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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 24th January, 2025

+ **W.P.(CRL) 960/2023 & CRL.M.A. 2053/2025**

PORTER BUILDCON PRIVATE LTD & ORS.Petitioners

Through: Mr. Rajiv Nayar, Sr. Adv with Mr.
Anirudh Bakhru, Mr. Saurabh Seth,
Mr. Prabhav Bahuguna, Mr. Sajal
Bansal, Mr. Surya Pratap Singh, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr Rakesh Kumar CGSC with Mr.
Sunil & Mr. Prashant Rawat, Advs.
Mr. Sanjay Kumar, Ms. Easha
Kadiyan & Mr. Sandesh K Jha, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

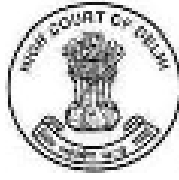
Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. This writ petition has been filed under Article 226 of the Constitution of India by the following 21 Petitioners-

- a) **Porter Buildcon Private Ltd.**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- b) **Rachaita Buildcon Private Limited**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;



- c) **Zentrum Buildwell Private Limited**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- d) **Ellora Buildtech Private Limited**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- e) **Kritunairu Builders and Developers Private Limited**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- f) **Seven Heaven Infrabuild Private Limited** Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- g) **Visit India Voyages Private Ltd**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- h) **Alesh Information Technology Private Limited**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- i) **Solestar Infrastructure Private Limited** Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- j) **Vedna Trading Private Limited**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- k) **One Point Associates**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- l) **Delight Business Solutions**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- m) **Awesome Builders**, Registered address 30, Ground Floor, Vijay



Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;

- n) **Sparkling Enterprises**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- o) **Genius Associates**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- p) **Bubbles Infrastructure**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- q) **Powervision Properties**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- r) **Redwind Enterprises**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- s) **Red Carpet Properties**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi;
- t) **Matrix Estates**, Registered address 30, Ground Floor, Vijay Block, Behind Nathu Sweets, Laxmi Nagar, Delhi; and
- u) **Pranjil Batra**, S/o Madan Mohan Batra, aged about 38, R/o F-193, First Floor, Mangal Bazar, Laxmi Nagar, New Delhi – 110092.

3. The above Petitioners have filed this writ petition praying for reading down of Section 24(1) of the Prohibition of Benami Property Transactions Act, 1988 (*hereinafter* “the Act”) and *inter alia* challenging the constitutional validity of Section 2(9) (A) to (D) of the Act. Some of the other reliefs sought include quashing of the show cause notices issued to them under Section 24(1) and 24(2) of the Act as also the provisional attachment made under Section 24(3) of the Act pursuant to the said notices.

4. In order to appreciate the contentions raised, the background in these appeals deserves to be captured. The above Petitioners, are either private



limited companies or partnership firms. According to the Petitioners, Mr. Pranjl Batra, Petitioner No. 21, is a software developer who is also a director/shareholder/partner in all these entities. He is also engaged in the real estate business.

5. Having discovered the *benami* relationship between Petitioner No.21 and the other Petitioners by examining material evidences such as the bank accounts and offices addresses *etc.*, an investigation proceeding was commenced by the Deputy Commissioner, Income Tax Department (*hereinafter* 'Initiating Officer') for undertaking action against the Petitioner No. 21, his family members and entities controlled by him.

6. Pursuant thereto, notices were issued under Section 24 (1) and (2) of the Act requiring Petitioners to show cause as to why the properties owned by these entities ought not to be treated as *benami* property. These notices were issued on different dates, namely 14th December, 2021, 15th December, 2021 and 30th December, 2021. Pursuant to these notices, the provisional attachment orders were passed under Section 24(3) of the Act on 16th December, 2021 and 31st December, 2021. The Initiating Officer then took steps under Section 24 (4) of the Act:

- (i) to get the approval from the Approving Authority *i.e.*, Additional Commissioner or a Joint Commissioner and
- (ii) confirm these provisional attachment of *benami* property till the end of these *benami* proceedings under Section 26 of the Act.

7. The provisional attachment orders, upon receiving the approvals, were confirmed on 29th March, 2022, 30th March, 2022 and 31st March, 2022. Thereafter the Initiating Officer made a reference to the Office of Competent Authority and Administrator, Revenue Department (*hereinafter* 'the



Adjudicating Authority') on 11th April, 2022 for adjudication of the proceeding.

8. The Adjudicating Authority issued notice under Section 26 (1) of the Act to the Petitioners on 26th April, 2022. However, before the Adjudicating Authority could complete the proceeding by passing an order under Section 26(3) of the Act, the present writ petition was filed seeking various reliefs which are set out below:-

“A. Read down or read into the provisions of Section 24(1) of the Prohibition of Benami Property Transactions Act, 1988 and hold that:

i. The expression ‘material in his possession’ must be construed to mean material of unimpeachable character and of sterling quality and not every nebulous or unsubstantiated information;

ii. The ‘reasons to be recorded in writing that any person is a benamidar in respect of a property’ ought to be separately communicated in writing to the affected person to whom the show cause notice is issued in terms of section 24(1) of the Act;

B. Declare section 2(9) (A) to (D) defining ‘benami transactions’ to be illegal, unconstitutional and violative of Articles 14, 19 & 21 of the Constitution being vague and capable of arbitrary application.

And/Or

C. As an alternative as well as a supplement to the prayer B (supra) this Hon’ble Court may be pleased to read down or read into the definition of ‘benami transaction’ and hold that:

i. The legal evidence of a definite character is a sine



qua non and an essential prerequisite to show that a particular transaction is a 'benami transaction';

ii. The circumstances which may directly or otherwise prove the fact of 'benami transaction' must 'unerringly and reasonably raise an inference of that fact';

iii. The essence of benami is the intention of the party or parties concerned therefore, a serious onus rests on the person asserting the transaction to be benami to show it on the basis of objective data and materials and not on mere conjectures and surmises; whims and fancies as a substitute for proof;

- D. Quash the show cause notice issued under Section 24(1) and Section 24(2) of the Prohibition of Benami Property Transactions Act, 1988 by Respondent No. 2, the Initiating Officer (Annexure P-1) dated 14.12.2021, 15.12.2021 & 30.12.2021 as there is fundamental violation of the postulates contemplated therein including the formation for reasons to believe based on material in possession;*
- E. Quash the action of the Initiating Officer in provisionally attaching the property of the petitioners (Annexure P-3) dated 16.12.2021 & 31.12.2021 under section 24(3) of the Prohibition of Benami Property Transactions Act, 1988;*
- F. Quash the approval accorded by the approving authority (Annexure P-4) dated 16.12.2022 in terms of Section 24(3) of Prohibition of Benami Property Transactions Act, 1988 for provisionally attaching the property of the petitioners;*
- G. Quash the order passed by the Initiating Officer (Annexure P-5) dated 29.3.2022, 30.3.2022 & 31.3.2022 in terms of Section 24(4)(a)(i) of the Prohibition of Benami Property Transactions Act, 1988 continuing the provisional attachment of the property with the prior approval of the Approving Authority;*



H. *Quash the reference made to the Adjudicating Authority (Annexure P-6) dated 11.4.2022 in terms of Section 24(5) the Prohibition of Benami Property Transactions Act, 1988;*

I *Quash the notices (Annexure P-7) dated 26.4.2022 issued under section 26(1) of the Prohibition of Benami Property Transactions Act, 1988 by the Adjudicating Authority as the entire proceedings are completely non-est in law.”*

9. Subsequently, orders under Section 26(3) of the Act, declaring the attached properties as *benami* properties, have also been passed by the Adjudicating Authority on 18th April, 2023, 19th April, 2023, 20th April, 2023, 24th April, 2023, 25th April, 2023, 26th April, 2023 and 27th April, 2023 (*hereinafter* ‘the orders under Section 26(3) of the Act’). The present writ petition continued to be pending even when these orders were passed. The Petitioners did not prefer any appeal against the orders passed by the Adjudicating Authority and the said Authority, accordingly, has also commenced the confiscation proceedings under Section 27 of the Act by issuing a show cause notice dated 13th November, 2024. In the confiscation proceedings, the Petitioners have been given time by the Adjudicating Authority to file replies/rejoinders *vide* order dated 18th December, 2024.

10. The Petitioners have now filed an application in this writ petition seeking interim stay of the operation of the confiscation notice dated 13th November, 2024. The Adjudicating Authority in its order dated 18th December, 2024 notes that the present writ petition is pending but there is no interim protection granted herein in favour of the Petitioners. The Adjudicating Authority also notes that appeals have not been preferred by the



Petitioners and thus, there is no impediment in proceeding with the confiscation.

11. Mr. Rajiv Nayar, Id. Senior Counsel appearing for the Petitioners submits that the present writ petition had been filed under legal advice, so obtained, at the relevant point of time. Ideally, orders under Section 26(3) of the Act ought to have been challenged by way of an appeal when they were passed in the month of April, 2023, however, since the Petitioners had already approached this Court in the writ petition, the said appeals were not filed and the confiscation proceedings have now commenced. He prays that the Petitioners may be permitted to approach the Appellate Tribunal under Section 46 of the Act so as to have their case adjudicated on merits itself, subject to which, the Petitioners do not wish to press any other challenges raised before this Court.

12. The Id. Counsel for the Respondents submits that at the time when the writ petition was filed, the orders under Section 26(3) of the Act had not yet been passed and once the said orders were passed, there was nothing stopping the Petitioners from availing of their appellate remedy.

13. This Court has heard the parties. Perusal of the present proceedings would show that, the writ petition was initially filed at the stage when the orders under Section 26(3) of the Act were yet to be passed. However, after the said orders were passed, an application under Order 6 Rule 17 of Civil Procedure Code, being *I.A. No.13190/23*, was filed by the Petitioners seeking amendment of the writ petition and to seek further relief for quashing of the said orders under Section 26(3) of the Act. This application also sought to place on record the orders passed under Section 26(3) of the Act. Notice was issued in this application on 16th May, 2023 and the said amendment



application is still pending adjudication before this Court.

14. The Petitioners, for whatever reason, have sought to raise very broad challenges to the provisions itself in this writ petition. They have also brought on record the orders passed by the Adjudicating Authority under Section 26(3) of the Act. The Petitioners, under normal circumstances, would have been entitled to file the appeals before the Appellate Tribunal, however, the Petitioners did not avail of the said remedy when available, and had chosen to dispute the vires of the foundational provisions of the Act before this Court. However ill-advised the said remedy *i.e.*, to place the orders on record and file a writ petition before this Court challenging the provisions of the Act and the orders under Section 26(3) of the Act, may have been, it cannot be said that the same is not a good faith proceeding.

15. It is noted by this Court that the appeals, as per Section 46 of the Act, have to be filed within forty-five days, however, the delay, if sufficient cause is shown, is condonable. The provision is extracted hereinbelow:

“46. Appeals to Appellate Tribunal

(1) Any person, including the Initiating Officer, aggrieved by an order of the Adjudicating Authority may prefer an appeal in such form and along with such fees, as may be prescribed, to the Appellate Tribunal against the order passed by the Adjudicating Authority under sub-section (3) of section 26, within a period of forty-five days from the date of the order.

(2) The Appellate Tribunal may entertain any appeal after the said period of forty-five days, if it is satisfied that the appellant was prevented, by sufficient cause, from filing the appeal in time.

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16. Under such circumstances and in the interest of justice, this Court is of the opinion that the Petitioners ought to be relegated to the appellate remedy, as they no longer press the challenge to the validity of the provisions of the Act. The Petitioners may accordingly file appeals under Section 46 of the Act challenging the orders under Section 26(3) of the Act, before the Appellate Tribunal.

17. Needless to add, the period during which the present writ petition remained pending would be liable to be excluded from the limitation period in terms of Section 14 of the Limitation Act. However it is made clear that this liberty is subject to the condition that the Petitioners prefer the appeals before the Appellate Tribunal by 28th February, 2025. If the said appeals are filed by 28th February, 2025 before the Appellate Tribunal, the appeals shall not be dismissed on the ground of being barred by limitation or delay.

18. Insofar as the confiscation proceedings are concerned, a perusal of the order dated 18th December, 2024 would show that the confiscation proceedings are listed before the Adjudicating Authority on 28th January, 2025 at 2.30 p.m. On the said date, the pleadings have to be completed before the Adjudicating Authority. The Petitioners are permitted to place today's order of this Court permitting them to file the appeals before the Adjudicating Authority in which case, the Adjudicating Authority shall afford time to the Petitioners before proceeding further - in terms of the Proviso to Sec. 27 (1) of the Act.

19. The remaining challenges and the prayers are not pressed in this petition. The appeals challenging the orders under Section 26 (3) of the Act shall be, however, adjudicated on merits by the Appellate Tribunal.

20. The petition is disposed of in these terms. Pending applications, if any,



are also disposed of.

21. The next date of hearing fixed on 5th March, 2025 is cancelled.

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

JANUARY 24, 2025
Ch/Am