IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.33170, 33187, 33186, 33193, 33185, 33184, 33183, 33182, 33181, 33177, 33175, 33178 & 33188 of 2024; 9078, 9103, 9099, 9096, 9106, 9120, 9131, 9133, 9127, 9124 & 9136 of 2025
and W.M.P.Nos.35938, 35934, 35929, 35928, 35925, 35947, 35962, 35933, 35916, 35957, 35956, 35955, 35953, 35949, 35969, 35924, 35968, 35963, 35944, 35942, 35940, 35939, 35931 & 35917 of 2024; 10209, 10206, 10197, 10218, 10213, 10232, 10239, 10236, 10235, 10228 & 10227 of 2025

In W.P.Nos.33170, 33187, 33186, 33193, 33185, 33184, 33183, 33182, 33181, 33177, 33175, 33178 & 33188 of 2024:-

Dr.T.Shanmuganathan, MD., (General Medicine),
Plot No.3B/4, Raman Enclave,
Silappathikara Street, Eswari Nagar,
Muthamizh Nagar, Medical College Road,
Thanjavur - 631 007. .. Petitioner

Versus

1. The Adjudicating Authority,
Office of the Competent Authority
[SAFEM(FOP)A & NDPSA],
Shastri Bhavan, New Building Complex, 4th Floor,
No.26, Haddows Road, Nungambakkam,

Chennai - 600 006.

2. The Initiating Officer,
   Deputy Commissioner of Income Tax (BPU),
   Room No:2 Income Tax Investigation wing Building,
   Ground Floor, 46, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034. .. Respondents

In W.P.Nos.9078, 9103, 9099, 9096, 9106, 9120, 9131, 9133, 9127, 9124 & 9136 of 2025:-

Dr.T.Shanmuganathan, MD., (General Medicine),
Plot No.3B/4, Raman Enclave,
Silappathikara Street, Eswari Nagar,
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   Deputy Commissioner of Income Tax (BPU),
   Room No:2 Income Tax Investigation wing Building,
   Ground Floor, 46, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

3. The Approving Authority,
Additional Commissioner of Income Tax,
Benami Prohibition Unit,
Room No.201, Income Tax Investigation Wing Building,
Ground Floor, 46, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. .. Respondents

Prayer in W.P.No.33170 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarifed Mandamus calling for the records relating to the impugned order passed in Ref Nos.R-56/2023, dated 07.10.2024 and quash the same and consequently allow the application filed under Section 62 in Ref Nos.R-56/2023 by directing the 1st respondent to implead the M/s.Thirumalai Thirumal Nidhi Ltd., as beneficial owner and to pass a suitable order within a stipulated time.

Prayer in W.P.No.33187 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarifed Mandamus calling for the records relating to the impugned order by first respondent passed in Ref Nos.R-64/2023, dated 07.10.2024 and quash the same and consequently allow the application filed under Section 62 in Ref Nos.R-64/2023, dated 09.08.2024 by directing the 1st respondent to implead the M/s.Thirumalai Thirumal Nidhi Ltd., as beneficial owner and to pass a suitable order within a stipulated time.

Prayer in W.P.No.33186 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarifed Mandamus calling for the records relating to the impugned order passed in Ref Nos.R-17/2024, dated 07.10.2024 and quash the same and consequently allow the application filed under Section 62 in Ref Nos.R-17/2024 by directing the 1st respondent to implead the M/s.Thirumalai Thirumal Nidhi Ltd., as beneficial owner and to pass a suitable order within a stipulated time.

Prayer in W.P.No.33193 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarifed Mandamus calling for the records relating to the impugned order passed in Ref Nos.R-60/2023, dated 07.10.2024 and quash the same and consequently allow the application filed under Section 62 in Ref Nos.R-60/2023 by directing the 1st respondent to implead the M/s.Thirumalai Thirumal Nidhi Ltd., as beneficial owner and to pass a suitable order within a stipulated time.

Prayer in W.P.No.33185 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarifed Mandamus calling for the records relating to the impugned order passed in Ref Nos.R-04/2024, dated 07.10.2024 and quash the same and consequently allow the application filed under Section 62 in Ref Nos.R-04/2024, dated 09.08.2024 by directing the 1st respondent to implead the M/s.Thirumalai Thirumal Nidhi Ltd., as beneficial owner and to pass a suitable order within a stipulated time.

Prayer in W.P.No.33184 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarifed Mandamus calling for the records relating to the impugned order passed by first respondent in Ref Nos.R-66/2023, dated 07.10.2024 and quash the same and consequently allow the application filed under Section 62 in Ref Nos.R-66/2023, dated 09.08.2024 by directing the 1st respondent to implead the M/s.Thirumalai Thirumal Nidhi Ltd., as beneficial owner and to pass a suitable order within a stipulated time.

Prayer in W.P.No.33183 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarifed Mandamus calling for the records relating to the impugned order passed in Ref Nos.R-

62/2023, dated 07.10.2024 and quash the same and consequently allow the application filed under Section 62 in Ref Nos.R-62/2023, dated 09.08.2024 by directing the 1st respondent to implead the M/s.Thirumalai Thirumal Nidhi Ltd., as beneficial owner and to pass a suitable order within a stipulated time.

Prayer in W.P.No.33182 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarifed Mandamus calling for the records relating to the impugned order by first respondent passed in Ref Nos.R-65/2023, dated 07.10.2024 and quash the same and consequently allow the application filed under Section 62 in Ref Nos.R-65/2023, dated 09.08.2024 by directing the 1st respondent to implead the M/s.Thirumalai Thirumal Nidhi Ltd., as beneficial owner and to pass a suitable order within a stipulated time.

Prayer in W.P.No.33181 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarifed Mandamus calling for the records relating to the impugned order passed in Ref Nos.R-61/2023, dated 07.10.2024 and quash the same and consequently allow the application filed under Section 62 in Ref Nos.R-61/2023, dated 09.08.2024 by directing the 1st respondent to implead the M/s.Thirumalai Thirumal Nidhi Ltd., as beneficial owner and to pass a suitable order within a stipulated time.

Prayer in W.P.No.33177 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarifed Mandamus calling for the records relating to the impugned order passed in Ref Nos.R-63/2023, dated 07.10.2024 and quash the same and consequently allow the application filed under Section 62 in Ref Nos.R-63/2023, dated 09.08.2024 by directing the 1st respondent to implead the M/s.Thirumalai Thirumal

Nidhi Ltd., as beneficial owner and to pass a suitable order within a stipulated time.

Prayer in W.P.No.33175 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarifed Mandamus calling for the records relating to the impugned order passed in Ref Nos.R-59/2023, dated 07.10.2024 and quash the same and consequently allow the application filed under Section 62 in Ref Nos.R-59/2023, dated 09.08.2024 by directing the 1st respondent to implead the M/s.Thirumalai Thirumal Nidhi Ltd., as beneficial owner and to pass a suitable order within a stipulated time.

Prayer in W.P.No.33178 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarifed Mandamus calling for the records relating to the impugned order passed in Ref Nos.R-58/2023, dated 07.10.2024 and quash the same and consequently allow the application filed under Section 62 in Ref Nos.R-58/2023, dated 09.08.2024 by directing the 1st respondent to implead the M/s.Thirumalai Thirumal Nidhi Ltd., as beneficial owner and to pass a suitable order within a stipulated time.

Prayer in W.P.No.33188 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarifed Mandamus calling for the records relating to the impugned order passed in Ref Nos.R-57/2023, dated 07.10.2024 and quash the same and consequently allow the application filed under Section 62 in Ref Nos.R-57/2023 by directing the 1st respondent to implead the M/s.Thirumalai Thirumal Nidhi Ltd., as beneficial owner and to pass a suitable order within a stipulated time.

Prayer in W.P.No.9078 of 2025 : Writ Petition filed under Article 226 of the

Constitution of India, pleased to issue a Writ of Certiorari calling for the records relating to the impugned final order passed in Ref Nos.R-56/2023 by first respondent dated 28.01.2025 and to quash the same and to pass a suitable order within a stipulated time.

Prayer in W.P.No.9103 of 2025 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records relating to the impugned final order passed in Ref Nos.R-59/2023 by first respondent dated 28.01.2025 and to quash the same and to pass a suitable order within a stipulated time.

Prayer in W.P.No.9099 of 2025 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records relating to the impugned final order passed in Ref Nos.R-58/2023 by first respondent dated 28.01.2025 and to quash the same and to pass a suitable order within a stipulated time.

Prayer in W.P.No.9096 of 2025 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records relating to the impugned final order passed in Ref Nos.R-57/2023 by first respondent dated 28.01.2025 and to quash the same and to pass a suitable order within a stipulated time.

Prayer in W.P.No.9106 of 2025 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records relating to the impugned final order passed in Ref Nos.R-60/2023 by first respondent dated 28.01.2025 and to quash the same and to pass a suitable order within a stipulated time.

Prayer in W.P.No.9120 of 2025 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records relating to the impugned final order passed in Ref Nos.R-63/2023 dated 28.01.2025 and to quash the same and to pass a suitable order within a stipulated time.

Prayer in W.P.No.9131 of 2025 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records relating to the impugned final order passed in Ref Nos.R-62/2023 dated 28.01.2025 and to quash the same and to pass a suitable order within a stipulated time.

Prayer in W.P.No.9133 of 2025 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records relating to the impugned final order passed in Ref Nos.R-66/2023 dated 28.01.2025 and to quash the same and to pass a suitable order within a stipulated time.

Prayer in W.P.No.9127 of 2025 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records relating to the impugned final order passed in Ref Nos.R-61/2023 dated 28.01.2025 and to quash the same and to pass a suitable order within a stipulated time.

Prayer in W.P.No.9124 of 2025 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records relating to the impugned final order passed in Ref Nos.R-65/2023 dated 28.01.2025 and to quash the same and to pass a suitable order within a stipulated time.

Prayer in W.P.No.9136 of 2025 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records relating to the impugned final order passed in Ref Nos.R-64/2023 dated 28.01.2025 and to quash the same and to pass a suitable order within a stipulated time.

For Petitioner (in all W.Ps)	: Mr.S.Anil Sandeep, Asstd. by Mr.L.Pachiyappan
For Respondents (in all W.Ps)	: Mrs.M.Sheela, Special Public Prosecutor (I.T)

COMMON ORDER

All these writ petitions are interconnected and, therefore, are addressed and resolved by this common order.

2. These Writ Petitions challenge either the interim orders that deny the impleading application and the request for cross-examination or the final orders issued by the adjudicating authority under the Prohibition of Benami Property Transactions Act, 1988 (hereinafter referred to as 'the Act').

3. The factual matrix in which these Writ Petitions arise is that it is alleged that the petitioner, *T.Shanmuganathan*, was a Director of M/s.Thirumalai Thirumal Nidhi Limited from 13.02.2014 to 20.07.2019. It is further alleged that the petitioner and his family members engaged in clandestine activities by exploiting third-party names, misusing their KYC details, and creating fixed deposits in M/s.Thirumalai Thirumal Nidhi Limited without the knowledge of the said individuals, thereby parking unaccounted income to the tune of Rs.2,99,56,796/-. Additionally, it is alleged that such fixed deposits were opened in the name of third parties in the year 2016. Later, in 2018, these fixed deposits were converted to joint holdings under the category of Either-or Survivor, with the names of the family members added in the same year. According to the Initiating Officer, this action was taken to facilitate the receipt of accrued interest and deposit renewals, with the ultimate goal being to receive the proceeds of these deposits upon maturity. In view of this, the initiating officer passed a provisional attachment order under Section 24(4) of the Act and

subsequently made references to the adjudicating authority under Section 24(5) of the Act.

4. In the said references, the petitioner submitted two applications. The petitioner sought to implead M/s.Thirumalai Thirumal Nidhi Limited as a party in the references. Additionally, the petitioner filed an application to cross-examine the initiating officer. Separate orders were issued regarding these applications. By the order dated 07.10.2024, the adjudicating authority addressed the request to implead the aforementioned Nidhi, ruling that such a request could not be granted and rejecting the application. The adjudicating authority also considered the question of cross-examination in the order dated 24.07.2024. After considering that the initiating officer serves as both the investigating and initiating authority, as well as the petitioner's need for certain specific information, the application was disposed of with the ruling that cross-examination is permissible. However, subsequently, the petitioner was instructed that it would be in the mode of a

questionnaire, which shall be circulated to the initiating authority, who can respond on a question-wise basis. This information can then be utilised by the petitioner for his purposes. Aggrieved by both orders, the petitioner filed W.P.No.33170 of 2024 & batch of cases.

5. The matters originally came up for admission on 07.11.2024. This Court, while issuing notice to the respondent authorities and noting that the learned Counsel is taking notice for the first respondent, passed an interim order allowing the enquiry to proceed before the adjudicating authority; however, it restrained the adjudicating authority from passing final orders until 11.11.2024. Again, when the matters were heard on 11.11.2024, the interim order was extended until 14.11.2024, with all matters posted on that date. However, it appears that the matters were not subsequently listed, and the interim order was not further extended. Therefore, the adjudicating authority, recognising that the entire process is a time-bound exercise per Section 26(7) of the Act, took up the issue and issued final orders on

28.01.2025, making the attachment absolute and aligning with the initiating authority. Aggrieved by this, the second set of Writ Petitions in W.P.No.9078 of 2025 etc., batch of cases were filed.

6. Heard *Mr.S.Anil Sandeep*, learned counsel for the petitioner, and *Mrs.M.Sheela*, learned Special Public Prosecutor (I.T.) for the respondents.

7. The learned Counsel for the petitioner submits that when this Court grants an interim order allowing the enquiry to proceed but stipulating that final orders need not be issued, the adjudicating authority violates this interim order by issuing a final order on 28.01.2025. Therefore, those orders must be set aside. Other grounds are also raised to challenge the final orders. Regarding the original orders challenged in the first set of Writ Petitions in W.P.No.33170 of 2024 etc., the learned Counsel for the petitioner submits that the petitioner is not the actual beneficiary of those deposits. In this case, it is the aforementioned Company, M/s.Thirumalai

Thirumal Nidhi Limited, which serves as the complainant. It intends to frame this petitioner for the excesses and malpractices committed by it. In fact, if the petitioner is not claiming the said deposits, then, the Nidhi would be the beneficial owner and thus has a significant interest in the entire proceedings.

8. Furthermore, the petitioner is making several allegations against the aforementioned Nidhi, including the forgery of the petitioner's signature on numerous documents. Therefore, if Nidhi or its other officers/employees forged the petitioner's signatures and created the deposits, the petitioner cannot, in fairness, be considered the beneficial owner, and now a penalty is being sought solely against the petitioner. Consequently, according to the petitioner, when Section 26 of the Act allows for the benamidar, the beneficial owner, and any other interested party or individual who has made a claim to be included as parties, the application to implead the Nidhi should have been allowed by the adjudicating authority.

9. *Mr.S.Anil Sandeep*, the learned Counsel would submit that concerning the instant Act, the initiating authority also acts as the investigating authority. Apart from forming an opinion as a reason to believe, it also investigates the matter and gathers all the evidence and particulars. The power to make inquiries is contained in Section 24(4) of the Act. A perusal of Section 23 shows that it is not only the inquiry but also the investigation that is conducted by the same person. Once the person conducts the investigation, the petitioner is entitled to cross-examine the authority. If this position is admitted, the very purpose of cross-examination is to elicit answers from the witness, and a pre-prepared questionnaire will not serve that purpose. Unless the petitioner is given an opportunity for extempore cross-examination, the truth cannot be elicited. How the statements are recorded, the opinion formed, and the relevant materials on record must all be put to the person and answers elicited. Only then will the petitioner have a fair opportunity to defend himself against the charges

made. Therefore, he would submit that the earlier set of Writ Petitions should be allowed by this Court.

10. Per *contra*, *Mrs.M.Sheela,* the learned Special Public Prosecutor (I.T.) for the respondent authorities, would submit that once the enquiry concluded and the interim order was not extended by this Court, the adjudicating authority proceeded with the enquiry and issued the order, as the proceedings are time-bound. Since the interim order was not extended, the petitioner cannot hold the adjudicating authority accountable. In fact, the interim order expired on 14.11.2024, and the order was passed only in January 2025. Therefore, the adjudicating authority bear no fault.

11. Regarding the earlier set of writ petitions, the learned Special Public Prosecutor (I.T.) would rely on the scheme of the Act, specifically Sections 19, 23, and 24, and would submit that in this case, the initiating authority exercises a statutory power that includes conducting an inquiry

into the matter, forming an opinion as to the reason to believe, and passing an order of provisional attachment. He is not merely a witness in the case; rather, he is an authority adjudicating the matter. The adjudicating authority has the power to make the provisional attachment absolute. If the adjudicating authority agrees with the initiating officer, then, the original provisional order of attachment is made absolute. Therefore, upon closer scrutiny of the scheme of the Act and the provisions contained therein, it cannot be stated that the initiating officer is merely a witness; since the person is an authority under the Act, there can be no permission for cross-examination.

12. Regarding the prayer for the impleading of the Nidhi, *Mrs.M.Sheela*, the learned Special Public Prosecutor submits that it is specifically the case of the initiating officer, after investigation and enquiry, that for all these deposits, only the petitioner is the beneficial owner. The initiating officer is making this charge based on the materials before them,

and if the adjudicating authority agrees, the provisional order of attachment will become absolute. Therefore, for deciding this issue, the Nidhi need not be made a party. It is up to the petitioner to establish his case in the manner known to law. Consequently, the adjudicating authority rightly rejected the impleading application.

13. In reply, *Mr.S.Anil Sandeep,* the learned Counsel for the petitioner, would specifically point out in some paragraphs, even while deciding the interim applications, where the adjudicating authority has observed, based on earlier proceedings, that the case is an open-and-shut case and there is nothing for the petitioner to defend himself against. He would submit that because certain defences were not taken or certain documents were not produced before the authorities on an earlier occasion, there cannot be any embargo on the petitioner from defending the present set of charges vigorously, and this Court should also consider such a pre-determined notion.

14. I have reviewed the opposing submissions from both sides and examined the case records.

15. The first question to be decided is whether the adjudicating authority was correct in issuing the final orders of adjudication dated 28.01.2025. In this regard, the petitioner had filed two sets of applications in various references for impleading and cross-examination. By the aforementioned orders, those requests were rejected. The petitioner then filed W.P.No.3310 of 2024 and batch of cases, which came up for hearing on 07.11.2024, and the interim order passed by this Court is extracted below for ready reference:

> "Mr.K.S.Jeyaganesan, learned Senior Panel Counsel (GOI) takes notice for the first respondent.
> 2. Notice to the second respondent returnable by 11.11.2024. Private notice is also permitted.
> 3. List the matter on 11.11.2024.
> 4. The enquiry pending on the file of the first respondent may go on. However, the first respondent shall not pass any final order till 11.11.2024."

16. Subsequently, once more, the matters were scheduled for 11.11.2024. On 11.11.2024, the following order was issued:

> "At the request of the learned counsel appearing for the petitioners, list these matters on 14.11.2024.
> 2. Interim order already granted by this Court is extended till 14.11.2024."

17. However, it can be seen that from 14.11.2024 onwards, the matters were not listed. It is settled law that once the Court grants an interim order, no orders have since been issued by the Court to vary or vacate the interim order merely because the matters were not listed before the Court; the interim order cannot be deemed vacated. It is true that the proceedings are time-bound. However, the adjudicating authority should have approached the Court for clarification or by filing a memo regarding permission to proceed further. Furthermore, at least one hearing should have been held, with the petitioner being asked for an extension of the interim order, but this was also not done. This Court specifically adjourned the matter, querying the learned Special Public Prosecutor (I.T.) for the respondents as to whether

any hearing occurred after 14.11.2024, and the answer was negative. No hearing took place at all, though a mail was sent to the petitioners seeking for the extended orders if any.

18. Earlier, when the interim application was filed and subsequently rejected, the petitioner approached this Court to address the issue. Although the interim order was granted and extended, the impugned order was passed suddenly without a hearing. Thus, while it may not be classified as a violation or willfulness on the part of the adjudicating authority, it should still be deemed that the final order is passed when the interim order of this Court is in force. As a result, the parties should be restored to their original position to avoid prejudice. Therefore, I hold that the final order passed on 28.01.2025 cannot be sustained.

19. Regarding the orders passed in the interim applications, firstly, concerning the question of impleading the Nidhi, it is essential to extract

Section 26(1) of the Act, which reads as follows:

> "**26. Adjudication of benami property.**—(1) On receipt of a reference under sub-section (5) of section 24, the Adjudicating Authority shall issue notice, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following persons, namely:—
> (a) the person specified as a benamidar therein;
> (b) any person referred to as the beneficial owner therein or identified as such;
> (c) any interested party, including a banking company;
> (d) any person who has made a claim in respect of the property"

20. In the instant case, the Nidhi has not claimed to be an interested party, nor has it laid any claim regarding the fixed deposits. On the other hand, it seems to be the complainant in this matter. If the individual is a complainant, statements from the other employees of Nidhi could have been recorded, and they would all be witnesses in this case. Essentially, the petitioner's defense is that only the Nidhi performed these actions and that the petitioner is either wrongfully accused or has not even signed many of the fixed deposits, with other officers/employees of the Nidhi allegedly forging the petitioner's signature. Establishing that defence differs from

adding Nidhi as a party among the respondents. When the provisional order of attachment is made with a specific allegation against the petitioner, and as the petitioner defends the claims, Nidhi would, at best, only be considered a third party concerning the essential question. Therefore, the mere non-impleadment of Nidhi shall not, in any way, affect the petitioner's defence nor their presence as a party is necessary to decide the issue.

21. The petitioner, inter *alia*, can still argue that the entire matter was handled by the Nidhi and that their complaint was erroneous. Therefore, it is unnecessary to include the Nidhi as a party. It is not making any claims regarding the fixed deposits. Consequently, no exception can be taken against the authorities for rejecting the application for impleadment. However, the mere rejection of the impleading application does not imply a rejection of the petitioner's defence concerning the Nidhi. The petitioner can establish the aforementioned contentions in a manner recognised by law.

22. The next question concerns the cross-examination. In this context, the Act is a *sui generis* legislation containing unique provisions. The statute grants both the power of investigation and the ability to initiate proceedings, forming the basis for belief and enabling the issuance of provisional orders of attachment after hearing the petitioner on the same authority. In fact, the Act defines 'authority' under Section 2(6), which is extracted as follows:-

> "**2. Definitions.**— In this Act, unless the context otherwise requires,—
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> .
>
> .
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> .
>
> (6) "authority" means an authority referred to in sub-section (1) of section 18;"

23. Section 18(1) is extracted hereunder:-

> "**18. Authorities and jurisdiction.**—(1) The following shall be the authorities for the purposes of this Act, namely:—
>
> (a) the Initiating Officer;
>
> (b) the Approving Authority;
>
> (c) the Administrator; and
>
> (d) the Adjudicating Authority."

It is evident that the initiating officer is also an authority within the meaning of the Act.

24. Thereafter, the powers of the Civil Court regarding discovery, inspection, etc., are conferred on all authorities under the Act. It is relevant to extract Section 19 of the Act, which reads as follows:

> "**19. Powers of authorities.**—(1) The authorities shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—
> (a) discovery and inspection;
> (b) enforcing the attendance of any person, including any official of a banking company or a public financial institution or any other intermediary or reporting entity, and examining him on oath;
> (c) compelling the production of books of account and other documents;
> (d) issuing commissions;
> (e) receiving evidence on affidavits; and
> (f) any other matter which may be prescribed.
> (2) All the persons summoned under sub-section (1) shall be bound to attend in person or through authorised agents, as any authority under this Act may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.
> (3) Every proceeding under sub-section (1) or sub-section (2) shall be deemed to be a judicial proceeding within the

meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(4) For the purposes of this Act, any authority under this Act may requisition the service of any police officer or of any officer of the Central Government or State Government or of both to assist him for all or any of the purposes specified in sub-section (1), and it shall be the duty of every such officer to comply with the requisition or direction.

(5) For the purposes of this section, "reporting entity" means any intermediary or any authority or of the Central or the State Government or any other person as may be notified in this behalf."

25. Section 20 of the Act designates the officers who can assist in the enquiry, etc. Section 21 defines how the initiating officer or other authorities should request information. Section 22 grants the power to impound documents, etc. Section 23 of the Act allows the authority to conduct an enquiry or investigation, and it is essential to extract this information for ready reference:

"**23. Power of authority to conduct inquiry, etc.**—The Initiating Officer, after obtaining prior approval of the Approving Authority, shall have power to conduct or cause to be conducted any inquiry or investigation in respect of any person, place, property, assets, documents, books of account or other documents, in respect of any other relevant matters under this Act."

26. Thereafter, Chapter-IV outlines the processes of attachment, adjudication, and confiscation. It is essential to extract the entirety of Section 24, which reads as follows:-

"**24. Notice and attachment of property involved in benami transaction.**—(1) Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as benami property.

(2) Where a notice under sub-section (1) specifies any property as being held by a benamidar referred to in that sub-section, a copy of the notice shall also be issued to the beneficial owner if his identity is known.

(3) 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, by order in writing, attach provisionally the property in the manner as may be prescribed, for a period not exceeding ninety days from the date of issue of notice under sub-section (1).

(4) The Initiating Officer, after making such inquires and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of ninety days from the date of issue of notice under sub-section (1),—

(a) where the provisional attachment has been made under sub-section (3),—

(i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or

(ii) revoke the provisional attachment of the property with the prior approval of the Approving Authority;

(b) where provisional attachment has not been made under sub-section (3),—

(i) pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or

(ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.

(5) Where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) of sub-section (4) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of that sub-section, he shall, within fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority."

Therefore, it is evident that under Section 24(3), the initiating officer must first form an opinion that the individual in possession of the property, deemed benami, may alienate the property during the period specified in the notice. If the initiating officer has reason to believe this, he must issue an order for provisional attachment.

27. Thereafter, an enquiry is also contemplated under Section 24(4), where, after making such enquiries and calling for reports or evidence within 90 days, he must pass an order continuing the provisional attachment with the prior approval of the adjudicating authority. Thus, it is clear that the initiating officer is not merely a witness in this case. He is also not the final adjudicating authority. Therefore, the scheme of the Act places him in a unique position. Considering the special features of the Act and the right of cross-examination, along with its relevance as enunciated in the judgment of the High Court of Madhya Pradesh in ***Harivallabh Mohanlal Joshi and Ors. Vs. Union of India*** in W.P.No.16633 of 2018, and the judgment of the Hon'ble Supreme Court of India in ***Ayaaub Khan Noor Pathan Vs. The State of Maharashtra and Ors.***[1], as well as other judgments, the following order has been passed:-

> "7. However, having said that, I am inclined to accept the plea of D2 for examination of documents, statements and relied upon documents, and direct the I.O u/s 26(3)(b) read

[1] (2013) 4 SCC 465

with Section 45 of PBPT Act and Sec.51 of Code of Civil Procedure **to allow D2 or his Authorized Representative as provided u/s 26(8) to cross examine the facts, documents, statements and relied upon documents including signature of D2 appearing on them for their veracity only in the above mentioned Reference cases, wherein such documents along with show cause notice, were already provided to D2 under acknowledgement. The above exercise should be completed before 24.08.2024.**

8. Both the I.O and D2 or his Authorized Representative on a mutually agreeable date may perform the above cross-examination proceedings as per laid down procedures. A mahazar may be drawn to record the proceedings and a copy of the same reflecting the entire proceedings of performance of the above cross-examination may be forwarded to this office for records and further proceedings going forward.

This disposes of the Common Memo filed by D2 in Re-56/2023 to R-66/2023 dated 25.03.2024 and Petition filed u/s 45 read with Sec. 151 of dated 25.03.2024 filed by Shri Sushanth Malligeswaran, Advocate and Ld. Counsel for D2 strictly within the above mentioned parameters and as per law established."

28. It is submitted that when the learned Counsel proceeded further for the cross-examination, the adjudicating authority required him to present the pre-prepared questionnaire, stating that the questions would be answered by the initiating officer. Although the original order did not impose such a condition, this condition cannot be deemed to be illegal. The petitioner will

now be given the opportunity to prepare the questionnaires by the date set by the authorities, and the initiating officer shall answer them. Based on this, any further supplementary questions or additional questionnaires can be permitted by the adjudicating authority at his discretion, and this Court will refrain from intervening in the adjudication process at this stage. It will remain open for the parties to make such requests before the authority.

29. Aside from this, if there are any other witnesses whose statements are relied upon, the petitioner is certainly entitled to cross-examine them. Questionnaires need not be administered for these witnesses, and if the petitioner wishes to cross-examine those who have provided witness statements, they may be summoned for that purpose, allowing the petitioner to cross-examine them effectively. In support of his defence, the petitioner can also muster evidence on his behalf and examine any witnesses he wishes to call to support his defence. Such opportunities shall be afforded to the petitioner. The learned Counsel for the petitioner states that certain

applications to summon documents have also been filed. These will be decided on their own merits by the authority. The petitioner will be granted such opportunities as may be necessary to establish the defence. It is important to note that the findings of the adjudicating authority in the orders refusing the impleading application, as well as the order concerning cross-examination, indicate that the case has already been concluded because earlier references have been addressed against the petitioner. These findings should be regarded as relating to the issuance of interim orders, and all objections that may be raised and defences will be considered objectively by the adjudicating authority.

30. In view thereof, these Writ Petitions are disposed of on the following terms

(i) The impugned order, dated 28.01.2025, passed in 11 references bearing Ref.Nos.R-56/2023, R-59/2023, R-58/2023, R-57/2023, R-60/2023, R-63/2023, R-62/2023, R-66/2023, R-61/2023, R-65/2023, R-64/2023, is quashed. The matters are remitted back to the file of the first respondent for continued adjudication.

(ii) The impugned orders, dated 24.07.2024 and 07.10.2024, passed in 13 references bearing Ref.Nos.R-56/2023, R-64/2023, R-17/2024, R-60/2023, R-04/2024, R-66/2023, R-62/2023, R-65/2023, R-61/2023, R-63/2023, R-59/2023, R-58/2023, and R-57/2023, stand upheld, subject to the other observations made in the order stated above.

(iii) The petitioner will first be given an opportunity to submit the questionnaire to the initiating authority. Depending on the answers, the petitioner will be entitled to make further prayers before the adjudicating authority;

(iv) With reference to other witnesses, the petitioner will be entitled to request the cross-examination of witnesses who have provided statements, summon any documents for the petitioner, and examine any witness on his behalf;

(v) By providing the aforesaid opportunities, it is up to the adjudicating authority to proceed further and complete the adjudication;

(vi) The petitioner shall also cooperate to expedite the process;

(vii) The period from 07.11.2025 until the date of receipt of a web copy of this order shall be excluded from the mandatory one-year period prescribed under Section 26(7) of the Act;

(viii) There will be no order regarding costs. Consequently, associated miscellaneous petitions are closed.

25.03.2025

Neutral Citation : yes/no
grs

To

1. The Adjudicating Authority,
   Office of the Competent Authority
   [SAFEM(FOP)A & NDPSA],
   Shastri Bhavan, New Building Complex, 4th Floor,
   No.26, Haddows Road, Nungambakkam,
   Chennai - 600 006.

2. The Initiating Officer,
   Deputy Commissioner of Income Tax (BPU),
   Room No:2 Income Tax Investigation wing Building,
   Ground Floor, 46, Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

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

D.BHARATHA CHAKRAVARTHY, J.

grs

W.P.No.33170 of 2024 etc., (batch cases)

25.03.2025