

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA NO. 16821 of 2022

**Krishna Sudama Marketing Private Limited
VS.
Union of India & Ors.**

For the petitioner	:	Mr. Pranit Bag, Ms. Amani Kayan, Mr. Zubeen Pandey, Mr. Debdatta Saha
For the respondents	:	Mr. Vipul Kundalia, Mr. Amit Sharma
Hearing concluded on	:	12.03.2024
Judgment on	:	22.03.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner-Company has challenged summons issued under Section 19 of The Prohibition of Benami Property Transactions Act, 1988 (hereinafter referred as, "the Benami Act") and the provisional order of attachment as well as extension of such order passed under Section 24 of the said Act.
2. The petitioner argues that the respondent-Authorities do not have any jurisdiction to initiate a proceeding under the Benami Act and, as such, the assumption of jurisdiction is required to be quashed under Article 226 of the Constitution of India in its entirety. Summons was issued under Section 19 of the said Act against the petitioner on December 20, 2021 and two replies were given to the same by the

petitioner on January 5, 2021 and January 20, 2022 respectively. Subsequently, show-cause notices were issued under Section 24(1) of the Benami Act on March 28 and March 29, 2022 for 37 sale transactions entered into by the petitioner by separate registered sale-deeds.

3. Learned counsel argues that the basic ingredients for assumption of jurisdiction under the Benami Act are not fulfilled in the present case.
4. It is argued that the petitioner, in its replies, has disclosed the source from where the purchase money came, that is, from loans obtained from other companies. It is contended that, thus, the transactions do not fall within the purview of Section 2(9) of the said Act. The respondents particularly rely on sub-clause (D) of Section 2(9) which provides that a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious is also a benami transaction under the Act.
5. It is argued that the burden of showing that a transfer is benami lies with the person asserting the same which corresponds to Sections 91, 92, 101, 102 and 106 of the Indian Evidence Act, 1872. For such proposition, the petitioners cites *Jaydayal Poddar (Deceased) Through L. Rs and another Vs. MST Bibi Hazra and others*, reported at (1974) 1 SCC 3, *P. Leelavathi (Deceased) Through L. Rs Vs. V. Shankarnarayana Rao (Deceased) Through L. Rs*, reported at (2020) 19 SCC 816 and *Mangathai Ammal (Deceased) Through L. Rs and others Vs. Rajeswari and others*, reported at (2020) 17 SCC 496.

6. It is contended that in the present case, such burden was not discharged by the respondents.
7. Learned counsel for the petitioner next argues that there is no retrospective application of the 2016 Amendment to the Benami Act and cites *Union of India and another Vs. Ganpati Dealcom Private Ltd.*, reported at (2023) 3 SCC 315 for such contention. It is argued that the very texture of the definition of “benami transactions” has been altered, introducing, *inter alia*, sub-clause (D). The funds for purchase of the 37 properties-in-issue have been generated through increase in share capital by issuance of shares at a premium purchase by alleged shell companies according to the respondents, but the respondents have not considered that the transaction was in the financial year 2011-12, thus, much prior to the coming into force of the 2016 Amendment.
8. It is further argued that the transactions-in-question underwent scrutiny before the Income Tax Authority. The assessment order passed for the assessment year 2012-13 on August 6, 2014 would reveal that the increase in share premium from Re. 1/- to Rs. 499/- per share while issuing 5 lakh equity shares of the petitioner-Company was examined and given a clean chit by the Income Tax Authorities.
9. Moreover, the properties-in-issue have been duly disclosed in the balance sheets of the company, which have been annexed to the writ petition. The flow of funds has also been clearly disclosed by the petitioner in its replies to the show-cause notice. The petitioner has

clearly disclosed the names of the companies which paid the loans to the petitioner. A transfer from Rimjhim Construction on April 24, 2018 to the tune of Rs. 2 Cr. and a debit from the account of Rimjhim Construction on the same date are disclosed, along with an account statement of Shakambhari Ispat and Power Limited on January 1, 2019 for Rs. 5 Cr. as well as a transaction from Eloquent Steel Private Limited on June 13, 2018 for a sum of Rs. 4 Lakh. There are similar transactions from Eloquent Steel Private Limited on July 1, 2018 as well. Hence, it cannot be said that the source of the consideration is not traceable.

10. Learned counsel for the petitioner next argues, by placing reliance on *Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*, reported at *AIR 1955 SC 74*, that shareholders are not the owners of the company. The respondents contend that jurisdictional facts could be assumed by contending that the shareholding pattern of the petitioner-Company had been changed in the year 2015. It is argued by the petitioner that the change of shareholding pattern can never be contended for assuming jurisdiction under the Benami Act as it is trite law that a shareholder of a company is not an owner of the company.
11. The petitioner next contends that the writ petition is very much maintainable. On similar facts, it is argued that the Rajasthan High Court held so in its judgment of *Shri Kalyan Buildmart Pvt. Ltd. Vs. PCIT*, reported at *(2021) 131 Taxmann.com 99 Raj.*
12. In the present case, it is argued that the jurisdictional question was raised in the replies of the petitioner. The challenge made to the order

passed under Section 24(4) of the Benami Act is on the basis of the principles of natural justice having not been met. Such jurisdictional issue, it is argued, is required to be decided by the writ court under Article 226 of the Constitution of India.

13. In *Union of India and Anr. Vs. Kunisetty Satyanarayana*, reported at (2006) 12 SCC 28, it is argued that the facts were clearly distinguishable from the present case since in the said case, the show-cause notice was issued regarding obtaining employment on a forged caste certificate where it was held that show-cause notice cannot give rise to the cause of action and cannot tantamount to an adverse order. In contrast, the provisional attachment orders passed in the present case tantamount to adverse orders. Thus, it is argued that the impugned summons and provisional attachment orders ought to be set aside.
14. Learned counsel for the respondents submits that by a letter dated January 5, 2023, the petitioner submitted certain documents in which he relied on charts and sale-deeds, indicating that the 37 properties were purchased from the same source, that is, from loans received as well as refund of advance from several companies including the companies named above. Section 2(8) of the Benami Act defines “benami property” as any property which is the subject matter of a benami transaction and also includes the proceeds from such property. It is argued that a show-cause notice was issued under Section 24 of the Benami Act on March 28, 2022 alleging the petitioner to be a benamidar in respect of the 37 immovable properties

and ultimately provisional attachment orders under Section 24(3) of the said Act were passed on the same date, initially attaching the properties for a period of 90 days from the last date of issuing show-cause notices. Subsequently, the proceedings before the Initiating Officer/respondent no. 3 culminated *vide* orders under Section 24(4) of the Benami Act dated June 20, 2022 whereby the provisional attachment orders were continued till the passing of the order by the Adjudicating Authority under Section 26(3) of the Benami Act.

15. Immediately thereafter, reference was made under Section 24(5) of the Act for adjudication which was forwarded to the Adjudicating Authority on July 4, 2022 by the Initiating Officer. Accordingly, show-cause notices under Section 26(1) of the Act were issued by the Adjudicating Authority on July 25, 2022 and sent through speed post.
16. Hence, the Adjudicating Authority was seized of the matter whilst the Initiating Officer was practically *functus officio* and later transposed to the status of an adversary before the Adjudicating Authority, though he remained duty-bound to carry out such other or further enquiries which may be directed by the Adjudicating Authority, if wanted.
17. The orders under Sections 24(3) and 24(4), it is argued, clearly set out the ground that the petitioner had acquired the 37 properties for a total consideration of Rs. 28.10 Lakh. After analysis of the creditworthiness of the primary shareholders, it was found that the initial primary shareholders and the petitioner were formed in a planned manner ranging within a week of formation of the petitioner-Company and that each allottee had raised capital by issuing shares

at a high premium, having acquired bogus share capital from another set of paper companies with premium only to provide accommodation entries to another set of companies including the petitioner.

- 18.** It is contended that none of the four companies to whom the shares of the petitioner-Company were allotted had any revenue from operations and had filed loss each year since incorporation and these companies had no creditworthiness of their own to enter into such transactions. Those bore characteristics of shell companies which are used as a conduit to introduce unaccounted money in books of accounts.
- 19.** It is argued that the four allottee companies as well as the petitioner-Company filed their returns for the assessment year 2012-13 from the same computer which is evident from the IP Address shown from the Income Tax return acknowledgment, which practice continued in subsequent years, proving that the formation of the allottee companies was controlled and managed by the same persons and those were not genuine business entities.
- 20.** It is argued that the analysis of the shareholding pattern shows that it was changed on March 31, 2014 and the shareholding was taken over by Aahana Housing Limited and Aahana Properties Limited. The entire share allottee companies thus exited the petitioner-Company by selling their shares at throw-away prices, incurring huge fictitious losses in favour of the beneficial owners.
- 21.** It is argued that the above chain of transactions indicates that the petitioner did not have any capability to enter into such high value transactions for acquisition of property and had acted as a conduit or

front entity to channelize consideration paid out of the fund accumulated by a set of shell/paper companies without economic rationale. The ultimate beneficiary, it is argued, could not be traced out, due to which the transactions fall within the purview of Section 2(9)(D) of the Benami Act.

- 22.** It is contended that the authorities have complied with the procedure laid down in the Benami Act. The Act is a Code in itself and specifies all safeguards that were required to be taken.
- 23.** Issuance of provisional attachment order under Section 24(3), it is argued, alongside issuance of show-cause notice under Section 24(1,) requires only the formation of an opinion of the Initiating Officer. There is no mandate in law to first afford a hearing before issuing such provisional order of attachment. The Statute itself stipulates that the upper-limit of the attachment cannot exceed 90 days, which is itself a safeguard.
- 24.** It is contended that the Income Tax assessments and orders do not tie the hands of the Initiating Officer to examine the transactions/financials under the Benami Act.
- 25.** The source of purchase of the 37 properties remains unsatisfactory, for which the impugned actions have been taken by the respondents. However, the order of provisional attachment will attain finality only after the order passed under Section 26(3) by the Adjudicating Authority.
- 26.** The petitioner has relied on judgments by bringing forward only one aspect of benami transactions as envisaged under Section 2(9)(A). the

judgments cited by the petitioner, particularly *Jaydayal Poddar (Deceased) (supra)*, *Mangathai Ammal (Deceased) (supra)* and *Bacha F. Guzdar (supra)* are all based on such limb of argument.

- 27.** The “beneficial owner” in the present case, as defined under Section 2(12) of the Benami Act, is the person/persons whose identity is unknown, for whose benefit the benami property is held by the benamidar.
- 28.** The petitioner, it is argued, can very well challenge the final adjudication by the Adjudicating Authority under the Benami Act itself and cannot stifle the legitimate adjudication process by filing a writ petition.
- 29.** The petitioner relies on *BRC Construction Company Private Limited & Anr. Vs. Union of India & Ors.*, reported at 2017 SCC OnLine Cal 16142, but the courts specifically noticed the significance of Section 2(9)(D) of the Benami Act and found that the benami transaction is defined collectively as an arrangement in respect of a property carried out in a fictitious name, which is applicable here.
- 30.** The respondents also cite *Dinesh Chand Surana v. Deputy Commissioner of Income Tax and Another*, reported at 2018 SCC OnLine Mad 3969, where it was held that a person cannot be said to be aggrieved to prefer a challenge against an order of provisional attachment especially when the Adjudicating Authority has already initiated proceedings under Section 26(3).
- 31.** In *Dinesh Chand Surana Vs. Deputy Commissioner of Income-tax*, reported at [2022] 142 taxmann.com 494 (Madras) a Division Bench

upheld the learned Single Judge's decision in the same case as mentioned above.

32. Learned counsel next relies on *Kailash Assudani Vs. Commisioner of Income-tax*, reported at [2017] 87 taxmann.com 361 (Madhya Pradesh), where it was held that principles of natural justice are codified in terms of Section 26(6) of the Benami Act and the impugned order therein is not subject to judicial review except before the Adjudicating Authority. The order of the Adjudicating Authority can be assailed before the Appellate Tribunal constituted under Section 31 of the Act.
33. In *Great Pacific General Trading Company Vs. Union of India*, reported at [2018] 95 taxmann.com 364 (Rajasthan), the same principle was reiterated.
34. Again, in *Union of India and another Vs. Kunisetty Satyanarayana*, reported at (2006) 12 SCC 28, the Supreme Court found that the writ petition should not be entertained against a mere show-cause notice.
35. By arguing on the strength of the above judgments, the respondents contend that the writ petition should be dismissed.
36. Upon a consideration of the arguments of both parties, it transpires that in *Dinesh Chand Surana (supra)*, the learned Single Judge of the Madras High Court held that no writ petition lies against a notice under Section 24(4) of the Benami Act. Undoubtedly, the said proposition may have its exceptions. The Division Bench of the Madras High Court, while affirming the said judgment, held that only a *prima facie* opinion is formed under Section 24. The proposition which can be culled out from such judgment is that under normal

circumstance there cannot be any challenge under Article 226 against a notice under Section 24(4) of the Benami Act.

37. The learned Single Judge of the Madhya Pradesh High Court in *Kailash Assudani (supra)* laid down the proposition that the principles of natural justice are codified in terms of Section 26(6) of the Benami Act and the order passed by the Adjudicating Authority can be assailed before the Appellate Tribunal.
38. In *Kunisetty Satyanarayana's* case, the Supreme Court was deciding on a challenge against a show-cause notice issued on cancellation of a caste certificate. There, it was held by the Supreme Court that ordinarily a writ petition should not be entertained against a mere show-cause notice or and at that stage the writ petition may be held to be premature. Discretionary jurisdiction should not ordinarily be exercised by quashing a show-cause notice or charge-sheet except in very rare and exceptional cases.
39. The common refrain in all the above judgments is that at the stage of issuance of a show-cause notice, the writ court ordinarily does not interfere. The Supreme Court, however, although in a somewhat different context, has observed that only in rare and exceptional cases such interference is called for.
40. With utmost respect, this Court cannot accept as absolute the view taken by the learned Single Judge in *Kailash Assudani (supra)* insofar as application of the codified principles of natural justice in sub-section (6) of Section 26 of the Benami Act to the initial issuance of a show-cause notice under Section 24 of the said Act is concerned.

There cannot be any manner of doubt that Section 26, which provides for adjudication of benami property, amply puts in safeguards to ensure that the principles of natural justice are satisfied.

41. However, if the premise of the challenge to a notice under Section 24 is that the authorities palpably lacked jurisdiction under the Benami Act, it would be unnecessary multiplicity of proceedings and harassment to the petitioner to relegate the petitioner to a subsequent adjudication under Section 26, even if it is palpable *ex facie* that the authorities did not have jurisdiction. However, a strong case of lack of jurisdiction has to be made out in such a situation by the petitioner, to impress upon the court that even on the face of the summons under Section 19 and/or a Notice under Section 24, no case of a benami transaction is made out. Such case, however, has to stand on an extremely sound footing to displace the regular procedure laid down in the statute by the legislature, in its wisdom, to adjudicate such issues.
42. In *Dinesh Chand Surana's* case, both the learned Single Judge and the Division Bench of the Madras High Court proceeded on the premise that a proceeding under Section 24 only requires a recording of *prima facie* opinion and the provisional attachment was purely of an interim nature.
43. The learned Single Judge of the Madras High Court proceeded on the premise that an order passed under Section 24(4), being an order of provisional attachment, the petitioner cannot be said to be aggrieved by such order. However, *per se* such logic would lose meaning if it

can be shown by the petitioner that the authorities have assumed jurisdiction which they do not have in law, which is evident in the teeth of the notice itself or the provisional order of attachment. However, the Division Bench added a further ingredient that while passing such orders as interim measure to protect the interest of revenue, there is no hastiness or procedural violations on the part of the respondents. On such premise, the order of the learned Single Judge was affirmed.

44. Yet, a strong jurisdictional objection can vitiate such exercise at the root. Thus, we are to look into the issue whether there was any palpable and erroneous assumption of jurisdiction in the present case.
45. The respondents have also cited *BRC Construction Company (supra)*, where a learned Single Judge of the this Court held against interdicting a proceeding under the Benami Act qua a private limited company where the dominant shareholders are *de facto* the company itself and it has become necessary to identify the structure and the role of the entities which requires explorations at the appropriate factual level regarding the benami colour.
46. The court proceeded on the premise that on a plain reading, the said fact could not be a sufficient indicator that there was an ingredient of benami transaction, which required a factual consideration and assessment. Hence, in the present case as well, we are to ascertain whether the shareholding pattern or the change in it has any relevant bearing *prima facie* on the allegation of benami.

- 47.** It is evident from the scheme of the Benami Act that the definition of 'benami transaction' has undergone a sea-change after the 2016 Amendment. Sub-clause (D) of Section 2(9) of the said Act labels a transaction as benami if it is a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious. It is the very clause on which the respondents rely in the present case.
- 48.** Under Chapter IV of the Benami Act, Section 24 provides the where the Initiating Officer, "on the basis of the material in his possession" has reason to believe that any person is benamidar in respect of a property, he may after recording reasons in writing issue a notice to the person to show cause.
- 49.** Preceding the said Chapter, Section 19 provides that the authorities are conferred with the powers, *inter alia*, as vested in a civil court under the Code of Civil Procedure, including discovery and inspection, enforcing attendance of any person, compelling production of books of account and other documents, etc, implying the power to issue summons.
- 50.** The subsequent Sections provide for an enquiry, calling for information and the power of the Authority to impound documents if necessary for a limited period.
- 51.** Section 23 empowers the authority to conduct an enquiry. Under the said provision, the Initiating Officer, after obtaining prior approval of the Approving Authority, shall have the power to conduct or cause to be conducted any enquiry or investigation as contemplated therein.

The explanation thereto says that nothing contained in the said Section shall apply and shall be deemed to have ever applied where a notice under sub-section (1) of Section 24 has been issued by the Initiating Officer.

- 52.** Thus, although Section 24 is freed from the influence of Section 29 in a sense, the materials in possession of the Initiating Officer as contemplated in Section 24, furnishing reason to the said Officer for his belief that a person is a benamidar, may or may not be preceded by an exercise under Sections 19 to 23 of the Act.
- 53.** In the present case, summons was issued under Section 19. The next stage was the Initiating officer forming an opinion under Section 24 and issuing a show-cause notice. Sub-section (3) of Section 24 provides that where the Initiating Officer is of the opinion that the person in possession of the property held benami may alienate the property during the period specified in the notice, he may with the previous approval of the Approving Authority pass a written order of provisional attachment for a period not exceeding 90 days. Under sub-section (4) of Section 24, within the said 90 days, after making enquiries and calling for reports or evidence and taking account of all relevant materials, he can extend the order of attachment till the passing of the order by the Adjudicating Authority under sub-section (3) of Section 26.
- 54.** Thus, Section 24 does not contemplate any prior opportunity of hearing being given to the noticee. The reason for such omission can be found in Section 26, under which the Adjudicating Authority, upon

receipt of a reference under Section 24(5), issues a fresh notice to furnish documents, particulars or evidence, etc., and provides for an opportunity of hearing being given to the alleged benamidar under sub-section (3) of Section 26. The Madhya Pradesh High Court, in the judgment of *Kailash Assudani (supra)*, was justified to the extent of laying down the proposition that Section 26 is a self-contained code embodying principles of natural justice.

- 55.** Section 24 is just a precursor of the said exercise in order to provide teeth to the authorities to prevent the disposal of the subject-property of benami transaction till an adjudication takes place under Section 26. Under normal circumstances, no hearing is required to be given to the alleged benamidar at the stage of Section 24 of the Benami Act, since if such a provision is read into Section 24, it will be an additional layer of protection to the alleged benamidar, as, in any event, he gets a right of hearing and sufficient opportunity of representation in an adjudication of benami property under Section 26 by the Adjudicating Authority.
- 56.** However, Section 24(1) contemplates a show-cause notice. The very expression “show cause” implicitly contains a right of the noticee to give a reply in writing disclosing his version of the matter. In the present case, the petitioner got such opportunity and gave as many as two replies to the show-cause notice. Thus, it cannot be said that the petitioner was deprived of such opportunity.
- 57.** Thereafter, the matter has been referred to the Adjudicating Authority who is in seisin of the same now under Section 26 of the Act. The

petitioner definitely has a remedy under Section 26(3) to appear before the Adjudicating Authority and be heard on merits.

- 58.** Hence, to carve into the provisions of Section 24 an innate violation of natural justice or wrong assumption of jurisdiction, the petitioner has to establish an extremely high ground of wrong assumption of jurisdiction. *Audi Alteram Partem* cannot be a strong ground for a challenge under Article 226 to a notice or provisional attachment under Section 24, as in view of the scheme discussed above, such a right of hearing is absent in the Statute. What is available is only a right of reply which has been availed of by the petitioner. Since Section 26 subsequently gives a full-fledged opportunity of hearing, reading a similar provision doubly into Section 24 will be an unnecessary and superfluous additional opportunity to the petitioner, which would only serve the purpose of protracting the proceedings.
- 59.** The Benami Act, as amended in 2016, provides a three-fold bar to benami transactions.
- 60.** Under Section 3, if a person enters into a benami transaction, he is punishable by imprisonment and/or fine, which is in the nature of a penalty.
- 61.** Section 4 prohibits the right to file or defend a suit on the ground of benami.
- 62.** The third bar is incorporated under Section 5 which makes a benami property liable to be confiscated by the Central Government.
- 63.** Chapter IV of the Benami Act provides the procedure leading to such confiscation. Sections 24 and 26 have been discussed above. Section

27 is the culmination of such proceeding which provides that where an order is passed in respect of any property under Section 26(3) holding it to be a benami property, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order of confiscating the property held to be a benami property.

64. Thus, two layers of protection are given to the petitioner – a right of hearing under Section 26(3) before declaring the transaction a benami transaction and another right of hearing before confiscation and vesting of the banami property.
65. In fact, a third safety net is provided to the benamidar by way of an appeal under Section 30 read with Section 31 of the Benami Act.
66. In the present case, the petitioner, thus, has ample remedies in law under Sections 26 and 27 as well as by way of an appeal under Sections 30 and 31 and can avail of the same in accordance with law, raising all questions, even including those relating to jurisdiction.
67. However, in patently exceptional cases, where it can be seen from the provisional order of assessment or the notice under Section 24 that the assumption of jurisdiction is erroneous, a small window remains for the writ court to interfere on the ground of jurisdiction.
68. Let us now examine the case made out by the respondents in such context, to ascertain whether *ex facie* it takes the transactions-in-question beyond the jurisdiction of the authorities under the Benami Act.

- 69.** For such purpose, the respondents' case has to be taken as it is, without entering into a factual enquiry, which is best left for the Adjudicating Authority, which is in seisin of the matter now, to decide.
- 70.** The respondents alleged upon an enquiry that the petitioner-Company purchased 37 properties by certain funds. To come within the definition of 'benami transaction' under Section 2(9)(D), a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious has to be made out.
- 71.** In the present case, admittedly the petitioner did not pay for the transactions. It is to be seen whether the consideration can be traceable to a real entity. To come under sub-clause (D), the arrangement has to be where the person providing the consideration is not traceable or is fictitious.
- 72.** The respondents allege that the primary shareholders of the petitioner-Company were floated along with the petitioner within a week of each other. Each allottee had raised capital by issuing shares at a high premium. All the four companies which were the shareholders of the petitioner were shell companies having no revenue from operations. The returns of the four allottee companies and the petitioner were alleged to have been from the same computer, which of course, *ipso facto* does not vitiate the filing. Thus, from an Income Tax point of view, the said filing might be aboveboard. However, from the benami view point, the money trail goes further without being identified. The shareholding pattern of the petitioner-Company changed on March 31, 2015 where the entire shareholding was taken

over by two companies which, as their names suggest, might have been group companies. The earlier allottee companies/shareholders sold their shares at throw-away prices incurring huge losses in favour of the beneficial owners. Thus, the petitioner apparently did not have any capability to enter into the high value transactions, nor did it have the required creditworthiness to have obtained loans to be invested in purchase of the 37 subject properties.

- 73.** By relying on *Bacha F. Guzdar (supra)*, the petitioner has raised an issue as to whether the shareholders can be equated with the company insofar as ownership of assets are concerned. The proposition of *Bacha F. Guzdar (supra)* ordinarily holds good. However, corporate jurisprudence has evolved over the years, honing the concept of piercing the corporate veil sharper, by widening its scope to different spheres of financial activity.
- 74.** Seen from such perspective, if the entire body of shareholders comprises of only four entities which are shell companies having no business operation, the company itself is virtually owned by those companies. To add further, the said shares were totally taken over by only two companies at a huge premium. The premium was enhanced by a quantum leap from Re. 1/- per share to Rs. 499/- per share. By virtue of such transactions, it does not leave anything to guesswork to come to the conclusion that a money-trail emerges, which is open-ended at the source.
- 75.** Seen in proper perspective, the primary shareholders, who were shell companies, could not have funded the share capital of the petitioner

or lend sufficient creditworthiness to the petitioner for the purchases unless there were other entities behind them. After the subsequent transfers of the shares through a string of shell companies, it remains blurred as to who was the ultimate provider of the consideration.

76. The respondents say that the statement of Entry Operator, one Mr. Munka, recorded by the DDIT Investigation, Kolkata reveals that he had provided accommodation entries such as bogus unsecured loans, bogus sale of unlisted investments, etc. through various groups including various companies of the Shakambhari Group including the petitioner-Company and has given the details of the *modus operandi* of the petitioner. Upon analysis of the financial data of the petitioner, it has been revealed that the fund raised as share capital initially was invested in the form of unlisted equities but once the company was taken over by one Agarwal Group, there has been sale of unquoted shares and gradually the amount so realized has been utilized for investments/loans and advances into the group companies. The group has allegedly sold the bogus investment and introduced unaccounted cash into the books of company under the garb of sale of unquoted shares.

77. Since Shakambhari was one of the major providers of the consideration used for purchasing the 37 properties, as admitted by the petitioner, the alleged finance by the Shakambhari Group, which is itself suspect in view of the investigations going on, takes the colour of an undisclosed source of finance. If the petitioner itself was owned by shareholders whose creditworthiness was nil, there would not be

any basis of repayment of advances or payment of any loan to the petitioner-Company, due to its utter lack of credit worthiness. Hence, the petitioner obviously acted as a conduit, being owned by shareholders which were none other than shell companies having fictitious existence, for channelizing money from undisclosed sources, shown to have been advanced by Shakambhari and others, into tangible properties by the 37 purchases which are in issue. Taking a broad view of Section 2(9)(D), the purchase of the properties through consideration which came from fictitious sources squarely attracts the said provision to the present transactions. It is to be noted that sub-clause (D) does not merely restrict itself to non-traceable sources of consideration but also to “fictitious” sources of consideration. Hence, there is sufficient *prima facie* material to indicate that the transactions-in-question were arrangements in respect of properties where the person providing the consideration is fictitious.

78. Hence, this Court does not find that there is *ex facie* erroneous assumption of jurisdiction by the Investigating Authority or the Adjudicating Authority under the Benami Act sufficient to displace the legitimate opinion formed in writing by the Investigating Authority, which justifies the reference to the Adjudicating Authority after issuance of notice and passing of provisional assessment order, which was continued subsequently.

79. For an adjudication of merits on the issues involved in the present case as indicated above, a full-fledged enquiry on factual assessments based on appreciation of evidence is required, which is entirely

unwarranted at the instance of the writ court, since a comprehensive procedure is provided in Section 26 of the Benami Act, which is, as the Madhya Pradesh High Court held, in the nature of a self-contained code.

80. Thus, I do not find any ground to interfere with the impugned notice under Section 24 or the provisional orders passed therein, particularly, since the matter has already been referred to the Adjudicating Authority and is under consideration before it within the contemplation of Section 26 of the Benami Act. The appropriate remedy before the petitioner is to participate in the said proceedings, and to have its defence vindicated there. In any event, even thereafter, the petitioner has two stages of remedies – one, a hearing before confiscation and the other by way of an appeal under Sections 30 and 31 of the Benami Act, if aggrieved by the decision of the Adjudicating Authority.
81. In the above circumstances, WPA No. 16821 of 2022 is dismissed on contest without any order as to costs.
82. However, it is made clear that the above findings are of a tentative nature only to *prima facie* explore whether the jurisdictional facts were sufficiently indicated by the respondents. The Adjudicating Authority, while deciding the issue, shall act independently in accordance with law without being influenced in any manner by any of the observations made hereinabove. The above observations are without prejudice to the rights and contentions of the parties in the proceeding under Section 26 of the Benami Act.

- 83.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)