

- 1 -

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

JUSTICE SUJOY PAUL

&

JUSTICE VIVEK JAIN

ON THE 13th OF MARCH, 2024

WRIT PETITION No.5861 OF 2024

BETWEEN :-

**SANTOSH BHADORIYA S/O SHRI
PARMANAND BHADORIYA, AGED ABOUT 45
YEARS, OCCUPATION – BUSINESS, R/O 44,
MARATHI MANDAL, ANAND NAGAR,
BHOPAL (MP) - 462022**

.....PETITIONER

***(BY MR. SUMIT NEMA – SENIOR ADVOCATE WITH MR AYUSH GUPTA
AND MR. MRINAL AGRAWAL - ADVOCATE)***

AND

- 1. UNION OF INDIA THROUGH ITS
SECRETARY, MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE) NORTH
BLOCK, NEW DELHI - 110002**
- 2. DIRECTOR GENERAL OF INVESTIGATION,
BHOPAL, INCOME TAX DEPARTMENT,
AAYKAR BHAWAN, HOSHANGABAD ROAD,
BHOPAL (MP) - 462004**
- 3. PRINCIPAL DIRECTOR OF INVESTIGATION,
BHOPAL, INCOME TAX DEPARTMENT,
AAYKAR BHAWAN, HOSHANGABAD ROAD,
BHOPAL (MP) – 462004**
- 4. ADDITIONAL COMMISSIONER OF INCOME
TAX (BENAMI PROHIBITION) BHOPAL,
INCOME TAX DEPARTMENT, AAYKAR**

- 2 -

**BHAWAN, HOSHANGABAD ROAD, BHOPAL
(MP)- 462004**

- 5. DEPUTY COMMISSIONER OF INCOME TAX
(BENAMI PROHIBITION), BHOPAL
(INITIATING OFFICER), INCOME TAX
DEPARTMENT, AAYKAR BHAWAN,
HOSHANGABAD ROAD, BHOPAL (MP) -
462004**

.....RESPONDENTS

***(MR. N. VENKATARAMAN – ADDITIONAL SOLICITOR GENERAL
WITH MR. SIDDHARTH SHARMA – SENIOR STANDING COUNSEL)***

WRIT PETITION No.5864 OF 2024

BETWEEN :-

**MOHAR SINGH S/O SHRI KHUSHILAL
SINGH, AGED ABOUT 57 YEARS,
OCCUPATION – BUSINESS, R/O HOUSE
NO.522, GAS RAHAT KENDRA, ANAND
NAGAR, RAISEN ROAD, BHOPAL (MP) -
462022**

.....PETITIONER

***(BY MR. SUMIT NEMA – SENIOR ADVOCATE WITH MR AYUSH GUPTA
AND MR. MRINAL AGRAWAL - ADVOCATE)***

AND

- 1. UNION OF INDIA THROUGH ITS
SECRETARY, MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE) NORTH
BLOCK, NEW DELHI - 110002**
- 2. DIRECTOR GENERAL OF INVESTIGATION,
BHOPAL, INCOME TAX DEPARTMENT,
AAYKAR BHAWAN, HOSHANGABAD ROAD,
BHOPAL (MP) - 462004**

- 3 -

3. **PRINCIPAL DIRECTOR OF INVESTIGATION,
BHOPAL, INCOME TAX DEPARTMENT,
AAYKAR BHAWAN, HOSHANGABAD ROAD,
BHOPAL (MP) – 462004**
4. **ADDITIONAL COMMISSIONER OF INCOME
TAX (BENAMI PROHIBITION) BHOPAL,
INCOME TAX DEPARTMENT, AAYKAR
BHAWAN, HOSHANGABAD ROAD, BHOPAL
(MP)- 462004**
5. **DEPUTY COMMISSIONER OF INCOME TAX
(BENAMI PROHIBITION), BHOPAL
(INITIATING OFFICER), INCOME TAX
DEPARTMENT, AAYKAR BHAWAN,
HOSHANGABAD ROAD, BHOPAL (MP) -
462004**

.....RESPONDENTS

*(MR. N. VENKATARAMAN – ADDITIONAL SOLICITOR GENERAL
WITH MR. SIDDHARTH SHARMA – SENIOR STANDING COUNSEL)*

.....

WRIT PETITION No.5882 OF 2024

BETWEEN :-

**GANGADEEN PATEL S/O SHRI DWARKA
PRASAD, OCCUPATION – BUSINESS, R/O 158,
SECTOR- B, SARVDHARAM COLONY,
BHOPAL (MP) - 462022**

.....PETITIONER

*(BY MR. SUMIT NEMA – SENIOR ADVOCATE WITH MR AYUSH GUPTA
AND MR. MRINAL AGRAWAL - ADVOCATE)*

AND

1. **UNION OF INDIA THROUGH ITS
SECRETARY, MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE) NORTH
BLOCK, NEW DELHI - 110002**
2. **DIRECTOR GENERAL OF INVESTIGATION,
BHOPAL, INCOME TAX DEPARTMENT,**

- 4 -

**AAYKAR BHAWAN, HOSHANGABAD ROAD,
BHOPAL (MP) - 462004**

- 3. PRINCIPAL DIRECTOR OF INVESTIGATION,
BHOPAL, INCOME TAX DEPARTMENT,
AAYKAR BHAWAN, HOSHANGABAD ROAD,
BHOPAL (MP) – 462004**
- 4. ADDITIONAL COMMISSIONER OF INCOME
TAX (BENAMI PROHIBITION) BHOPAL,
INCOME TAX DEPARTMENT, AAYKAR
BHAWAN, HOSHANGABAD ROAD, BHOPAL
(MP)- 462004**
- 5. DEPUTY COMMISSIONER OF INCOME TAX
(BENAMI PROHIBITION), BHOPAL
(INITIATING OFFICER), INCOME TAX
DEPARTMENT, AAYKAR BHAWAN,
HOSHANGABAD ROAD, BHOPAL (MP) -
462004**

.....RESPONDENTS

***(MR. N. VENKATARAMAN – ADDITIONAL SOLICITOR GENERAL
WITH MR. SIDDHARTH SHARMA – SENIOR STANDING COUNSEL)***

.....

WRIT PETITION No.5926 OF 2024

BETWEEN :-

**BANA SINGH S/O SHRI MADHAV SINGH,
AGED ABOUT 47 YEARS, OCCUPATION –
BUSINESS, R/O 88, PRESS COLONY, ANAND
NAGAR, BHOPAL (MP) - 462022**

.....PETITIONER

***(BY MR. SUMIT NEMA – SENIOR ADVOCATE WITH MR AYUSH GUPTA
AND MR. MRINAL AGRAWAL - ADVOCATE)***

AND

- 1. UNION OF INDIA THROUGH ITS
SECRETARY, MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE) NORTH
BLOCK, NEW DELHI - 110002**

- 5 -

2. **DIRECTOR GENERAL OF INVESTIGATION,
BHOPAL, INCOME TAX DEPARTMENT,
AAYKAR BHAWAN, HOSHANGABAD ROAD,
BHOPAL (MP) - 462004**
3. **PRINCIPAL DIRECTOR OF INVESTIGATION,
BHOPAL, INCOME TAX DEPARTMENT,
AAYKAR BHAWAN, HOSHANGABAD ROAD,
BHOPAL (MP) – 462004**
4. **ADDITIONAL COMMISSIONER OF INCOME
TAX (BENAMI PROHIBITION) BHOPAL,
INCOME TAX DEPARTMENT, AAYKAR
BHAWAN, HOSHANGABAD ROAD, BHOPAL
(MP)- 462004**
5. **DEPUTY COMMISSIONER OF INCOME TAX
(BENAMI PROHIBITION), BHOPAL
(INITIATING OFFICER), INCOME TAX
DEPARTMENT, AAYKAR BHAWAN,
HOSHANGABAD ROAD, BHOPAL (MP) -
462004**

.....RESPONDENTS

***(BY MR. N. VENKATARAMAN – ADDITIONAL SOLICITOR GENERAL
WITH MR. SIDDHARTH SHARMA – SENIOR STANDING COUNSEL)***

*These writ petitions coming on for admission this day,
JUSTICE SUJOY PAUL passed the following :*

ORDER

Regard being had to be similitude of the question involved,
on the joint request, matters were heard analogously on
admission and decided by this common order.

2. The facts are taken from W.P.No.5861 of 2024.

- 6 -

3. In this petition filed under Article 226 of the Constitution, the petitioner has called in question (i) show cause notice dated 05/01/2024 (Annexure P/1) issued under Section 24(1) of **the Prohibition of Benami Property Transactions Act, 1988** (hereinafter referred as '**Act of 1988**') and (ii) Provisional Attachment Order (P.A.O.) dated 05/01/2024 (Annexure P/2) issued under Section 24(3) of Act of 1988.

4. Shri Sumit Nema, learned Senior Advocate for the petitioners submits that the show cause notice (Annexure P/1) and provisional attachment order (Annexure P/2) are called in question mainly on the ground that the alleged benami transaction has taken place prior to 01/11/2016, the date when Act of 1988 stood amended. In view of recent judgment of Supreme Court in **Union of India & another vs. M/s Ganpati Dealcom Private Limited (2023) 3 SCC 315**, show cause notice and provisional attachment order is bad in law. Section 5 of Act of 1988 is declared as unconstitutional by the Supreme Court in **Ganpati Dealcom Private Limited (supra)** and therefore, petitioners may not be relegated to avail the in house remedy under the Act of 1988. Heavy reliance is placed on para 127.2 and 127.4 of the judgment of Supreme Court in **Ganpati Dealcom Private Limited (Supra)**.

5. The next submission of learned Senior Counsel for the petitioners is that after delivery of the judgment of Supreme Court in **Ganpati Dealcom Private Limited (supra)**, the Appellate Tribunal for the SAFEMA at New Delhi in M.P.-PBPT-

- 7 -

2092/MUM/2022 (Mis.) **M/s. Prism Scan Express Pvt. Ltd. Vs. Initiating Officer** and other connected matters decided on 15.12.2023 opined that the word ‘held’ used in Section 2(9)(A) of Amending Act 2016 has a definite meaning and purpose. The *first* part of Section 2(9)(A) deals with transfer of the property to a person of which consideration was paid or provided by another person. The *Second* part has been separated from the *first* part by putting the word ‘or’ in between. Under this second part of definition, *if the property is held* by a person whose consideration has been provided or paid by another person, then also it would be a *benami transaction*. It is strenuously contended that the Appellate Tribunal came to hold that despite the judgment of Supreme Court in **Ganpati Dealcom Private Limited (supra)**, the action is permissible if property is held after Amending Act came into being. In this view of the matter, if the petitioners are relegated to avail the in house remedy under the Act of 1988, it will be a futile exercise taking into account the view already taken by the Appellate Tribunal in **M/s. Prism Scan Express Pvt. Ltd. (supra)**.

6. Furthermore, it is argued that High Court of Madras in **(2023) 157 Taxmann. Com 307 (Deputy Commissioner of Income-tax (Benami Prohibition) Vs. Advance Infra Developers (P.) Ltd.** already held that in the light of judgment of Supreme Court in **Ganpati Dealcom Private Limited (supra)**, there exists no reason for interference with the order of Appellate Tribunal, which held that proceeding initiated before amendment were not legally sustainable.

- 8 -

7. Lastly, it was pointed out that High Court for the State of Telangana, Hyderabad has taken similar view in **W.P. No.14695 of 2021** and connected matters (**Nexus Feeds Ltd. and others Vs. Assistant Commissioner of Income Tax**). The Revenue filed SLP, which was not entertained by the Apex Court by holding that review of judgment of **Ganpati Dealcom Private Limited (supra)** is pending. Liberty was reserved to approach the Apex Court again by filing a fresh petition in case review petition (s) is allowed. On the strength of aforesaid, Shri Nema, learned Senior Counsel submits that as on date the binding judgment of **Ganpati Dealcom Private Limited (supra)** covers the field and it was no more open to the respondents to issue the impugned show cause notice and P.A.O.

8. Sounding a *contra* note, Shri N. Venkatraman, learned ASG assisted by Shri Sidharth Sharma, learned counsel urged that the first document called in question is a show cause notice. This is trite that a show cause notice can be questioned only when there exist a jurisdictional error or error of competence. The show cause notice is pregnant with various facts and is running in more than hundred pages. The petitioners should either admit all the facts and then argue the question of law or should avail the in-house remedy. Both the remedies are not simultaneously available to the petitioners.

9. Interestingly, learned Senior Counsel for the petitioners and learned ASG both have placed reliance on certain paragraphs of judgment of Supreme Court in **Ganpati Dealcom Private**

Limited (supra). Learned ASG strenuously contended that in **Ganpati Dealcom Private Limited (supra)**, the Apex Court has interfered only to the extent a punitive action was sought to be taken with retrospective effect. By placing reliance on the definitions of ‘Benami property’, ‘Benami transaction’, ‘Benamidar’ and ‘Beneficial owner’, learned counsel for the respondents urged that if ‘Benami property’ is held by a person after the amendment came into being, it will be certainly within the competence of authorities to proceed against the property. The definition of ‘property’ is wide enough to include ‘shares’ which is the subject matter of adjudication in the instant cases. In nutshell, it is urged that no case is made out by petitioners for interference against the show cause notice and against the Provisional Attachment Order (PAO).

10. In the rejoinder submissions, Shri Sumit Nema, learned Senior Counsel fairly submitted that definition of ‘property’ in the Act of 1988 is wide enough to include ‘shares’. As noticed above, his bone of contention is that the case of the petitioners is squarely covered by the judgment of Supreme Court in **Ganpati Dealcom Private Limited (supra)** and in the teeth of order of Appellate Tribunal in the case of **M/s. Prism Scan Express Pvt. Ltd. (supra)**, the petitioners may not be relegated to avail remedy under the Act of 1988.

11. We have heard the parties at length and perused the relevant record.

- 10 -

12. The document dated 05.01.2024 is merely a show cause notice. The scope of interference by this Court at this stage as rightly pointed out by learned ASG is limited against the show cause notice. The Apex Court in the case of **Special Director & Another Vs. Mohd. Gulam Ghouse & Another** reported in (2004) 3 SCC 440 has held as under :

“Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court.”

(Emphasis Supplied)

13. A similar question cropped up before this Court in WP Nos. 3957/2019 and 3963/2019 decided on 17.12.2019. The show cause notice and PAO issued under the Act of 1988 were called in question in the said petition by contending that properties mentioned in the show cause notice shows that the same were purchased before amendment had taken place in the said Act in the year 2016. Thus, the amended provisions cannot be made applicable with retrospective effect. This Court did not interfere in the show cause notice in the light of judgment of Supreme Court in **Mohd. Gulam Ghouse (supra)**. This Court considered the

scheme ingrained in Section 24 and 26 of the Act of 1988. The Division Bench considered the order passed in **WP No. 10280/2017 (Kailash Assudani Vs. Commissioner of Income Tax and Ors.)** wherein the Writ Court declined interference against the PAO.

14. The relevant portion of order in **Kailash Assudani (supra)** where scheme of the Act of 1988 was considered reads thus :

“The order dated 29.06.2017 is a provisional attachment order under Section 24(4) of the PBPT Act, 1988. The order itself shows that it is issued with the prior approval of approving authority, but will remain subject to passing of necessary order by the adjudicating authority. Section 24(3) of the PBPT Act makes it clear that the order of attachment would be a provisional order. As per Sub-section (5) of Section 24 of the Act, the Initiating Officer after passing the provisional attachment of property is obliged to draw up the statement of the case and refer it to the adjudicating authority. On receipt of reference under Sub-section (5) of Section 24, the adjudicating authority shall issue notice to the stake holders as provided under Sub-section (1) of Section 26 of the Act. Section 26 (3) makes it clear that the adjudicating authority will examine the entire issue and relevant material. Sub-section (3) of Section 26 reads as under:

“(3) The **Adjudicating Authority** shall, after—

- (a) considering the reply, if any, to the notice issued under sub-section (1);
- (b) making or causing to be made such inquiries and calling for such reports or evidence as it deems fit; and
- (c) taking into account all relevant materials, provide an opportunity of being heard to the person specified as a benamidar therein, the Initiating Officer, and any other person who claims to be the owner of the property, and, thereafter, pass an order—

- 12 -

- (i) holding the property not to be a benami property and revoking the attachment order; or
- (ii) holding the property to be a benami property and confirming the attachment order, in all other cases.”

A plain reading of Sub-section (3) makes it clear that the adjudicating authority is obliged to examine the stand of alleged Benamindar in reply to the show cause notice. He is further obliged to make further inquiry or take into account further report or evidence which he deems fit for deciding the question. He can take into account all relevant documents. After providing due opportunity of hearing to alleged Benamindar, he may pass the order to declare the property as Benami Property and confirm the attachment order or he may hold that the property cannot be treated as Benami Property. In that case, he may revoke the attachment order. Pertinently, as per Sub-section (6) of Section 26, the adjudicating authority may at any stage of proceeding, either on the application of any party or suo-moto strike out the name of any property 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.

In my view, the principles of natural justice are codified in terms of Sub-section (6) of Section 26 of the Act. The impugned order is subject to judicial review before the adjudicating authority. The order passed by the adjudicating authority can be assailed before the appellate tribunal constituted under Section 31 of the Act. The order of appellate tribunal can also be called in question by preferring appeal to the High Court within a period of 60 days. A microscopic reading of provisions make it clear that principles of natural justice are reduced in writing in the shape of amendment in the said act. The amended provisions contains a complete code in itself.

7. In this back drop, it is to be seen whether at this stage any interference is warranted by this Court. In C.B. Gautam (Supra) the order of compulsory

- 13 -

purchase under Section 269-UD(1) of Income Tax Act was served on the petitioner without issuing any show cause notice and without giving any opportunity to him. The Apex Court in the aforesaid factual back drop interfered in the matter. In the said case, neither show cause notice was given nor reasons were assigned in the impugned compulsory purchase order. In the present case show cause notice has been issued, opportunity has been given to the petitioner. The order impugned is provisional/tentative in nature. It is subject to judicial review by adjudicating authority. If order of adjudicating authority goes against the petitioner, the further forums of judicial review of said order is available to the petitioner before the appellate tribunal and then before this Court. Hence, against the tentative/provisional order, no interference is warranted by this court at this stage. As per the scheme of the Act, the petitioner can raise all possible grounds before the adjudicating authority. The adjudicating authority is best suited and statutorily obliged to consider all relevant aspects. Thus, at this stage no case is made out for interference. Moreso, when adjudicating authority has already fixed the hearing on 23.08.2017. Resultantly, the petition is dismissed.”

(Emphasis Supplied)

15. The said order got a stamp of approval by Division Bench in WA No. 704/2017 decided on 16.08.2017. The Division Bench in WA No. 704/2017 opined as under:

“We do not find any merit in the present appeal. It is the Adjudicating Authority who is to decide the question of Benami nature of the property. The proceedings under Section 24 of the Act contemplates the issuance of show cause notice as to why the property specified in the notice should not be treated as Benami property. However, the substantive order of treating the property as Benami is required to be passed by Adjudicating Authority under Section 26 of the Act only.

- 14 -

Therefore, the appellant is at liberty to take all such plea of law and facts as may be available to the appellant before the Adjudicating Authority. The Adjudicating Authority shall decide the Benami nature of the property in accordance with law.”

(Emphasis Supplied)

16. The ‘provisional assessment order’ as name suggests, is ‘provisional’ in nature . The ‘adjudicating authority’ is best suited to decide the question of Benami nature of the property. We find substance in the argument of learned ASG that show cause notice is a detailed notice running in several pages containing several factual basis and it is within the province of ‘adjudicating authority’ to decide whether property is ‘Benami’ in nature and whether petitioners are liable for any action under the Act of 1988. The Division Bench in WP No. 7957/2019 declined interference against show cause notice and PAO and permitted the petitioner to raise all relevant aspects before adjudicating authority under Section 26 of the Act of 1988. We deem it proper to follow the same course. The petitioners can avail the remedies under the Act of 1988 and take all possible factual and legal grounds before the ‘adjudicating authority’. Needless to mention that judgment of High Court of Madras in **Advance Infra Developers (P) Ltd. (supra)** and other judgments can be relied upon by the petitioners before the ‘adjudicating and appellate authority’ (if required) to impress upon it to take a different view than the view taken by Appellate Authority in **M/s. Prism Scan(supra)**. We have no doubt that if relevant grounds are taken and judgments are cited, the said authorities will consider and decide the matter on its own merits in accordance with law.

- 15 -

17. We find no reason to entertain these petitions despite availability of statutory alternative remedies. The petitioners may avail the said remedy. It is made clear that this Court has not expressed any opinion on the merits of the case. Admission is declined.

18. Petitions are **disposed off**.

(SUJOY PAUL)
JUDGE

(VIVEK JAIN)
JUDGE