



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 05th AUGUST, 2022

IN THE MATTER OF:

+ **LPA 430/2022 & CM APPLs. 31585/2022, 31586/2022, 31587/2022**

RAMAA ADVISORS PVT. LTD.

..... Appellant

Through: Mr. Rishi Agrawala, Ms. Niyati Kohli, Mr. Ankit Banati, Mr. Shravan Niranjana, Mr. Prabhav Bahuguna, Advocates

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Chetan Sharma, ASG with Ms. Nidhi Raman, CGSC along with Mr. Amit Gupta, Mr. Rishav Dubey, Mr. Saurabh Tripathi, Ms. Rupali Kapoor, Mr. Zubin Singh, Advocates for UOI Mr. Zoheb Hossain, Senior Standing Counsel with Mr. Vipul Aggarwal, Mr. Parth Semwal, Advocates

+ **LPA 431/2022 & CM APPLs. 31609/2022, 31610/2022, 31611/2022**

OPTIMA INFRASTRUCTURES PVT. LTD.

..... Appellant

Through: Mr. Vijay Aggarwal, Mr. Hardik Sharma, Ms. Barkha Rastogi, Mr. Abhiraj, Advocates

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Chetan Sharma, ASG with Ms. Nidhi Raman, CGSC along with Mr. Amit Gupta, Mr. Rishav Dubey, Mr.



NEUTRAL CITATION NO: 2022/DHC/002975

Saurabh Tripathi, Ms.Rupali Kapoor,
Mr.Zubin Singh, Advocates for UOI

Mr. Zoheb Hossain, Senior Standing
Counsel with Mr.Vipul Aggarwal,
Mr.ParthSemwal, Advocates

+ **LPA 432/2022 & CM APPLs. 31616/2022, 31617/2022, 31618/2022**

COBOL TECHNOLOGIES PVT. LTD. Appellant

Through: Mr. Rishi Agrawala, Ms.Niyati Kohli,
Mr.AnkitBanati, Mr.Shravan
Niranjan, Mr. Prabhav Bahuguna,
Advocates

versus

UNION OF INDIA & ANR Respondents

Through: Mr. Chetan Sharma, ASG with
Mr.Kirtiman Singh, CGSC along with
Ms.Kunjala Bhardwaj, Advocate for
UOI

Mr. Zoheb Hossain, Senior Standing
Counsel with Mr.Vipul Aggarwal,
Mr.ParthSemwal, Advocates

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Appellants seek to challenge the common judgment dated 04.05.2022, passed by the learned Single Judge, dismissing the Writ Petitions bearing Nos. W.P.(C) 12846/2021, W.P.(C) 12847/2021 and W.P.(C) 12853/2021.



2. The Appellants had filed the said Writ Petitions praying for the following relief:

“a. Issue a Writ, Order or Direction in the nature of a Mandamus or any other appropriate Writ, Order or Direction thereby Quashing the notification dated 08.10.2021 issued by the Ministry of Finance, Government of India, to the extent whereby it has brought to end the ability of the existing Member Adjudicating Authority, New Delhi to deliver orders / judgments in the matters in which orders are reserved by appointing a new officer to the post of Member, Adjudicating Authority at New Delhi, for Prohibition for Benami Property Transactions Act, 1988, without providing any time period for him to pass orders / judgments though done earlier in previous notifications, and thereby directing the concerned Member, Adjudicating Authority to (i) pass orders/judgment within a specified time frame (2-3 months) in respect of all cases which he has reserved judgments after hearing arguments, in particular the case of the Petitioner which has now undergone two full rounds of hearing and where judgment has been reserved now for the second time as recently as on 16th September 2021;

OR ALTERNATIVELY

b. Issue a Writ, order or direction including a Writ in the nature of Mandamus and/or Certiorari or any other appropriate Writ, Order or Direction, thereby directing Respondent No. 2 Adjudicating Authority and its concerned officer to pass orders/judgment within a specified time frame (2-3 months) in respect of all cases which have been heard by him and where judgment has been reserved, in particular the case of the Petitioner;

AND

c. Pass necessary orders and directions thereby laying down guidelines for the Respondent No. 1 that during issuing transfer orders, the same should have a provision that the concerned Authority / Tribunal



Member / etc. shall be authorized to pass judgments within a relevant period of time in the matters which have already been reserved for judgment;”

3. Shorn of details, the facts in brief, leading to the present appeals are as follows:-

- i. It is stated that on 10.08.2019, provisional Attachment Orders were passed by the Initiating Officer under the Prohibition for Benami Property Transactions Act, 1988 (hereinafter called as 'Benami Act').
- ii. It is stated that Section 7 of the Benami Act was amended by Section 155 of the Finance Act, 2021, whereby the Competent Authority authorized under Section 5(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, was designated as the Adjudicating Authority competent to exercise jurisdiction, powers and authority under the Benami Act.
- iii. It is stated that proceedings commenced before the Adjudicating Authority, New Delhi under the Benami Act and arguments were heard, on 01.02.2021 & 02.02.2021, and orders were reserved on 02.02.2021 by the Adjudicating Authority, New Delhi.
- iv. A notification bearing No. S.O.966(E) dated 27.02.2021 was issued by the Ministry of Finance stating that in respect of cases where hearings had been concluded and orders had been reserved, the Adjudicating Authority has time till 30.09.2021 to pass judgments, extending the time given by the earlier



notification dated 31.12.2020 wherein the time had been fixed upto 31.03.2021.

- v. Since the post of Adjudicating Authority, New Delhi was vacant, the Member, Adjudicating Authority, Mumbai i.e. Mr. Hari Govind Singh was given additional charge of Adjudicating Authority, New Delhi.
- vi. It is stated that Mr. Hari Govind Singh, who was given additional charge of Member, Adjudicating Authority at New Delhi, heard the matter pertaining to the Appellants and reserved orders on 16.09.2021.
- vii. It is stated that the Ministry of Finance *vide* notification bearing No. S.O. 3814(E) dated 17.09.2021, extended the time period till 31.03.2022 for pronouncing the judgments in cases where hearings had been concluded and orders were reserved.
- viii. It is pertinent to mention that the Ministry of Finance had earlier issued a notification dated 27.02.2021, wherein time to deliver judgments by the Adjudicating Authority had been extended till 30.09.2021. It is also pertinent to mention that the Adjudicating Authority, Mumbai, who had been given additional charge did not deliver its judgment till 31.03.2022.
- ix. It is stated that Office Order No.270/2021 dated 08.10.2021 was notified by the Ministry of Finance appointing Mr. Sanjog Kapoor to the post of Member, Adjudicating Authority at New Delhi and, thereby the additional charge given to the Adjudicating Authority, Mumbai, came to an end after the appointment of Mr. Sanjog Kapoor as Member, Adjudicating Authority at New Delhi.



- x. The grievance of the Appellants, in short, is that Mr. Hari Govind Singh, who was the Member, Adjudicating Authority, Mumbai and was given additional charge as Adjudicating Authority at New Delhi, had heard the matter, and should be directed to pronounce the judgment in the matter reserved by him.
- xi. The learned Single Judge dismissed the writ petition and held that the Adjudicating Authority, Mumbai had been given additional charge of the Bench at New Delhi and, therefore, once Mr. Sanjog Kapoor had been appointed as Adjudicating Authority at New Delhi, Mr. Hari Govind Singh could not have passed the judgment in the matter reserved by him since he was no longer holding the post of Adjudicating Authority at New Delhi.
- xii. Aggrieved by the said judgment, the present appeals have been filed.

4. Heard learned Counsel for the Appellants and the Respondents, and perused the material on record.

5. Mr. Vijay Aggarwal, learned Counsel for the Appellants, contends that since Mr. Hari Govind Singh had heard the matter, he ought to have pronounced the judgment as time had been extended in all these cases upto 31.03.2022 and he ought to have been directed to pass the judgment. He further places reliance on the judgment of a Bench of three Judges of this Court in Karan v. State NCT of Delhi, **CRL.A. 352/2020** dated 27.11.2020. Reliance has also been placed on the judgments of the Apex Court in Gullapalli Nageswara Rao & Ors. v. Andhra Pradesh State Road Transport



Corporation &Anr., AIR 1959 SC 308 and State of M.P. v. Bhooraji & Ors., (2001) 7 SCC 679.

6. The facts in the present cases reveal that Mr. Hari Govind Singh was the Adjudicating Authority, Mumbai, and was given only additional charge to function as the Adjudicating Authority, New Delhi. On the day Mr. Sanjog Kapoor was appointed as an Adjudicating Authority, New Delhi on 08.10.2021, Mr. Hari Govind Singh had not pronounced the judgment in the cases pertaining to the Appellants and, therefore, on 08.10.2021, Mr. Hari Govind Singh ceased to function as the competent authority for New Delhi. Viewed in this light, the notification dated 17.09.2021 extending the time period from 30.09.2021 to 31.03.2022 for pronouncing judgments in cases where hearings had been completed and orders were reserved cannot be applied to the present cases.

7. The judgments cited by learned counsel for the Appellants cannot be applied to the facts of the present cases. In Gullapalli Nageswara Rao & Ors. v. Andhra Pradesh State Road Transport Corporation &Anr., AIR 1959 SC 308, the issue in the case was that the matter was heard by one authority and the judgment was pronounced by another authority, and, therefore, the ratio of Gullapalli Nageswara Rao (supra) cannot be applied to the present case.

8. Similarly, in the case of Karan v. State NCT of Delhi, CRL.A. 352/2020, dated 27.11.2020, the facts of the case are that the learned Additional Sessions Judge, who had heard the case was transferred after reserving the judgment, and pronounced the judgment after his transfer. The question that arose in the said case was whether the learned Additional Sessions Judge even after his transfer could pronounce the judgment or not. The Division Bench after analysing the provisions under CrPC and the



transfer circular held that this was merely an irregularity. The relevant portion of the said judgment reads as under:-

“154. The ld. Addl. Sessions Judge was duly empowered to pronounce the judgment by virtue of Note 2 appended to the transfer order dated 13th March, 2020. The pronouncement of the judgment by ld. Addl. Sessions Judge is in terms of Section 353 CrPC. The delay in pronouncing the judgment is a mere irregularity and is hereby condoned.

155. Notwithstanding validity of Note 2, the impugned judgment is also protected by Sections 462 and 465 CrPC and the de facto doctrine.”(emphasis supplied)

9. Similarly, the facts of State of M.P. v. Bhooraji & Ors., (2001) 7 SCC 679 also do not apply to the present cases.

10. The notification dated 17.09.2021, would apply to such of those officers who had reserved orders, but had not pronounced it within the time as stipulated by the notification. The said notification cannot be extended to an officer who has ceased to occupy the post. Further, the notification dated 17.09.2021 only extended the period from 30.09.2021 to 31.03.2022 to deliver judgments in cases where the Adjudicating Authority was yet to deliver its judgments. The notification dated 17.09.2021 on which reliance has been placed reads as under:-

“S.O. 3814(E).—In exercise of the powers conferred by sub-section (1) of section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020) (hereinafter referred to as the said Act), and in partial modification of the notifications of the Government of India in the Ministry of Finance, (Department of Revenue) No. 93/2020 dated the 31st December, 2020, published in the



Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), vide number S.O. 4805(E), dated the 31st December, 2020 and No. 10/2021 dated the 27th February, 2021, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), vide number S.O. 966(E) dated the 27th February, 2021 and No. 20/2021 dated the 31st March, 2021, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), vide number S.O. 1432(E) dated the 31st March, 2021 and No. 74/2021 dated 25th June, 2021, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), vide number S.O. 2580(E) dated the 25th June, 2021, (hereinafter referred to as the said notifications), the Central Government hereby specifies for the purpose of sub-section (1) of section 3 of the said Act, that,—

(A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and, —

(a) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of any order for imposition of penalty under Chapter XXI of the Income-tax Act, —

(i) the 30th day of March, 2022 shall be the end date of the period during which the time limit specified in, or prescribed or notified under, the Income-tax Act falls for the completion of such action; and

(ii) the 31st day of March, 2022 shall be the end date to which the time-limit for completion of such action shall stand extended;

(b) the compliance of any action, referred to in clause (b) of sub-section (1) of section 3 of the said Act, relates to intimation of Aadhaar number to the prescribed authority under sub-section (2)



of section 139AA of the Income-tax Act, the time-limit for such the compliance of such action shall stand extended to the 31st day of March, 2022.

(B) where the specified Act is the Prohibition of Benami Property Transaction Act, 1988, (45 of 1988)(hereinafter referred to as the Benami Act) and the completion of any action, as referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to issue of notice under sub-section (1) or passing of any order under sub-section (3) of section 26 of the Benami Act,—

(i) the 30th day of June, 2021 shall be the end date of the period during which the time-limit specified in or prescribed or notified under the Benami Act falls, for the completion of such action; and

(ii) the 31st day of March, 2022 shall be the end date to which the time-limit for completion of such action shall stand extended.”

11. Mr. Hari Govind Singh had not pronounced any judgment prior to 08.10.2021 and on that day, Mr. Hari Govind Singh, who was only holding additional charge ceased to be Adjudicating Authority, New Delhi.

12. A writ is maintainable when there is a right. In the absence of any right, a writ cannot be passed. The Appellant has not been able to demonstrate violation of any right or breach of any notification which states that an Authority should pronounce the judgment in a matter heard by it even after the person, who heard the matter, has ceased to occupy the chair. This Court, therefore, does not find any reason to interfere with the judgment dated 04.05.2022, passed by the learned Single Judge in the Writ Petitions



NEUTRAL CITATION NO: 2022/DHC/002975

bearing Nos. W.P.(C) 12846/2021, W.P.(C) 12847/2021, W.P.(C) 12853/2021

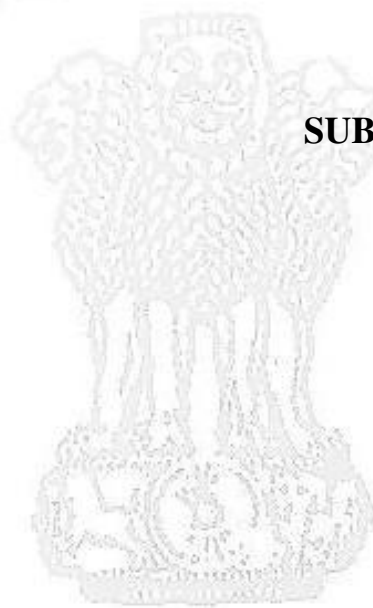
13. The appeals are accordingly dismissed with the above observations. Pending applications stand disposed of.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

AUGUST 05, 2022

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