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Background: This law called the prohibition of Benami Properties Transaction Act 1988a (W.E.F Sept-1988), subsequently replaced by The Benami Transaction (prohibition) Amendment Act, 2016 (w.e.f Nov-2016). BENAMS Transaction (as amended by the Finance (No. 2) ACT 2019) Definition (U / S 2) BENAMS PROPRITITIES: Any properti which is the subject of the Benami transaction. Any properties is also included. 1. Inamovable 2. Mobile, 3. Materials and, 4. Intangible etc. 5. Material or immaterial. BENAMIDAR: any person or a fictitious person on behalf of which benamous property transferred or prisoners, includes a person who lends its name. Person must include: individual, huf, company, society, AOP, Boi, and Aoi. Fictitious person: non-existent person or entity. Beneficiary: a person who if her identity is known or not, in favor of which the property believed held by a benamidar. BENAMS Transaction: It is a transaction or an agreement a) when the property is transferred or in possession of a person (benamidar) and the consideration for these assets has been supplied or paid by another person (beneficiary). And the property is held for the immediate or future benefit, directly or indirectly to the person (beneficiary) that provides consideration. For example: a property purchased and registered on behalf of OFA MR B (benamidar) and the consideration is supplied or paid by MR C (beneficiary). Therefore Mr. B agrees only to keep the property to remember before deciding in transaction. 1. Credit of real estate actually place; 2. The examination is paid or supplied by the beneficiary; 3. Both benamidar and beneficial owner is real and non-fictitious or non-existent, 4. Benamidar is aware of the transfer of real estate. Exception above is; 1. Karta or HUF Property Waiting, and the property is required to benefit from her now benefit from the member of the HUF & consideration paid by the known source. 2. Property held by a trusted person (Trustee ie, performer, partner, agent, etc.) for another person's benefit. 3. Property detained from individual in the name of the spouse or a child and consideration paid by the known source. 4. Property held by individuals in the joint names of SA © and brother / sister / linear etc. b) a transaction or an agreement on the property carried out or made in fictitious name. C) owner of the property (benamidar) is not aware or denies the knowledge of operations. D) A person (beneficiary) that provides the consideration is not traceable or fictitious. Prohibition of Income Transaction in which any person enters a transaction, in order to defeat the provisions of a law or avoid the payment of the lawsuits of law or for the payment to avoid creditors, the actual beneficiary, benamidar and any other person who Abets or induces a person to enter the Benami transaction, will be guilty of the crime of Benami operations. This person if found guilty of the crime of transaction is punished with hard prison 5, for a period that cannot be less than a year, but which can be extended to seven years and must also be a fine liable that can extend to twenty-seven five percent. of the market value of the property. Any person who is necessary to furnish information pursuant to this law consciously false information to any authority or provides any false document in any procedure pursuant to this law. It is punished with a hard prison for a period that must not be less than six months, but that can extend to five years and must also be liable to fine that can extend to ten percent. of the market value of the property. Attack, award and confiscation (U / S 24) If the official startup, based on the fact material in its possession has reason to believe that every person is a benamidar towards one He can, after registering reasons in writing, issue a warning to the person to show the cause within the time possibly being specified in the announcement. A copy of the communication also beneficial advantageous If its identity is known if the official start is the opinion that the person in possession of the buildings detained benzay can alienate (transfer the property of (property rights) to another person or group) the property during the period indicated in the Announcement subject to approval of the approval authority, start the official, temporarily attach the property in the prescribed way. But not exceed 90 days (from the last day of the month in which warning the warning service service (U / S25) An alert can be served on the person both by post or convocation issued by a court (under the code of civil procedure 1908) NOTICE can be addressed to individuals: in the event of a partner management of the individual or managers of the company; in the case of a company of Karta: in the case of official principal HUF: in the case of the main company official or Member: in case of BOI & Other Association Person managing and checking business: in case of prohibition of other people on the transfer of benamidar property (U / S 6) no person must reuse the owner owner held by him to the beneficial owner: If the transaction of HI- Trasferita in violation of the bill then this transaction must be considered nothing or nothing. Confiscation (U / S 27) If an order is applied in relation to any property in sub-section (3) of the Section 26 which holds these properties to be a patient property, the award authority, after having given an opportunity to be heard to the interested party, make an order confiscate the buildings detained to be a property property: when a confiscation provision is It was made in virtue paragraph (1). 1. All rights and title to these assets are absolutely due to the free central government of all overall dimensions and no compensation must be due as regards this confiscation. 2. Any third-person right created in such assets in order to defeat the purposes of this law must be null and nothing. 3. If no order is carried out on the proceedings according to the present law that reaches the finality, no statement is against the government. 4. The administrator has the power to receive and manage the property, in relation to which a sequestration order was made under Subsection (1) of Section 27, in the way and subject to these conditions, as can be prescribed. 5. The central government can, by order published in the Official Journal, tell me how many of its officers as you think fit, to perform the functions of the administrators. 6. The administrator must also adopt SUH measures, since the central government can lead to, to have the property that was conferred to the central government under the subsection (3) of Section 27, in this way and subject to these conditions of May be prescribed possession of goods (U / S 29) if a seizure order has been made towards a property. 1. The administrator must take possession of the property. 2. The administrator, a 3. with written communication, order within seven days from the date of notification of the relevant communication to any person (benamidar) 4. to surrender or deliver the possession of the administrative or any other person duly authorized in writing from him in this account; 5. In the event of non-compliance with the order referred to in clause (A), or if in its opinion, recruitment of immediate possession is justified, appeal to the appellant tribunal (AT) (U / S 46) 1. person 2. Start Official. 3. Person (benamidar or beneficiary) entrusted by an order of the contracting authority may appeal within 45 days from the date of this order; in this form and together with these commissions that can be prescribed for the Court appeal against L Order of the contracting authority. 2. The Court of the Applazor can entertain any appeal after the aforementioned period 45 days, if it is satisfied that the appellant has been prevented, from sufficient cause due to 3. The Court to be able to give the parties to the appeal the opportunity to be heard, pass these orders on it as he thinks. 4. AT must have Power to 1. To determine a last chance. 2. Asporlo further proof 3. To request a document or witness to be examined 4. Administer the theme 5. To pass the final order and affirm 5. for more possible away can hear and finally decide the appeal within a period of one year from the last date of the month when the appeal is filed. Error Correction (U / S 47) 1) The Title Tribunal or the Authority may award, in order to correct any error apparent on the face of the record, modify any order made by it within a period of one year from the end of the month in which it was approved the order. 2) No amendment must be made under subsection (1), if it is likely that the amendment affects any person prejudicial, unless it has received notice of intention to do so and have had an opportunity to be heard. Contributor to print this article, all you need to be registered or access of mondaq.com. Article by Vijay Pal Dalmia, Advocate, Supreme Court of India and Delhi High Court. Partner & Head of Intellectual Property Division Leys, Vaish Associates Advocates, India Vijay Pal Dalmia, Advocate Supreme Court of India and Delhi High Court Email ID: VPdalmia @ Vashishlaw .com Mobile no .: +91 9810081079 LinkedIn: Facebook Twitter: @vpdalmia and Aditya Dhar Email: Aditya .Dhar @ Vashlaw.com MOBILE nO .: +91 9971873110 the right to property can not be included in the fundamental rights under the Constitution of India, however, remains a precious constitutional right under Article 300-a of the Constitution of India which envisages No person will be deprived of his property save by the authority of law. Even India's Supreme Court reiterated this position in the case of D Basnett, by LRS vs. the collector. Section 27 (2) of the ban on real estate Benami Transactions Law, 1988 (PBPT) correspond to this right of an individual. The section 27 (2) PBPT provides that nothing in the subgroup (1) applies to an inmate owned or acquired by a person from Benamidar for an adequate consideration, before the notice question under subsection (1) of section 24 without having his knowledge of Benami transaction. It means as well, no seizure regarding a property will take place in the section 27 (1) PBPT if the following conditions are met: 1) The property is held or acquired from a person (interested party) from Benamidar. 2) The above-mentioned property is acquired for an adequate consideration. 3) This property is held by that person prior to the issue of notice under subsection (1) of Section 24. 4) The said property is held by that person without his knowledge of Benami transaction. The PBPT section 24 provides for the notice and attachment of the property involved in the transaction Benami. The PBPT section 24 (3) provides for the provisional attachment of the property for a period not exceeding ninety days from the notice date of issue under the secondary section (1). The prerequisites required to be satisfied prior to the attachment of a property under section 24, paragraph 3, of the real estate transaction ban Benami Act, 19881 are as follows: 1) The investment officer must know that one who is the person who currently owns the property in possession. 2) If the person that person is not holding the property as Benami, additional steps are not meaningless. 3) That person is susceptible to alienate the property of the subject in due course for disposal. 4) It is likely that the alienation is made within the time limit specified in issued U / S. 24 (1). Now, if it is found through the investigation by the Investment that the conditions of section 27 (2) are met and that no confiscation can take place in Section 27 (1), you can say that the saying purchase made by him is Bona Pathe. After the satisfaction of compliance with the aforementioned mandatory prerequisites of Section 24, paragraph 3, of the PBPT and to satisfy the principle of natural justice, the investment officer is obliged to issue communication to A He said the person who is currently holding the property in possession. In the case of the Kavita PVT infrastructure. Ltd. Vs. The start officer, Mumbai, the relative appellative tribunal for the transactions of the Benami has observed that the provisions of the PBPT provide extensive powers to the initial officer to inquire and investigate the property . The officer is obliged to respect the arrangement with due diligence. No discretion is left if the layout is read significantly. Pass the temporary attachment order in Section 24, paragraph 3, of the PBPT act without informing the person holding the property in possession would amount to violating the rights of establishing this person. The question of the U / S warning service. 24 (1) At the affected part of the interested party was well arranged in the order of the Appellation Court for Benami, it was passed in the case of "m / s. Virgin Bulltestate Pvt. Ltd. Vs. Starting the official FPA PBPT285 / JP / 2019 "in which it was stated that" would have been fair and legal apart from the respondent would notice the appellant under section 24 (1) before making a decision in section 24 (4) (a) because in the phase Of 24 (1) the applicant had already acquired some legal rights entering the alleged Benamidar shoe ". Furthermore, in the aforementioned case, the on-all of the appellated court has also noted that the general state of the right is that the burden of proof resides on the person who supports. Therefore, it is well consolidated that the burden of proof is on the investigative official in the initial phase to establish with Cogent tests that the purchase by that person who is in possession of the alleged property ownership is not bona-fide. Conclusion: When the conditions of section 27 (2) of the PBPT are fulfilled after the investigator executive inquiry under section 24 and it is clear that the alleged Benami property is detained or acquired by a person other than benamidar, from the Officer Investment It is obliged to issue news to this person who is currently holding the property in possession. The issue of notice to that person may amount to the violation of constitutional law to the property. The sentence can be accessed: Series I. Kavita infrastructure Pvt. Ltd. vs. The Initiating Officer, Mumbai: FPA-PBPT-820 / MUM / 2019 A © 2020, Vasc Ascortraes Avcaties, All rights reserved Avocati, 1 A * and 11 floors, Mohan Dev Building 13, Tolstoy Mary New Delhi-110001 (India). The content of this article is intended to provide a general guide to the object. Specialized professional consultancy should be sought after specific circumstances. The opinions expressed in this article are exclusively of the authors of this article. Author (s) Popular on: Real estate and construction from India The reason why and the title of two two two Diligence Shardul Amarchand Mangalds & Co A e a. ~ ~ Title "is a legal term: Means the right of property to the property. The title survey is essential to ascertain the property's property and ensure that, the title is complete ... buyers of home buyers = financial creditors: Supreme Court reigns Cyril Amarchand Mangaldas The Supreme Court in Pioneer Urban Land and Infrastructure Limited vs. Union of India, accepted the establishment of the basus of insolvency and the bankruptcy code (second amendment), 2018 (act of amendment). Act).

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