

W.P.No.22037 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22037 of 2017
and
W.M.P.No.23086 of 2017

K.Nagarajan, I.A.S
Managing Director
Tamil Nadu Warehousing Corporation
82, Anna Salai,
Chennai – 600 032.

...Petitioner

Vs.

1.The Adjudication Authority,
Under the Prohibition of Benami Property
Transaction Act,
Room No.26, 4th Floor,
Jeevan Deep Building,
Parliament Street,
New Delhi – 110 001.

2.The Approving Authority,
Additional Commissioner of Income Tax,
Corporate Circle Range – 1,
Aayakar Bhavan,
121, Mahathma Gandhi Road,
Chennai – 600 032.

3.The Initiating Officer,
Deputy Commissioner of Income tax,
Corporate Circle Range – 1(1)
Aayakar Bhavan

121, Mahathma Gandhi Road,
Chennai – 600 032.

4.B.Sundari

D/o.K.Balasubramanian (Late)
No.21, Ponnamman Koil Street,
Kottur, Chennai – 600 085.

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the entire records pertaining to the impugned order passed by the 3rd respondent dated 12.05.2017 and the consequential impugned Notice issued by the 1st respondent in Reference No.R-52/2017 dated 26.05.2017 and quash the same in so far as the adverse finding of the 3rd respondent as against the petitioner declaring him as the beneficial owner of the property mentioned in the impugned order as illegal and arbitrary.

For Petitioner : Mr.A.Iruthayaraj

For Respondents : M/s.M.Sheela
Special Public Prosecutor
[For Income Tax]
Assisted by
M/s.Prarthana.M and Aswini.G
[R1 to R3]

Mr.B.Kumar
Senior Counsel
Assisted by M/s.Kanimozhimathi
[For R4]

ORDER

The Writ Petition on hand is instituted, questioning the legal validity of the order dated 12.05.2017 and 26.05.2017.

2. The impugned orders are challenged in view of the fact that the third respondent passed the impugned order dated 12.05.2017, implicating the petitioner as the beneficial owner of the property in question without issuing any notice or giving any opportunity to the petitioner. Thus, the petitioner raised the ground that the impugned order is *per se* illegal and violative of the principles of natural justice.

3. The petitioner states that he joined service in the Revenue Department, Government of Tamil Nadu in 1977 and subsequently, elevated from State Civil Services to Indian Administrative Services in 2000 Batch allotment. He was serving in the Tamil Nadu Warehousing Corporation as Managing Director from 8th September 2014 onwards.

4. In pursuance of a search warrant issued by the Income Tax

Department (Investigation Wing) in the name of B.Ayyappan, who was said to be the Managing Director of M/s.Kathir Kaman Jewellers (P) Ltd, Chennai. Further, a search warrant was issued in the name of Mrs.R.Sabitharani, the petitioner's spouse to search her residence in Issa Pallavaram, Chennai, wherein the petitioner lives with his spouse. The search was conducted on 23rd and 24th of November, 2016. Some items of gold and an amount of Rs.7,28,300/- in cash were found during search. The petitioner's spouse, who had been working as the Chief Technical Officer (C.T.O.) in Central Bank of India since 1985 with a substantial income as salaries and other emoluments, admitted that the aforesaid cash and items of gold belongs to her and the Income Tax Search Team conducted an enquiry. The Prohibitory Orders dated 24.11.2016 issued to the petitioner's spouse by the Deputy Director (Investigation Wing), Income Tax Department were subsequently lifted on 18.01.2017. She was being assessed with reference to the assets found during search.

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5. Under these circumstances, to the shock and surprise of the petitioner, the third respondent passed the impugned order, dated 12.05.2017, arraying the petitioner as a beneficial owner of the property

attached provisionally without any justification much less legal evidence of a definite nature. The third respondent passed the impugned order under Section 24(4)(a)(i) of the Benami Transactions (Prohibition) Amendment Act, 2016 [hereinafter referred to as the 'Act']. The amended Act came into force with effect from 01.11.2016. Thus, the petitioner states that the amended Act shall be applicable only to the Benami transactions entered into on or after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016 i.e. on or after 01.11.2016 as provided under Section 3(3) of the Act. Even the impugned order shows that the transaction alleged to be Benami transaction was entered into on 28.10.2016 and therefore, the impugned order passed by the third respondent with the approval of the second respondent lacks jurisdiction.

6. In this context, the learned counsel appearing on behalf of the petitioner mainly contended that the impugned order was passed without issuing any show cause notice to the petitioner as mandated under Section 24(2) of the Act. Thus, the entire action initiated against the petitioner was in violation of the principles of natural justice. The petitioner was not provided with an opportunity to defend his case in the manner provided and

thus, the order impugned *per se* void.

7. The learned counsel for the petitioner further contended that the proceedings under the Benami Transactions (Prohibition) Amendment Act, 2016 are required to be an independent proceedings. Thus, an adverse finding of the third respondent as against the petitioner based on the statements recorded under Section 131 of the Income Tax Act by Income Tax Officers in a different context is unsustainable. The impugned orders are passed based on certain assumptions, conjunctures, surmises and speculations. Thus, the impugned orders do not have its legs to stand before the scrutiny of law.

8. The learned counsel for the petitioner reiterated that the provisions of the Benami Transactions (Prohibition) Amendment Act, 2016 pertaining to the transactions entered into 28.10.2016 prior to the amendment Act cannot be enforced. Admittedly, the amendment Act came into force only on 01.11.2016, after the alleged transaction. Thus, the very initiation itself is in violation of the provisions of the Act. The impugned orders are passed based on the reliance on the sworn statement of one B.Ayyappan, Managing

Director of M/s.Kathir Kaman Jewellers (P) Ltd, Chennai. Thus, there is no basis for such initiation.

9. The learned counsel appearing on behalf of the respondents 1 to 3 contended that the amendment Acts of the year, 2016, more specifically, Section 1 Sub-Section (3) categorically states that “the provisions of Sections 3, 5 and 8 shall come into force at once and the remaining provisions of this Act shall be deemed to have come into force on 19th day of May 1988”. Therefore, the intention of the Legislature is to ensure that the pre-amendment Act is in force for all purposes and the amendments are carried on, in order to make the legislation more effective. When Section 1 Sub-Section (3) clarifies the said position that except Sections 3, 5 and 8 and the remaining provisions of the Act shall be deemed to have come into force on 19th day of May 1988, when the original Act namely the prohibition of Benami Property Transactions Act, 1988 came into force, then, the very ground raised by the petitioner in this regard is unsustainable. Section 24 is Notice and attachment of property involved in Benami transaction. As far as the impugned order dated 12.05.2017 is only a provisional attachment made under Section 24(4)(a)(i) of the Benami Transactions (Prohibition)

Amendment Act 2016 and after the provisional attachment, the notice to show-cause under Section 26(1) was issued to the petitioner, who is the beneficial owner. Therefore, the procedures as contemplated under the provisions of the Act are scrupulously followed and thus, the petitioner has to face the adjudication in the manner prescribed. Instead of facing the adjudication, the petitioner is making an attempt to prolong the issue for the purpose of escaping from the clutches of law. Thus, the Writ Petition is unnecessary and to be rejected.

10(a). In support of the said contention, the learned counsel for the respondents 1 to 3 relied on the judgment of the High Court of Madras in the case of ***Dinesh Chand Surana Vs Deputy Commissioner of Income Tax and Ors.*** reported in [MANU/TN/3340/2018] and the relevant portion of the order is extracted hereunder:

“6. The petitioner has filed W.P.Nos.13160 & 13161 of 2018 challenging the order, dated 23.05.2018 under Section 24(4) of the Act. In my considered view, the prayer sought for by the petitioner is not maintainable, since the order passed under Section 24(4) of the Act is being an

order of provisional attachment and the petitioner cannot be stated to have been aggrieved over such order, especially, when the adjudicating authority under the Benami Act has already initiated proceedings under Section 24(4) of the Act, which is only a provisional attachment and cannot be permitted to stall the adjudication under the Act by the adjudicating authority. Therefore, the relief sought for by the petitioner in W.P.Nos.13160 & 13161 of 2018 cannot be granted.”

(b) The High Court of Chattisgarh at Bilaspur rendered a judgment on 06.02.2020 in the case of ***Tulsiram and Ors. Vs Assistant Commissioner of Income Tax (Benami Prohibition) and Ors.*** reported in [MANU/CG/0099/2020] held as follows:

“10.V. As regards the intention of the Legislature, while enacting the Amendment Act of 2016, the clarification given by the Hon'ble Finance Minister in the Lok Sabha on 27.07.2016 while recommending the Amendment Bill, 2016 to the House. He stated that “....if we brought a new Bill, properties acquired benami between the

period of 1988 onwards would have all gone scot free. So, it was considered necessary that the old law be allowed to remain, and the new amendments be inserted into the old law itself.”

“VIII. The object of the Act was clearly stated by the then Finance Minister while introducing the Amendment Act, 2016 as “....the principal object behind this bill is that a lot of people who have unaccounted money invest and buy immovable property in the name of some other person or a non-existent person or a fictitious person or a benami person. So, these transactions are to be discouraged.....It is predominantly an anti-black money measure that any transaction which is benami is illegal and the property is liable to be confiscated.”

11. Relying on the said judgments, the learned counsel for the respondents 1 to 3 emphasized that the very initiation, *per se*, is invalid and in violation of the provisions of the amended Act. Thus, the Writ Petition is to be dismissed.

12. Let us examine the nature of the impugned proceedings passed with reference to the provisions of the Act. As discussed above, Section 1 Sub-Section (3) clarifies that the provisions of Sections 3, 5 and 8 shall come into force at once, and the remaining provisions of the amendment Act shall be deemed to have come into force on 19th day of May, 1988. Section 3 contemplates “Prohibition of benami transactions”. Though the petitioner has relied on Sub-Section (3) to Section 3, stating that whoever enters into any benami transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016, shall, notwithstanding anything contained in Sub-Section (2), be punishable in accordance with the provisions contained in Chapter VII, Section 1 Sub-Section (3) clarifies that the other remaining provisions of the Act shall be deemed to have come into force on the 19th day of May, 1988. Thus, in respect of the transactions prior to the amendment i.e. on 01.11.2016, the actions were taken under Section 24 is valid and in accordance with law. In the present case, investigations and search were conducted prior to the amendment Act. The alleged benami transactions were also occurred prior to the amendment. But, the provisional attachment under Section 24 was made after the amendment, which is certainly permissible under Section 1 Sub-

Section (3) of the Act. Thus, the reference made by the learned counsel for the petitioner regarding Sub-Section (3) to Section 3 cannot have any application in respect of the facts and circumstances of the case on hand.

13. Section 24 stipulates Notice and attachment of property involved in benami transactions. Section 24 (4)(a)(i) enumerates as follows:

“(4) The initiating officer, after making such inquiries 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”

14. Therefore, the impugned order dated 12.05.2017 is only a

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. After making such provisional attachment, Sub-Section (5) to Section 24 states that “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 Adjudication Authority.”

15. Section 25 speaks about Adjudication of benami property. Section 26 contemplates “Manner of service of notice.” Sub-Section (1) to Section 26 reads as under:

“(1) Manner of service of notice- *(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.”

16. Therefore, the scheme of the Act is unambiguous under Section 24(4)(a)(i). A provisional attachment of property shall be made in order to prevent the persons from encumbering the property during the process of adjudication and after passing the provisional attachment, if the proceedings are to be continued, then, an adjudication under Section 25 and thereafter Section 26(1), show-cause notice is to be issued. In the present case, it is not in dispute that the impugned order dated 12.05.2017, is an order of

provisional attachment passed under Section 24(4)(a)(i) of the Benami Transactions (Prohibition) Amendment Act, 2016 and the second amendment order dated 26.05.2016 is the notice to show-cause under Section 26(1) of the Act. Thus, for all purposes, it is only the commencement of proceedings under the Act and the petitioner has to respond to the show cause notice by submitting their explanations/objections along with the documents and evidences and thereafter, the authorities are bound to adjudicate the matter in the manner provided and take appropriate decision. This being the scope of the Act, the petitioner has misconstrued the provisions based on certain incorrect interpretations, filed the present Writ Petition. Now, the impugned show cause notice dated 26.05.2017 is to be responded by the petitioner by submitting their explanations/objections, if any and thereafter, the authorities are bound to take a decision, considering the documents and the objections, if any filed by the petitioner. Thus, the petitioner has approached this Court at the initial stage and the adjudication is yet to be completed.

17. This being the factum established, the petitioner is at liberty to submit his objections/defence statements, evidences and documents, if any,

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within a period of three weeks from the date of receipt of copy of this order and on receipt of such objections etc., the respondents are bound to continue the proceedings and complete the same by following the procedures as contemplated as expeditiously as possible, since the matter is pending for a long time and the petitioner is directed to co-operate for the completion of proceedings instead of making an attempt to prolong and protract the issues on flimsy grounds.

18. With these directions, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Speaking order/Non-speaking order

Internet: Yes/No

Index : Yes/No

Kbs/Kak

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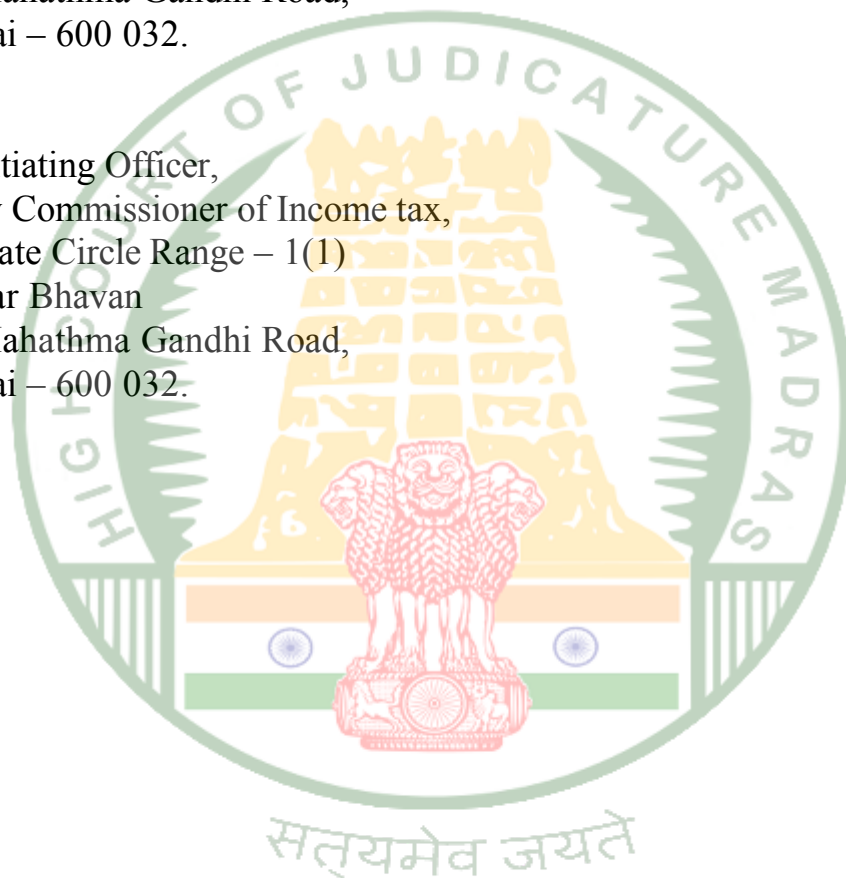
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S.M.SUBRAMANIAM, J.

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