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W.P. No.4897 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.4897 of 2021 and
W.M.P. Nos.5508 and 5509 of 2021 and
W.M.P. No. 1771 of 2023

- 1.Veena Bajaj
- 2.Aarti Bajaj
- 3.Esha Bajaj
- 4.G.M.Dusija

5.M/s.Sarweshwara Promoters Pvt. Ltd.,
Rep. by its Managing Director, Mr. Sunil Bajaj,
A3, Lotus Lawns 4 &5, Kilpauk Garden Road
1st Street, Kilpauk, Chennai 600 010.

... Petitioners

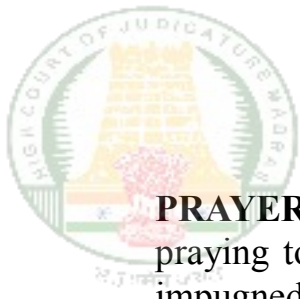
Vs.

1. Deputy Commissioner of Income Tax (Benami Prohibition)
Initiating Officer, Chennai,
O/o. The Deputy Commissioner of Income Tax (Benami Prohibition)
Room No.104, I Floor, Income Tax Investigation Wing Building,
46, M.G. Road, Nungambakkam,
Chennai - 600 034.

2. Corporation Bank,
Georgetown Branch, No.101, Armenian Street,
Georgetown, Chennai 600 001.

3. The Sub-Registrar,
O/o.SRO, Adyar, Chennai 600 020.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order dated 16.12.2020 in reference F.No.IO/PBPT/Aroopa/2020-21 on the file of the 1st Respondent consequential to the provisional attachment order No.20/DCIT (BP)/2018-19 dated 20.07.2018 as confirmed by the 1st Respondent Adjudicating Authority and quash the same as illegal, unjust, arbitrary, contrary to law and consequentially direct the 3rd respondent to remove the encumbrance of the Provisional attachment dated 20.07.2018 registered as Doc.No.9 of 2018 dated 26.07.2018 on the file of the 3rd Respondent.

For Petitioners : Mr.Om Prakash, Senior Advocate,
Assisted by Mr.P.Ilayaraj Kumar for
M/s.Ramalingam & Associates

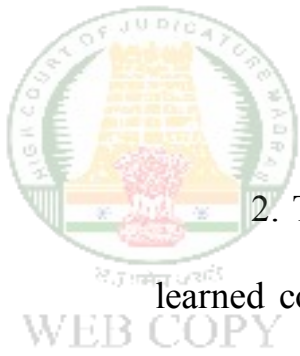
For R1 : Ms.Sheela
Special Public Prosecutor

For R2 : Mr.S.Sethuraman

For R3 : No appearance

ORDER

This writ petition has been filed challenging the impugned order dated 16.12.2020 on the file of the 1st Respondent and the consequential order Number 20/DCIT(BP)/2018-19 dated 20.07.2018 as confirmed by the 1st Respondent adjudicating authority and to remove the encumbrance of the provisional attachment dated 20.07.2018 registered as Doc.No.9 of 2018 dated 26.07.2018 on the file of the 3rd Respondent.



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2. Today, when the matter is taken up for hearing it was submitted by the learned counsel for the Respondents that the Appellate Tribunal vide order dated 15.12.2022 has set aside the order of the adjudicating authority on the premise that the proceedings initiated by the Respondents in relation to alleged benami transaction relate to a period prior to the Amendment Act, 2016 cannot be sustained in the light of the judgment of the Hon'ble Supreme Court in the case of *Union of India vs. Ganpati Dealcom (P) Ltd.*, reported in (2023) 3 SCC 315. It was submitted that a review petition is filed and pending before the Hon'ble Supreme Court. The Tribunal after recording the same observed that if the Apex Court reviews its judgment, the Respondents are at liberty to take appropriate measures including filing a Review Petition before the Tribunal. The relevant portions of the Tribunal order is extracted hereunder:

"Therefore, the order of the Adjudicating Authority confirming the action of Initiating Officer needs to be interfered and accordingly the impugned order and the proceedings initiated by the Respondent in reference to the alleged benami transaction of a period prior to the Amendment Act of 2016 are set aside.

The appeal is allowed in view of the aforesaid.

It is however made clear that if the Apex Court reviews its judgment, the Respondent would be at liberty to take appropriate remedy pursuance to it which includes filing a review petition before this Tribunal."



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3. It is submitted that a batch of matter including appellate order in FPA-PBPT-1943-1946/CHN/2022 is challenged by way of Civil Miscellaneous Appeal before this Court and the same is pending consideration, however, no interim order/stay is granted thusfar.

4. It is submitted by the learned counsel for the petitioner that in the light of the Tribunal order, the proceedings under the Prohibition of Benami Property Transaction Act, 1988, no longer survives and since neither the Hon'ble Supreme Court nor this Court has granted any stay, the attachment cannot continue to exist and the Respondents ought to remove the encumbrance forthwith.

5. The learned counsel for the Respondents would submit that they may be granted 8 weeks time from the date of receipt of a copy of this order, to enable them to move the Division Bench or the Hon'ble Supreme Court for obtaining appropriate interim order/ directions.

6. In view of the same, the Respondents are directed to remove the encumbrance/provisional attachment dated 20.07.2018 within a period of 10 weeks from the date of receipt of a copy of this order. In the meanwhile, it is open to



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the Respondents to move the Division Bench of this Court or the Apex Court for appropriate order, if so advised. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed. No costs.

13.10.2023

Speaking (or) Non Speaking Order

Index:Yes/No

Neutral Citation: Yes/No

mka/spp

To:

1. Deputy Commissioner of Income Tax (Benami Prohibition)
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O/o. The Deputy Commissioner of Income Tax (Benami Prohibition)
Room No.104, I Floor, Income Tax Investigation Wing Building,
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MOHAMMED SHAFFIQ, J.

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