APPELLATE TRIBUNAL FOR SAFEMA, FEMA, PMLA, NDPS, PBPT Act AT NEW DELHI

Date of Decision: 26.03.2019

MP-PBPT-163/MUM/2019(Stay)
FPA-PBPT-206/MUM/2018

Shri Akashdeep Initiating Officer and Dy. Commissioner of Income Tax (Benami Prohibition) Unit-2 Mumbai	...	Appellant
Versus		
M/s. Manpreet Estates LLP Mumbai	...	Respondent No. 1
M/s. RKW Developers Pvt. Ltd. Mumbai	...	Respondent No. 2

Advocates/Authorized Representatives who appeared

For the Appellant	:	Shri Manpreet Singh Arora, Advocate Shri Rahul Sinha, I.O.
For the Respondents	:	Shri Ashwani Taneja, Advocate Shri Rahul Rai, Advocate

CORAM
JUSTICE MANMOHAN SINGH : CHAIRMAN

JUDGEMENT
FPA/PBPT/206/2018/MUM

1. The Appellanthas filed an appeal against impugned order dated 24.10.2018 passed under Section 26(3) of the PBPT Act arising out of Reference No. 198/17 filed by the Initiating Office upon informationreceived from Investigation Directorate, Mumbai as the I.O, Mumbai, BPU-2, on the basis of information received from Investigating Directorate, Mumbai proceeded with reference whereby it was contended

that therespondent no.1 is benamidar as actual benefits from the immovable property held by it accrued or would accrue to the respondent no. 2.

2. As per the case of appellant, Manpreet Estates LLP is the Benamidar and RKW Developers Private Limited is the beneficial owner.

3. The brief facts are that the respondent No 1 purchased ten residential flats at New Urmila CHS Limited, 19th Road Khar West, Mumbai for total consideration of Rs. 95.25 Crores. All of these ten flats are part of one single building i.e. Urmila CHS Ltd. which was constructed on land admeasuring 608.64 Sq. Mtrs. and 656.11 Sq. Mtrs. and situated at plot of land bearing C.T.S. No. D/900/A/3 Survey No. 637/638 of Suburban Scheme VII (Khar), Khar (West), Mumbai. The said properties have been purchased by the respondent no. 1 from ten persons on 17.01.2017 consisting of 5 individuals and 5 companies.

4. It is alleged by the appellant that these 5 individuals and the Directors of these 5 companies are dummy directors of these companies and dummy owner of the properties. The individuals and directors of these companies are employees of the respondent no. 2. They were not aware of any details, transactions or day to day functioning of the companies, though they are the directors of the said companies, which were handled by Mr. SachinPathak and Mr.Hemant Bhatia, who are in turn the accountants of M/s RKW Developers Private Limited and related concern. Both Mr. SachinPathak and Mr. Hemant Bhatia are employees of Wadhawan Group and are managing and controlling these companies on

the instruction of Mr. HitenSakhuja, a relative of the promoters and directors of the Wadhawan Group companies.

5. It is admitted on behalf of the appellant that the entire transaction of purchase of properties by the respondent no.1 from the aforementioned ten parties has been funded by M/s Dewan Housing Finance Limited (DHFL). The respondent no. 2 and DHFL are related to each other by means of common promoters and directors and also have common office addresses. The properties were purchased/registered by the respondent no. 1 on 17.01.2017 and whereas the loan was sanctioned to it by DHFL on 18.01.2017. The funds received by the ten parties as consideration for sale of the properties were immediately transferred directly or through intermediates to different concerns which were controlled and managed either directly by respondent no. 2 or through its related entities.

6. It is argued that though the reference forwarded by DDIT(Inv.)-8(1), Mumbai stated 10 original owners, who sold the properties to respondent no. 1, as benamidar&respondent no. 2 as beneficial owner, the IO is not bound by the reference and has to form his own belief under PBPT Act' 1988. It is submitted that on the basis of the information and material available the I.O. formed a reason to believe that the respondent no.1 is benamidar as actual benefits from the property accrued or would accrue to the respondent no. 2 only and accordingly recorded reasons before the issue of notice u/s 24(1) of the PBPT Act, 1988.

7. It is stated on behalf of the appellant that the respondent no. 1 has been purchased from the erstwhile partners of partnership firm on 13.12.2016 i.e. only about a month before the purchase of the properties and taken over by Shri RajenDhruv and Shri Kishore Parekh as partners. It

is alleged that Benamidar had no major assets or business. It is stated that though DHFL is listed having 60% of public holding, the key factor remains that day to day management is under the control of the members of the Wadhwan family, who are the main persons in decision making and also are involved in the management of the respondent no. 2 and the other group companies. The respondent no. 2 was involved in the scheme of purchase of flats by the respondent no 1 for redevelopment since beginning as evident from the fact that even the fees for filing forms with RoC with respect to change in the partnership agreement and the appointment of present partners in the respondent no. 1 was paid by the respondent no. 2. Mere approvals in the name of benamidar do not prove in any way that the benefits from the property are actually enjoyed by it and not by the beneficial owner as there is an active financial relationship between the respondents as evident from the bank statement as even after availing loan from DHFL, the respondent no. 1 received huge amounts of money from respondent no. 2 which it used for the development of property, thereby establishing that the respondent no. 2 is directly involved in the development of project in order to derive future benefits arising out of the same. The person providing the consideration i.e. DHFL and person reaping the benefits of such transaction i.e. respondent no. 2 are same as they are linked to each by means of common directors and promoters

8. It is submitted on behalf of appellant that the benefits to the beneficial owner arising out of property held in the name of the benamidar need not be direct and immediate and that indirect and future benefits are also covered under the definition of a benami transactions under section 2(9)(A) of the PBPT Act, 1988, therefore, the Adjudicating Authority thus erred in setting aside on merits the order u/s 24(4) of the PBPT Act' 1988

passed by the IO holding respondent no 1 as the benamidar and respondent no 2 as beneficial owner. There being a statutory power vested with the adjudicating Authority by virtue of Section 11 PBPT Act, the strict rules of evidence may not apply, whilst the Authority needs to weigh and shift the material placed before it with preponderance of probabilities coupled with circumstances, motives (if any) and object of undertaking a benami transaction.

9. It is alleged that the burden of proving, that a particular property is Benami or a person is Benamidar/beneficial owner/interested party, is upon the Initiating Officer alleging the same and such burden has to be strictly discharged based on legal evidence. Hon'ble Supreme Court and High Courts have consistently held that the burden of proving that a particular property is Benami and apparent purchaser is not the real owner always rests on the person who asserts it to be so. The reliance has been placed on ***JaydayalPoddarVs. BibiHazra AIR, 1974 SC 171***and ***Bhim Singh &Anr. Vs. Kan Singh 1980 AIR 727, 1980 SCR(2) 628*** and***Binapani Paul Vs. PratimaGhosh&Ors. on 27th April, 2007 Appeal (Civil)8098 of 2004.***

10. But, the above mentioned case laws have been laid in relating to Benami Property are prior to the enactment of the Prohibition of Benami Property Transactions Act, 1988, as amended by Act No. 43 of 2016. The saidcase laws have been decided in civil matters in respect of the title owner and the real owner of the property prior to amendment.

11. The subject matter of the reference was the transaction for the purchase of piece and parcel of land, admeasuring 608.64 sq. mts. and 656.11 sq. mts. bearing CTS No. D/900/A/3 and Survey No. 637/638 of Suburban Scheme VII, Khar West, Mumbai (hereinafter referred to as the "said Property").

12. The brief facts as per respondent no. 1 (for short R-1) are as under:-

a) Mr. Rajen Dhruv is one of the partners of **R-1** and is also the promoter of Midcity Group which is known for its quality of construction and completing projects within timelines. Mr. Dhruv is the CEO and MD of Midcity Group and controls key departments viz. legal, corporate planning, land acquisition, construction, marketing and finance, etc. Mr. Dhruv looks after the finance of the Midcity Group as he is well acquainted with various financial institutions, including Altico Capital India Private Limited, India Bulls Housing Finance Limited, India Infoline Finance Limited, Punjab National Bank, Union Bank of India, Kotak Mahindra Bank, Punjab & Maharashtra Co-operative Bank Ltd. and DHFL, as he has in the past raised funds from them for his other projects, in the ordinary course of business.

b) The Midcity Group has over two decades of experience in the Real Estate and Infrastructure space. Midcity Group has completed around 28 projects till date in the City of Mumbai Suburban. Presently there are numerous other ongoing projects with saleable area admeasuring approximately 1.5 million sq. ft.

c) In or about October 2016, Mr. Dhruv came to know about a property situated at Khar (West) which was available for re-development. Finding the property ideal and feasible, Mr. Dhruv

decided to purchase the flats and initiate re-development on the said Property.

d) At the relevant time, all the other entities in which Mr. Rajen Dhruv was either a partner/director were the entities/partnership forming part of the Midcity Group and were engaged in redevelopment of various other projects. Therefore, Mr. Dhruv thought that a separate entity, in which Mr. Dhruv and his relative Mr. Kishore Parekh would be partners, would be a suitable entity to undertake development of the said Property after purchasing the same. Mr. Kishore Parekh agreed to the aforesaid arrangement.

e) Mr. Dhruv had raised funds from DHFL for his other projects also and in November 2016, Mr. Dhruv once again approached DHFL for the purpose of raising funds in order to redevelop the said Property. Since Mr. Dhruv was looking after the finance of the Midcity Group, he approached and negotiated with DHFL for the purpose of raising funds for the said Property. Meetings were held with the representatives of DHFL when the documents/deeds with respect to the said Property and the flats were handed over to them and it was agreed that the loan will have to be secured by creating a charge.

f) In the meanwhile, Mr. Dhruv through his common friend met Ms. Tabassum Wajeda Mohammed Abid and Mr. Haroon Rasheed who are the erstwhile partners of **R-1 i.e. Manpreet Estates LLP**, when he became aware that the **R-1** was in the business of properties, real estates, developing building, act as contractors, etc. upon discussing the matter with the erstwhile partners, Mr. Dhruv realized that they were desirous of dissolving the **R-1** as they could

not carry on the business for which **R-1** had been incorporated. Further, **R-1** also did not have any other assets /liabilities of its own. Since Mr. Dhruv intended to acquire the said Property in a new entity, he was of the view that it would be appropriate to acquire the same in **R-1** as its objects met with his requirements. Mr. Dhruv also discussed the modalities of taking over **R-1** with a view to acquire the project of redevelopment in the firm. Discussions and negotiations were held with the erstwhile partners and pursuant thereto on 16th December 2016, an agreement was entered wherein Mr. Rajen Dhruv and Mr. Kishor Parekh were inducted as partners of **R-1** with effect from 12th December 2016 and the erstwhile partners retired from **R-1**.

g) The understanding arrived at between the parties was that **R-1** shall raise money from banks/financial institution for payment of consideration. In order to safeguard the interest of the flat owners, it was also agreed that the physical possession of the flats would be taken only once the cheques are encashed.

h) During the said period, **R-1** was also in process of complying with the requirements of DHFL with respect to raising a loan and creation of mortgage. It was only after the requisite compliances were followed by **R-1** that on 4th January 2017, DHFL issued its in-principle approval to the loan. It was only on the basis of the in-principle approval that **R-1** proceeded to execute and register the agreements with various flat owners in the building on 13th January 2017 and registered the same on 17th January 2017. All the vendors were paid valuable consideration and requisite stamp duty was also paid on all the agreements. The total consideration paid by **R-1** to all the flat owners and the owner of the land is

approximately about Rs. 111,32,00,000/- (Rupees One Hundred and Eleven Crores Thirty Two Lakhs Only) and the **total amount paid towards stamp duty by R-1 was approximately about Rs. 5,56,60,500/- (Rupees Five Crores Fifty Six Lakhs Sixty Thousand and Five Hundred Only**).

i) That accordingly, on 19th January 2017, a mortgage deed (appended in the along with reply filed before the authority) was executed and registered by and between this **R-1** (therein referred to as the Mortgagor) and DHFL (therein referred to as the Mortgagee) on the terms and conditions stated therein.

j) Subsequent to the registration of the documents, **R-1** took following steps towards redevelopment of the said Property:

i) On 6th February 2017, **R-1** through its Architect filed an application with the Chief Executive Officer, Slum Rehabilitation Authority and submitted a proposal under regulation 33(14) for acceptance **(Appended in the reply filed before the Adjudicating Authority)**.

ii) On 7th April 2017, the Chief Executive Officer, Slum Rehabilitation Authority accepted the proposal for S. R. Scheme submitted by **R-1** under Regulation 33(14) (D) read with (E) and (F) subject to certain conditions. **(Appended in the reply filed before the Adjudicating Authority).**

iii) On 12th December 2017, Slum Rehabilitation Authority accepted the proposal of clubbing and issued an in principle approval to the scheme in the form of a Letter of Intent.

iv. Further, since the project had already received IOD and CC, **R-1** demolished the building and started shore piling work.

k) Since **R-1** hadcompleted the transactions in a bona-fide manner, it was shocked to receive a show cause notice dated 14th July 2017 under section 24(1) of the Prohibition of Benami Property

Transactions Act, 1988 **(the said Act)**. On the same date, an order was passed by the Dy. Commissioner of Income Tax thereby levying provisional attachment on the said Property. **R-1** states that vide its letter dated 8th August 2017, **R-1** submitted a detailed reply to the show cause notice and the provisional attachment order. Relevant contents of the reply were reproduced in the order of the Adjudicating Authority and is at **Pg. 22-32 of the impugned order (Appeal Set's Pg. No. 33-43)**.

l) **R-1** states that despite of the aforesaid clear and equivocal facts of the case, the IO in total disregard to the reply given by **R-1** and without furnishing any valid justification whatsoever, passed an order dated 9th October 2017 continuing the provisional attachment.

m) The IO subsequently also filed in the Adjudicating Authority Reference No. 198/2017 seeking therein the confirmation of its attachment order. **R-1** was arrayed as benamidar in the said reference.

n) Consequent to the filing of the above reference, Ld. Adjudicating Authority in **a detailed and comprehensive order dated 24.10.2018,** did not confirm the Provisional Attachment Order as passed by the IO, finding the pleadings and grounds taken by **R-1** to be true, valid and genuine.

13. Admittedly, the Adjudicating Authority inter-alia on various reasons disallowed the reference filed by the IO by passing the speak detailed order on the following:-

i) SCN is not sustainable since no explanation given by IO for changing the character of original reference and hence order u/s 24(3) & 24(4) are also invalid and illegal.

ii) No explanation was given as to why the Provisional Attachment Order u/s 24(4)(a)(i) was not served to the R-2.

iii) The IO has miserably failed to discharge the burden of proof cast upon him to prove the transaction as benami.

iv) Genuine and Bona-fide transaction carried out by R-1 and Failure of the IO to establish connection between DHFL and RKW Developer Pvt. Ltd. (R-2).

v) Transaction not carried out in stages as alleged as the R-1 has able proved that the land was purchased by it through genuine sources and for re-development.

vi) The possession, control and enjoyment of the property is totally in the hands of the R-1 and therefore no proof that the property is held for the benefit of R-2 and thus crucial mandatory test to treat the property as benami failed.

vii) Admission of IO that the funds were not given by the R-2 to R-1 for the purchase of property.

14. The counsel appearing on behalf of **R-1**submits that R-1 is the true and sole owner of the said Property and all the benefits arising out of the said land accrues to **R-1** only and as such no other person is beneficial owner of the said property as is being erroneously projected by the appellant (the IO). The transaction of the purchase of the 10 flats is a

genuine and bona-fide transaction for which consideration was paid by **R-1**.

15. There is no denial that the consideration for all the eleven (11) flats was partly funded out of the loan proceeds as secured from DHFL. TheIO has accepted the genuineness of transaction involving the Flat No. 5 purchased by **R-1** for valid consideration, from its joint owners Sh. ManojDhirajlal Shah, Mrs. Rajul D. Shah and Sh. Manoj D Shah. The said flat was also brought on the same date as the other ten (10) flats i.e. 13.01.2017. In fact, the IO had questioned the validity of alleged as benami ten (10) flats, meaning thereby IO admitted and accepted that the purchase of the above-said flat is not a benami transaction, but remaining 10 flats are of benami transaction.

16. **R-1** is a registered LLP whose designated partner Mr. Rajen Dhruv is a promoter of Midcity group. **R-1** is also a part of Midcity group. It has come on record that the Mid-city group has completed many real-estate projects in the past and is in course of developing other projects also. A statement of projects under-taken by mid-city group including the **R-1** is filed and a brief profile of Mid-city group is annexed.

17. It is not denied by the appellant that the Mid-city group has taken loan facilities for its other real-estate projects from DHFL in the past and as recently as November 2016 had availed mortgage loan of Rs. 200,00,00,000/- **(Two Hundred Crores)** for one of its group entity namely Orbit Ventures Developers, which is developing project '**Shikar I-II**'. Therefore for business convenience and prudence, Mr. Rajen Dhruv again approached DHFL and got sanctioned a project loan of Rs. 180,00,00,000/-

(One Hundred and Eight Crores) for **R-1**. In the letter dated 06.04.2018, the lender i.e. DHFL had addressed to the IO that ***"the loan to Manpreet Estates LLP (a Midcity group concern) was sanctioned in the normal course of our business for acquisition of project and redevelopment thereof. The subject loan is not the only project loan sanctioned to that group. Earlier also some projects of that group were financed by us"***The said Letter was reproduced in the order of the Adjudicating Authority. Therefore, it is wrongful for the appellant to state that **R-1** did not had the financial capacity to avail loan from DHFL or it has a control over to the financial institution.

18. The appellant has disputed the veracity of the loan agreement as executed between **R-1** and DHFL, and has claimed that **R-2** is exercising control over DHFL. DHFL i.e. Dewan Housing Financial Corporation Ltd. is a listed public company having substantial public holding. Therefore, submission of the appellant cannot be accepted to the effect that it is in control of a public listed company as the loan extended to the R-1 by DHFL was done on '**arm's length basis**'. The relevant disclosures for the payment of interest have been made in the Income Tax Return filed for the Assessment Year 2018-19.

19. It is not denied on behalf of the appellant that the designated partners of **R-1 i.e.** Mr. Rajen Dhruv and Mr. Kishore Parekh had given 'Irrevocable Personal Guarantee' and therefore stood as guarantors for the loan taken by **R-1.** The sanction letter dated 18.01.2017, from DHFL containing therein names of Mr. Rajen Dhruv and Mr. Kishore Parekh as personal guarantors for the loan sanctioned to **R-1.** In the letter dated

06.04.2018 of DHFL, a copy was also served to the **R-1**, requesting **R-1** to arrange alternative property as **collateral security.**

20. It is admitted by the IO himself that consideration was paid by **R-1** to the 10 (ten) erstwhile owners, and it has been contended that the sale consideration is finally parked with **R-2** and related concerns. The IO has passed order of attachment u/s 24(4)(a)(i), claiming therein that the transaction entered into by **R-1** is covered within the meaning of section 2(9)(A) of the PBPT Act. For a transaction to be covered under section 2(9)(A) of PBPT Act, there must be following two conditions are met:

i) Consideration for property has been provided or paid by another person; and

ii) Property is held for immediate or future benefit, direct or indirect, of the person who has provided the consideration.

In view of facts involved in the present case, it cannot be accepted that the R-2 is the beneficial owner,therefore, in the absence of beneficial owner allegation of transaction being benami u/s 2(9)(A) cannot be sustained and were rightly rejected by the Adjudicating Authority.

21. Even the attachment order u/s 24(3) of PBPT Act, has been passed without following the procedure as laid down in the Rule 5 of the PBPT Rules, 2016 which deals with provisions relating to provisional attachment, which read as under:-

> "***5. Provisional attachment*** *– For the purpose of sub-section (3) of section 24, the Initiating Officer shall provisionally attach any property in the manner provided in the Second Schedule of Income-tax Act, 1961 (43 of 61)*"

In this case the referred property being immovable, Part-III of Second Schedule of Income-Tax Act, 1961, containing rules dealing with attachment and sale of immovable property are applicable and for ready reference the rules are reproduced below:-

"***Attachment***

48. Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

Service of notice of attachment*:*

49. A copy of the order of attachment shall be served on the defaulter.

Proclamation of attachment

50. The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer.

22. Under these mandatory provisions, the IO was duly bound to follow the statutory procedure mandated in above rules. Though order of attachment was passed and served on the **R-1**, the requirement of proclamation of attachment order at some place on or adjacent to the property attached by beat of drum or other customary mode and affixture of copy thereof on a conspicuous part of the property and on the notice board of the office of the Initiating Officer was not done.Certificate of confirmation of affixture of the order on the notice board of the Initiating Officer is also not found enclosed with the reference confirming that said mandatory step was taken at the relevant point of time. Thus, the rules were not followed.

a) The Hon'ble Supreme Court in the case of ***Ronald Wood Mathams v. State of West Bengal (AIR 1954 SC 455)*** observed "*But it is essential that rules of procedure designed to ensure justice should be scrupulously followed, and Courts should be jealous in seeing that there is no breach of them*".

b) On the decision of Hon'ble Punjab & Haryana High Court in the case of ***Pal Singh Santa Singh v. The State(AIR 1955 Punjab 18)***, in the matters of proclamation u/s 87 of Criminal Procedure Code, where the Hon'ble High Court has held that attachment without publication is invalid if publication of attachment was required under rules but not made.

23. Thus, the provisional attachment order passed u/s 24(3) as well as order directing its continuation passed u/s 24(4)(a) of the Act wascontrary to the rules.

24. In the present case, the beneficial interest in the property is with **R-1.** The Adjudicating Authority has correctly observed that there is nothing to show that the property in question is held by **R-1** for the benefit of R-2.

25. The sale deeds for all the 10 flats has not been challenged by the IO. The erstwhile sellers had entered/executed the sale deed with **R-1**, representing themselves to be the true owners. As per the mandate of Section 91 and Section 92 of the Indian Evidence Act, 1872, If a transfer has been done of an immovable property vide a written documentary evidences in the form of a registered sale deed. The contradictory stand by

way of oral evidence is not available unless the party concerned challenging the written documents are able to prove that those are sham documents and executed between the parties contrary to law.

26. It is correct that after amendment, the onus of proving a benami transaction rests entirely on the shoulders of the respondents. Before amendment, the burden of proof was on the prosecution to prove the guilt of the Benamidar and beneficial owner. Once both are able to discharge their burden of proof as per amended law, then the burden of proof would be shifted to the prosecution. In the present case, the respondents were able to discharge their initial burden of proof by producing the sale deeds and document pertaining to the loan amount and respondent no. 1 was also the promoter of respondent no. 2, no even prima contrary evidence is proved by the appellant. Thus, in the facts of present case and documentary evidence proved, the onus of proving a benami transaction rests entirely on the shoulders of the IO who is making the charge. The burden of proof shall shift to the person who is taking contrary of within the meaning of section 91 and 92 of the Evidences Act, 1972.

27. The authority has also concurred with the submission of R-1 that the IO has miserably failed to discharge such burden of proof. Section 92 of Indian Evidence Act,1872 talks about the exclusion of evidence of oral agreement. Once the primary evidence is proved by way of written document which is not challenged, no evidence of an oral agreement or statement shall be admitted, the burden shall be shifted to the party who pleaded oral agreement. After the amendment in the Benami Act, if apply as it is, the burden of proof was shifted upon the appellant. In the present case, the IO has failed to discharge such burden and he has merely based

on his personal perception with uncorroborated statements had passed the order without even a single iota of evidence to discharge such a burden of proof once the R-1 was able to prove that his transaction was bona fide for beyond reasonable doubt.

28. Once the burden is shifted upon the IO,the principles of general law available prior to amendment would apply. The following judgements are referred on behalf of respondent no. 1 and 2:-

a) **Valiammal V. Subramaniam,**
AIR 2004 SC 4187

"*Circumstances which can be taken as a guide to determine the nature of transaction:-*

After saying so, this Court spelt out following six circumstances which can be taken as a guide to determine the nature of the transaction:

1. the source from which the purchase money came;

2. the nature and possession of the property, after the purchase;

3. motive, if any, for giving the transaction a benami colour;

4. the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;

5. the custody of the title deeds after the sale; and

6. the conduct of the parties concerned in dealing with the property after the sale."

The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another."

b) **Smt. Usha Bhar vs Sanat Kumar Bhar**

2004 135 Taxman 526 Cal

"*In order to ascertain whether a particular sale is benami and apparent purchaser is not the real owner, the burden lies on the person asserting to prove so, such burden has to be strictly discharged based on legal evidence of definite nature."*

"it is the intention of the parties which is to be ascertained, very often such intention is shrouded in a thick veil. It is not possible to pierce the veil easily. However, such difficulties would not relieve the person who asserts that the transaction is benami, of any part of onus that rests on him. The difficulty would not justify the acceptance of mere conjecture or surmise as a substitute of proof."

c) Bhim Singh V. Kan Singh AIR 1980 SC 727

"The principle governing the determination of the question whether transfer is a benami transaction or not may be summed up thus:

(1) The burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction;

(2) If it provided that the purchase money came from a person other than the person in whose favour the property is transferred. The purchase is prima-facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary;

(3) The true character of the transaction is governed by the intention of the person who has contributed the purchase money and

(4) The question as to what his intention was has to be decided on the basis of the surrounding circumstances, the relationship of the parties, the motives governing their action in bringing about the transaction and their subsequent conduct etc."

d) Andalammal V. Rajeswari Vedachallam
AIR 1985 Mad 321

"The next question to which we propose to advert is the issue relating to benami theory. It is by now well-settled that the burden is on the person who sets up the case of benami in the instant case the respondents and that if the burden is not discharged, the ostensible title will prevail. To substantiate a case of benami, the judicial pronouncements have laid down several factors have to be taken into

consideration and on an over all assessment of such factors is the court to render a finding. The relevant factors are:-

a) The consideration;

b) Possession and enjoyment of property;

c) Possession of the title deeds;

d) Motive; and

e) Mutation in the public records."

e) Jayadayal Poddar V. Bibi Hazra AIR 1974 SC 171

"The essence of a benami is the intention of the party or parties concerned; and not unoften such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof."

29. Counsel for appellant in his written submission has stated that if there are infirmities in the proceedings, then this Appellate Authority is not convinced with the above arguments,it may remand the proceedings back to the Adjudicating Authority for impleading DHFL as an interested party and deciding the matter afresh, rather than dismissing the appeal. I do not agree with the submission of the appellant due to the nature of the present case.

30. In the light of above, this Tribunal is of the view that no ground has beenmade outby the appellant for any interference. The appeal is dismissed.

31. No costs.

(Justice Manmohan Singh)
Chairman

New Delhi,
26th March, 2019
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