BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.01.2025**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.2841 of 2025
and
W.M.P.(MD)No.1996 of 2025

M.Sivasamy ... Petitioner

/Vs./

1. The Adjudicating Authority,
   Office of the Competent Authority (SAFEM(FOP)A & NDPSA),
   Shastri Bhavan, New Building Complex, (4th Floor),
   No.26, Haddow's Road, Nungambakkam,
   Chennai - 600006.

2. The Deputy Commissioner of Income Tax (Benami Prohibition),
   Initiating Officer,
   Room No: 104, I Floor,
   Income Tax Investigation Wing Building,
   46, MG Road, Nungambakkam,
   Chennai - 600 034.

3. The Additional Commissioner of Income Tax,
   Benami Prohibition Unit,
   Income Tax Investigation Wing Building,
   46, MG Road, Nungambakkam,
   Chennai - 600 034. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari and call for the records pertaining to the impugned order in the impugned notice F.No.OCA/MDS/31/2024-PBPTA issued under Section 26(1) of PBPTA, 1988 dated 28.06.2024 issued by the 1st respondent and quash the same.

For Petitioner : Mr.S.Durai Raj
For Respondent : M/s.M.Sheela
Special Public Prosecutor
for Income Tax
Assisted by Mr.N.Dilip Kumar
Senior Standing Counsel

ORDER

This writ petition has been filed challenging the notice dated 28.06.2024 issued by the first respondent thereby call upon the petitioner to submit an explanation before 31.07.2024 by annexing all the relevant document. Further, the petitioner was directed to appear for personal hearing on 16.08.2024.

2. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The Income Tax Authorities conducted an investigation in the petitioner's company under Section 132 of Income Tax Act, 1961, dated 15.11.2019 and filed an appraisal report. Based on the report, notices were issued to the petitioner and others under Section 24 of Prohibition of Benami Property Transactions Act, 1988 (herein after called as PBPTA, 1988) alleging that the allotment of shares by the Company to 18 job workers as detailed in the report dated 16.04.2021 are benami transactions. Such shares are benami property and the petitioner is beneficial owner. Aggrieved by the said notice, the petitioner filed batch of writ petitions before this Court in W.P.No.12443 of 2022 etc., batch on the ground that the transactions are not covered by the provisions of PBPTA, 1988. Further, even as per the report, beneficial owner is the Company i.e., M/s.Shobikaa Impex Private Limited. The said contention was not accepted by this Court and as such, the writ petitions were withdrawn by the petitioner dated 16.04.2024 and to participate in the proceedings before the first respondent. Thereafter, the petitioner had participated in the proceedings before the second respondent. The second respondent by its proceedings dated 27.05.2024

provisionally attached the shares under Section 24(4)(b)(i) of the PBPTA, 1988. In pursuant to the same, the first respondent initiated proceedings by issuance of notice dated 28.06.2024 under Section 26(1) of the PBPTA, 1988. On receipt of the same, the petitioner submitted a reply on 04.10.2024 and the adjudication proceedings is in progress. Now, the petitioner challenged the very proceedings by issuance of notice under Section 26(1) of the PBPTA, 1988 on the ground that the second respondent did not conduct any preliminary enquiry as contemplated under Section 19 and 23 of the PBPTA, 1988. Therefore, the entire proceedings initiated cannot be sustained and the order passed under Section 26(4) cannot be sustained. Further, the company is one of the beneficial owner and even then, no notice served on the company as contemplated under Section 26(1) of the PBPTA, 1988. Therefore, the entire proceedings vitiated.

4. Mrs.M.Sheela, learned Special Public Prosecutor of Income Tax appearing for the respondents would submit that the provision under Section 26(6) of the PBPTA 1988 says that the adjudicating authority may, at any stage of the proceedings, either on the

application of any party, or suo motu, strike out the name of any party improperly joined or add the name of any person whose presence before the Adjudicating Authority may be necessary to enable him to adjudicate upon and settle all the questions involved in the reference. Therefore, while proceedings are in progress, the first respondent can issue notice to the beneficial owner.

5. That apart, already show cause notice which is under challenge in this writ petition have been acted upon. On receipt of the notice dated 28.06.2024 issued under Section 26(1) of the PBPTA, 1988 the petitioner submitted a reply and the petitioner is now attending the adjudication proceedings. Therefore, the notice dated 28.06.2024 is acted upon. Further, it is relevant to extract the provision under Section 26(1) and 26(6) of the PBPTA, 1988.

> *"26(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;

Provided that the Adjudicating Authority shall issue notice within a period of thirty days from the date on which a reference has been received;

Provided further that the notice shall provide a period of not less than thirty days to the person to whom the notice is issued to furnish the information sought.

(6) The Adjudicating Authority may, at any stage of the proceedings, either on the application of any party, or suo motu, strike out the name of any party improperly joined or add the name of any person whose presene before the Adjudicating Authority may be necessary to enable him to adjudicate upon an settle all the questions involved in the reference."

6. The specific contention of the petitioner is that the company is being the beneficial owner, it should be served with notice under Section 26(1) of the PBPTA, 1988.

7. As rightly pointed out by the learned Special Public Prosecutor appearing for the respondents that the provision under Section 26(6) is clear that the Adjudicating Authority can issue notice to the beneficial owner at any stage of the adjudication proceedings to add or delete any person whose presence before the Adjudicating Authority may be necessary to enable him to adjudicate upon and settle all the questions involved in the reference.

8. Further, on a perusal of the reply submitted by the petitioner for the notice issued impugned in this writ petition revealed that the petitioner did not even whisper about this ground that the company is also one of the beneficial owner and it should be served on the notice under Section 26(1) of the PBPTA, 1988. The petitioner being the Managing Director of the Company, now come forward to this ground to challenge the very proceedings itself. That apart, already the petitioner challenged the notice issued to the beneficial owner under Section 24 of the PBPTA, 1988 before this Court in the batch of writ petitions. In the said writ petitions, the respondents filed counter. While this Court about to dismiss all the writ petitions, the petitioner sought for

withdrawal of writ petitions. This Court permitted the petitioner to withdraw the writ petitions with liberty to participate in the adjudication proceedings. Now after having been participated in the adjudication proceedings, after submission of the reply for the notice impugned in this writ petition under Section 26(1) of the PBPTA, 1988, dated 28.06.2024 in the mid of the adjudication proceedings, the petitioner cannot take such stand that the notice under Section 26(1) was not served to the company who is also beneficial owner.

9. In view of the above, this Court finds no infirmity or illegality in the notice issued by the first respondent dated 28.06.2024 and the writ petition is devoid of merits and it is liable to be dismissed.

10. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The first respondent is at liberty to issue notice to the company and proceed with the adjudication proceedings.

30.01.2025

Index : Yes / No
NCC : Yes / No
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TO:-

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G.K.ILANTHIRAIYAN, J.

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Order made in
W.P.(MD)No.2841 of 2025

Dated:
30.01.2025