IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.9868 of 2023
and
W.M.P.No.9941 of 2023

Irfanudeen Abdul Munaf ... Petitioner

Vs.

1.The Adjudicating Authority,
under the Prohibition of Benami Property
Transactions Act, 1988,
Office of the Competent Authority (SAFEM(FOP)A & NDPSA],
Shastri Bhawan, New Building 4th Floor,
No.26, Haddows Road, Nungambakkam,
Chennai – 600 006.

2.The Deputy Commissioner of Income Tax (Benami Prohibition),
Room No.2, Income Tax Investigation Wing Building,
Ground Floor, 46, M.G.Road,
Nungambakkam,
Chennai – 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records on the file of the first respondent and quash the impugned order in F.No.OCA/MDS/592/2022 – PBPT dated 14.02.2023 by the first respondent passed u/s. 26(3) of the Prohibition of Benami Property Transactions Act, 1988 as illegal, arbitrary and without jurisdiction.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.N.Ramesh
Senior Panel Counsel [R1]
M/s.M.Sheela
Special Government Pleader [R2]

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ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records on the file of the first respondent and quash the impugned order in F.No.OCA/MDS/592/2022 – PBPT dated 14.02.2023 by the first respondent passed u/s. 26(3) of the Prohibition of Benami Property Transactions Act, 1988 as illegal, arbitrary and without jurisdiction.

2. Mr.N.Ramesh, learned Senior Panel Counsel takes notice on behalf of the first respondent and M/s.M.Sheela, learned Special Government Pleader takes notice on behalf of the second respondent. In view of the consent expressed by the learned counsel appearing on either side, this petition is taken up for final disposal.

3. The case of the petitioner is that, at his friends request, the petitioner had sent a sum of Rs.99,75,000/- in cash through his cousin, Mr.Nathar Sahib.

Upon secret information, the police intercepted the said Nathar Sahib and the said amount was provisional seized by the Income Tax Department. Thereafter, sworn statement of the said Nathar Sahib had been recorded, in which he stated that he was only carrying the said cash at the instance of the petitioner. Thereafter, proceedings under the Prohibition of Benami Property Transactions Act, 1988 (in short 'PBPT Act') have been initiated against the petitioner as well as the said Nathar Sahib by the respondents and the impugned order in F.No.OCA/MDS/592/2022 – PBPT, dated 14.02.2023 had been passed by the first respondent under Section 26(3) of the PBPT Act, without providing any opportunity to the petitioner. Challenging the same, the above writ petition is filed before this Court.

4. The learned counsel for the petitioner submits that, without providing any opportunity to the petitioner, the first respondent has passed the impugned order, which is in violation of the principles of natural justice. Hence, he seeks indulgence of this Court against the impugned order.

5. The learned Senior Panel Counsel appearing for the first respondent submits that, initially, notice was sent to the petitioner and the petitioner

appeared before the Initiating Authority. Thereafter, the petitioner has given four addresses, from which, all are incorrect address. Due to which, the notices sent to the petitioner were returned with an acknowledgment "no such person". Hence, the present impugned order was passed in the absence of the petitioner and there is no violation in the order passed by the first respondent. Therefore, he prays for dismissal of the above writ petition.

6. Heard Mr.R.Sivaraman, learned counsel for the petitioner, Mr.N.Ramesh, learned Senior Panel Counsel appearing for the first respondent and M/s.M.Sheela, learned Special Government Pleader appearing for the second respondent and perused the materials available on record.

7. This Court is of the view that, expressing any opinion on the merits of the case would adversely affect the interest of the petitioner as well as the respondents. This Court has to see whether any opportunity was given to the petitioner before passing the impugned order. A perusal of the impugned order reveals that, the petitioner had not appeared before the adjudicating authority. In his absence, the present impugned order is passed, which is in violation of principles of natural justice.

8. In view of the above, the impugned order in F.No.OCA/MDS/592/2022 – PBPT dated 14.02.2023 passed by the first respondent under Section 26(3) of the Prohibition of Benami Property Transactions Act, 1988, is set aside and the matter is remitted back to the first respondent for fresh consideration. Further, the petitioner is directed to appear before the first respondent-Adjudicating Authority within a period of one week from the date of receipt of a copy of this order and after giving opportunity to the petitioner, the first respondent-Adjudicating Authority is directed to pass appropriate orders, on merits and in accordance with law, within a period of two weeks thereafter.

9. Accordingly, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

30.03.2023
(2/2)

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.

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