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W.P.Nos.19819, 20303, 20362 & 18611 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.07.2023

Pronounced on : 28.07.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.Nos.19819, 20303, 20362 & 18611 of 2023

and

W.M.P.Nos.19142, 19144, 19660, 19661, 19728, 19729, 17850 & 17852 of 2023

- 1.M.Kumudhavalli ... Sole Petitioner in W.P.No.19819 of 2023
... 2nd Petitioner in W.P.No.20362 of 2023
- 2.N.Muthu Narayanan ... Sole Petitioner in W.P.No.20303 of 2023
... 1st Petitioner in W.P.No.20362 of 2023
- 3.M/s.Varficus Venture Private Limited
(Previously M/s.GEAPL Infrastructure
Private Limited)
Represented by its Director
N.Muthu Narayanan
Plot No.173, Door No.24
Karpagam Garden, First Main Road
Adayar, Chennai - 600 020. ... Sole Petitioner in W.P.No.18611 of 2023

Vs.

- 1.The Initiating Officer
Joint Commissioner of Income Tax (OSD)
Benami Prohibition Unit
Room No.2, Ground Floor
Investigation Building
No.46, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034.



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2.The Approving Authority
Additional Commissioner of Income Tax
(Benami Prohibition)
Room No.201
Income Tax Investigation Wing Building
II Floor, 46, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034.

3.The Adjudicating Authority
Inspecting Officer
Prohibition of Benami Property Transactions Act, 1988
Office of the Competent Authority
SAFEM(FOP) & NDPS Acts
New Building Complex (IV Floor), Shastri Bhavan
No.26, Haddows Road, Nungambakkam
Chennai - 600 006. ... Respondents in all WPs

Prayer in W.P.No.19819 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari calling for the notice issued u/s 24(1) of the Prohibition of Benami Property Transaction Act, 1988, dated 27.01.2023, vide DIN ITBA/COM/F/17/2022-23/1049190374(1) the order u/s 24(3) of Prohibition of Benami Property Transaction Act, 1988 vide DIN ITBA/COM/F/17/2022-23/1049386453(1) dated 03.02.2023 provisionally attaching the properties, and the order passed u/s 24(4)(a)(i) of the Prohibition of Benami Property Transaction Act, 1988 dated 20.04.2023, vide DIN ITBA/COM/F/17/2023-24/1052239533(1), continuing the provisional attachment of the properties, all passed by the first respondent, the notice u/s 26(1) of the Prohibition of Benami Property Transaction Act, 1988 F.No.OCA/MDS/50/2023-PBPTA; Reference No.R-48/2023/PBTP, I.O.Reference No.Chennai/PBPT/24(5)/504 dated 15.05.2023 issued by the



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third respondent and quash the same as illegal and void.

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Prayer in W.P.No.20303 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari calling for the notice issued u/s 24(1) of the Prohibition of Benami Property Transaction Act, 1988, DIN ITBA/COM/F/17/2022-23/1048670265(1) dated 12.01.2023, the order u/s 24(3) of PBPTA, 1988, DIN ITBA/COM/F/17/2022-23/1049386212(1) dated 03.02.2023 provisionally attaching the properties, and the order passed u/s 24(4)(a)(i) of the PBPTA, 1988 dated 20.04.2023, vide DIN ITBA/COM/F/17/2023-24/1052239431(1) dated 20.04.2023, continuing the provisional attachment of the properties, all passed by the first respondent, the notice u/s 26(1) of the PBPTA, 1988 vide No.OCA/MDS/50/2023-PBPTA; Reference No.R-48/2023/PBTP, I.O.Reference No.Chennai/PBPT/24(5)/504 dated 15.05.2023 issued by the third respondent and quash the same as illegal and void.

Prayer in W.P.No.20362 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari calling for the notice issued u/s 24(1) of the Prohibition of Benami Property Transaction Act, 1988, DIN ITBA/COM/F/17/2022-23/1049191268(1) dated 27.01.2023, the order u/s 24(3) of Prohibition of Benami Property Transaction Act, 1988, DIN ITBA/COM/F/17/2022-23/1049388385(1) dated 03.02.2023 provisionally attaching the properties, and the order passed u/s 24(4)(a)(i) of the Prohibition of Benami Property Transaction Act, 1988, vide DIN ITBA/COM/F/17/2023-24/1052239759(1) dated 20.04.2023, continuing the provisional attachment of the properties, all passed by the first respondent,



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and the notice u/s 26(1) of the Prohibition of Benami Property Transaction Act, 1988, vide No.OCA/MDS/50/2023-PBPTA; Reference No.R-48/2023/PBTP, I.O.Reference No.Chennai/PBPT/24(5)/504 dated 15.05.2023 issued by the third respondent and quash the same as illegal and void.

Prayer in W.P.No.18611 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari calling for the notice issued u/s 24(1) of the Prohibition of Benami Property Transaction Act, 1988, dated 30.01.2023, vide DIN ITBA/COM/F/17/2022-23/1049252409(1) the order u/s 24(3) of Prohibition of Benami Property Transaction Act, 1988, dated 03.02.2023, vide DIN ITBA/COM/F/17/2022-23/1049388719(1) provisionally attaching the properties, and the order passed u/s 24(4)(a)(i) of the Prohibition of Benami Property Transaction Act, 1988, dated 20.04.2023, vide DIN ITBA/COM/F/17/2023-24/1052240700(1) continuing the provisional attachment of the properties, all passed by the first respondent, and the notice u/s 26(1) of the Prohibition of Benami Property Transaction Act, 1988, dated 15.05.2023 vide F.No. OCA/MDS/50/2023-PBPTA; I.O.Reference No.Chennai/PBPT/24(5)/504 issued by the third respondent and quash the same as illegal and void.

For Petitioner : Mr.K.Ravi
(in all WPs)

For Respondents : Ms.M.Sheela
(in all WPs) Special Public Prosecutor for R1 to R3



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COMMON ORDER

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1. These four writ petitions are filed either by M/s.Varficus Venture Private Limited (Previously - M/s.GEAPL Infrastructure Private Limited) or by its Directors, and what are in challenge are the provisional attachments made by the Initiating Officer under Section 24(3) of the Prohibition of Benami Property Transactions Act, 1988 (hereinafter would be referred to as Act).

1.2 The details are as below:

<i>W.P.No.</i>	<i>Filed By</i>	<i>Properties attached</i>
18611 of 2023	M/s.Varficus Venture Private Limited (Previously - M/s.GEAPL Infrastructure Private Limited)	Plot No.173, Door No.24, Karpagam Garden, First Main Road, Adayar, Chennai- 600 020
19819 of 2023	M.Kumudhavalli	Residential apartment "COURT YARD" bearing No.709, 7th floor, 1825 sq. ft. in New Door No.3, Old door No.19, Plot No.21, 3rd Main Road, Ram Nagar, Nanganallur, Chennai-600 061.
20362 of 2023	1.N.Muthu Narayanan 2.M.Kumudhavalli	Immovable property in the form of land of 7 acres and 62 cents along with well in survey No.144/4 and 5 HP electric pumpset motor at Kollathanallur village, Chithamur Panchayat Union, Kancheepuram District
20303 of 2023	N.Muthu Narayan	Flat 1, II Floor, GRN Divine Castle, No.28A, 100 Feet Road, Hindu Colony, Nanganallur, Chennai 600061.



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WEB COPY 2. The Petitioners allege:

- The petitioners herein, along with another, were booked for the offence under Section 409, 420, 465 and 468 I.P.C. in Crime No.92 of 2020, on the file of CCB-II, and they were taken into judicial custody about a year later, on 20.12.2022 and were in judicial custody till 24.03.2023. This fact is not in dispute.
- While so, on 30.01.2023, the Initiating Officer issued a notice under Section 24(1) of the Act, directing the petitioners to show cause as to why certain properties of theirs should not be treated as benami properties. Subsequently, the Initiating Officer also sent two reminders dated 15.02.2023 and 13.03.2023, for the petitioners to respond to the show cause notice.
- Within a few days, to be precise on 03.02.2023, the properties of both the company and of the Directors as shown in the table above were provisionally attached. The petitioners came out of judicial custody on 24.03.2023, wherein after the Directors came to know of the developments and replied to the same on 15.04.2023.
- The petitioners now challenge the provisional attachments on the



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following grounds:

- (a) that the notice under Section 24(1) of the Act was never served on the petitioners, for they were in judicial custody at the relevant point of time. Indeed, this notice has granted 16 days for the petitioners to respond, and even during these 16 days, the petitioners were in judicial custody.
- (b) Notice is required to be served in terms of of Sec. 25 of the Act, and so far as service of notice on a person in judicial custody, the same should have been served on the Prison Superintendent and this was not done.
- (c) The minimum criterion prescribed under Sec.24(3) of the Act, for provisionally attaching the properties of the suspected beneficiaries of a benami transaction is that the Initiating Officer should have to form an opinion that the property suspected to be held benami is at the risk of being alienated. The provisional order of attachment was made on 03.02.2023 when the petitioners were still in judicial custody, and the suspected benamidar, the co-accused of the petitioners herein, was also in judicial custody at the relevant time. When the suspected



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benamidar and his alleged beneficiaries are in judicial custody, it is inconceivable that the property could be alienated. In other words, the Initiating Authority has not applied his mind to the situation and has drawn an opinion without any rational basis, and the order did not disclose the grounds on which the initiating authority formed his opinion.

- (d) From the office of the adjudicating authority, the petitioners were given a portion of the order of the approving authority to the intended provisional attachment by the initiating officer. This approval in terms of the document provided is seen to have been given only on 20.04.2023, whereas the provisional order of attachment was made on 03.02.2023. Under Section 24(3) of the Act, the approval of the approving authority is a pre-condition even for the initiating officer to attach the property even provisionally.

The provisions of the statute are allowed to go with the wind, and the authorities have shown scant regard to the same, argued the counsel. Reliance was placed on the ratio in ***J.Sekar Vs. Union of India*** [(2018) 89 Taxmann.com 159], ***Shri Ajay Kumar Gupta Vs Adjudicating Authority***



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(PMLA) [2017 MCH 4443]; ***Siemens Ltd. Vs State of Maharashtra and Others*** [(2006) 12 SCC 33]; ***Union of India and Another Vs Vicco Laboratories*** [(2007) 13 SCC 270]; ***Oryx Fisheries Private Limited Vs Union of India and Others*** [(2010) 13 SCC 427].

3. Per Contra, the learned counsel appearing for the department submitted:

- a) Regarding service of show cause notice on the petitioners at a time when they were in judicial custody is concerned, the F.I.R. in Crime No.92 of 2020 was registered against the petitioners on 23.11.2020, whereas the petitioners were arrested and remanded to judicial custody only on 20.12.2022, more than two years later. The respondents, who are keen to administer the Act and to protect the revenue, did not know that the petitioners were in judicial custody.
- b) So far as the provisional attachment under Section 24(3) is concerned, it can be made only for a period of 90 days, and thereafter it is extended till the adjudicating authority takes a final decision for attachment under Section 24(4) of the Act. Now, the provisional attachment was made on 03.02.2023 for which the approving authority has given its approval on 02.02.2023. This was later extended under



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Section 24(4) vide proceedings dated 20.04.2023.

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c) On 24.03.2023, the petitioners have been released from judicial custody and they had all the time to approach the initiating officer to produce necessary materials and seek revocation of attachment provisionally made. Indeed, they have responded to the show cause notice issued under Section 24(1) of the Act only after their release from the prison. This reply is dated 06.04.2023. This is backed by another reply dated 15.04.2023, which is essentially a response to the notice dated 11.04.2023, which is merely a reminder to the show cause notice dated 30.01.2023.

d) By virtue of powers under Section 24(5), the initiating officer has referred the matter to the adjudicating authority and the matter is now pending before the adjudicating authority under Section 26 of the Act. The petitioners, however, have not appeared before the adjudicating authority as yet.

Reliance was placed on a Division Bench decision of this Court in ***M/s.Marg Projects and Infrastructure Ltd & Others Vs The Deputy Commissioner of Income Tax (Benami Prohibition)*** in W.A.Nos.1257 to 1261 of 2022 dated 30.06.2022, which directed the petitioners to appear before the adjudicating



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authority. The learned counsel appearing for the Department also relied on the ratio of Hon'ble Division Bench of this Court in ***Naveen Balaji and Others Vs The Deputy Commissioner of Income Tax & Others*** in W.A.Nos.1054, 1007 of 2022 & batch etc., and the decision of the learned Single Judge in ***Dinesh Chand Surana Vs Deputy Commissioner of Income Tax and Ors.*** [2018 SCC OnLine Mad 3969] and also judgment of the High Court of Kerala in ***Griffin Developers Private Limited & Ors Vs The Union of India & Others*** [2018 SCC OnLine Ker 11974] and the order of High Court of Madhya Pradesh in ***Simmant Kohli Vs Union of India*** in W.P.No.3957/2019 & 3963/2019 dated 17.12.2019.

4. The relevant portion in ***J.Sekar Vs. Union of India*** [(2018) 89 Taxmann.com 159], and ***Shri Ajay Kumar Gupta Vs Adjudicating Authority*** (PMLA) [2017 MCH 4443] are extracted hereunder :

In ***J.Sekar Vs. Union of India*** case :

"72. Reasons to believe cannot be a rubber stamping of the opinion already formed by someone else. The officer who is supposed to write down his reasons to believe has to independently apply his mind. Further, and more importantly, it cannot be mechanical reproduction of the words in the statute. When an authority judicially reviewing



*such a decision peruses such reasons to believe, it must be apparent to the reviewing authority that the officer penning the reasons has applied his mind to the materials available on record and has, on that basis, arrived at his reasons to believe. The process of thinking of the officer must be discernible. The reasons have to be made explicit. It is only the reasons that can enable the reviewing authority to discern how the officer formed his reasons to believe. As explained in **Oriental Insurance Company v. Commissioner of Income Tax [2015] 378 ITR 421 (Delhi)**, "the prima facie formation of belief should be rational, coherent and not ex facie incorrect and contrary to what is on record." A rubberstamp reason can never take the character of 'reasons to believe', as explained by the Supreme Court in **Union of India v. Mohan Lal Kapoor (1973) 2 SCC 836**. In **Dilip N Shroff v. CIT (2007) 6 SCC 329**, the Supreme Court decried the practice of issuing notices in a standard proforma manner 'without material particulars and without deleting inappropriate words or paragraphs.'*

In Shri Ajay Kumar Gupta Vs Adjudicating Authority :

"12. In the absence of any sufficient reason, arriving to such conclusion by mere reproducing the words reasons to believe it cannot be stated that the order has been passed after considering the entire gamut of materials. Admittedly, in this case, entire documents are available and the properties are in the custody of the court. Therefore, the order of attachment is not



maintainable."

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5. There are two facts: (a) the Judicial Custody of the petitioners, who are also the directors of the company based on the case registered in Cr.No.92 of 2020; and (b) the order of provisional attachment made by the initiating authority on 03.02.2023, when they were still in judicial custody, which makes alienation impossible on the date the order of attachment was passed.

6. The respondents step into the scene only after the registration of the case in Cr.No.:92 of 2020, but they are not the investigating agency. And it is not in dispute that these petitioners were arrested some two years after the registration of the said criminal case. Where were they during the interregnum? Were they absconding then? Maybe, or may not be, which is not very pertinent for the present. The point is whether the initiating officer knew that the petitioners were in judicial custody when Sec 24(1) show cause notice was issued, and provisional attachment under Sec.24(3) was made? There is nothing on record to indicate it.

7. Turning to the next point, what is the extent to which the initiating authority may have to travel for forming his opinion, and what is the extent to



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which he should spell out the grounds there for when an order of provisional attachment is made? The scheme of the Prohibition of Benami Transaction Act is looked into, it makes benami transaction a crime, and besides providing for the confiscation of the property found to be held benami, it also provides that both the benamidars and the beneficiary are liable for criminal prosecution under Sec.53 of the Act. An attachment of the property till an order of confiscation is made is only a preliminary step in that direction, and all that is required at that point in time is the existence of a suspicion that the property could be involved in a benami transaction. Here is a situation where a FIR is laid against the petitioners in Cr.No.:92 of 2020 on 23.11.2020, the Income Tax Department has taken a couple of years to believe that that the property could be involved in a benami transaction. When a show cause notice under Sec.24(1) is issued, it is based only on this prima facie suspicion, and this suspicion is sufficient for the initiating authority to form an opinion on provisional attachment. Set in the context, Sec.24(1) notice does not conclude anything as to affect the right of the petitioners. Indeed, the Act provides lots of checks and balances within its scheme in order to ensure that right to property of the citizen is not invaded and trampled upon by the statutory functionaries. At the first stage, it issues a show cause notice under



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Sec.24(1), and waits for the response of the suspected benamidar and the beneficiaries. They have ample opportunity to show cause and to establish that there is no basis for the initial suspicion of these authorities.

8. Till a decision is taken on the show cause notice issued under Sec.24(1) of the Act, the property which might face confiscation in an eventuality of final adjudication enabling it, the property must be secured for purposes associated with the working of the Act. It will be silly for an initiating authority to let an alienation of a benami property even as it tries to fix responsibility on the suspects. A provisional order of attachment needs to be understood in that context. It is not same as an order of attachment before judgement under Order XXXVIII Rule 5, 6 CPC. There the attachment is made not with any intent to secure it for a possible confiscation for the benefit of revenue administration of the State, but only to secure the interest of a creditor-plaintiff. Therefore, the standard required for an order under Order XXXVIII Rule 5,6 CPC are more stringent since it neither involves a crime, nor it involves the interest of the State.

9. In the backdrop of what is stated above, the provisional attachment made



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by the initiating officer cannot be termed as bad in law. He has done that

which the statute contemplates. And, this attachment is only provisional.

Admittedly, the matter is now pending before the Adjudicating Authority.

The petitioners have all the opportunities to approach the adjudicating officer and explain why the provisional order of attachment is bad.

10. To conclude, this Court does not find merit in these petitions and hence, all the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

28.07.2023

Index : Yes / No

Speaking order / Non-speaking order

kas/asr/ds



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To:

1. The Initiating Officer

Joint Commissioner of Income Tax (OSD)
Benami Prohibition Unit
Room No.2, Ground Floor
Investigation Building
No.46, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034.

2. The Approving Authority

Additional Commissioner of Income Tax
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N.SESHASAYEE.J.,

ds

Pre-delivery order in
W.P.Nos.19819, 20303, 20362 & 18611 of 2023

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