property Transactions Act, 1988 and all subsequent proceedings on the basis of the aforesaid notices are quashed and all legal consequences will automatically follow.

(Md. Nizamuddin, J.)