



2025:KER:78610

WPC.No.4193/20

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

**WEDNESDAY, THE 22ND DAY OF OCTOBER 2025 / 30TH ASWINA,
1947**

WP(C) NO. 4193 OF 2020

PETITIONERS:

- 1 VITTAL SAIT POPAT,
AGED 55 YEARS,
NANDHAN NIVAS, KAIRALI STREET, PATTAMBI,
PALAKKAD, PIN-679 303.**
- 2 V.M.DHANANJAY,
NANDHAN NIVAS, KAIRALI STREET, PATTAMBI,
PALAKKAD, PIN-679 303.**

**BY ADVS.
SMT.LATHA ANAND
SRI.M.N.RADHAKRISHNA MENON
SRI.RADHAKRISHNA PILLAI B
SHRI.SIDHARTH P.S.
SRI.ROHITH MOHAN
SHRI.S.S VISHNU**

RESPONDENTS:

- 1 THE ASSISTANT COMMISSIONER OF INCOME TAX (BPU),
BENAMI PROHIBITION UNIT, POORNIMA BUILDING,
3RD FLOOR, PANAMPILLY NAGAR, KOCHI, PIN-682 036.**
- 2 THE DEPUTY DIRECTOR OF INCOME TAX
(INVESTIGATION),
CHUNDAKKAYIL COMPLEX, MANJAKULAM ROAD, PALAKKAD,**



2025:KER:78610

WPC.No.4193/20

2

PIN-678 014.

- 3 THE DEPUTY COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE, THRISSUR, AAYAKAR BHAVAN,
SAKTHAN THAMPURAN NAGAR, THRISSUR-680 001.**

BY ADV SRI.NAVANEETH.N.NATH, CGC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 22.10.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**



2025:KER:78610

WPC.No.4193/20

3

JUDGMENT

The petitioners, who are assesseees under the Income Tax Act, have approached this Court challenging Exts.P10 and P11 notices issued to them under Section 24(1) of the Prohibition of Benami Property Transactions Act, 1988.

2. The facts that led to the filing of this writ petition are as follows:

On 09.05.2019, the Sub Inspector of Police, Thrithala Police Station, seized an amount of Rs.88,77,000/- from the possession of the 2nd petitioner and Crime No.174 of 2019 of Thrithala Police Station was registered, as evidenced by Ext.P1. Subsequently, a summons under Section 131 of the Income Tax Act, 1961 was issued by the 2nd respondent, calling upon the 2nd petitioner to produce the books of accounts. Ext.P2 is the said summons. Thereafter, Ext.P3 joint affidavit was submitted by both the petitioners before the 2nd respondent on 30.09.2019, wherein, they explained the source of the said amount. Thereafter petitioners have filed Exts.P6 and P7 revised returns for the assessment year 2019-2020,



2025:KER:78610

WPC.No.4193/20

4

wherein, these amounts were shown as cash in hand. In the meanwhile, Exts.P10 and P11 notices were issued to the petitioners under Section 24(1) of the Prohibition of Benami Property Transactions Act, 1988 (*hereinafter referred to as the Act*), requiring the petitioners to show-cause in writing, as to why the property referred above (cash) should not be treated as benami property as per the provisions of the Act. The petitioners were also required to furnish the details of the source of the said amount along with necessary documentary evidence and furnish details of the bank accounts in their name along with certified copies of the bank account statements for the period from 01.04.2015 to 31.01.2020. It was in these circumstances, this writ petition was submitted challenging the same.

3. After filing of this writ petition, Ext.P12 assessment order was passed by the assessing officer under the Income Tax Act, wherein, the officer concerned, by invoking Section 37 of the Income Tax Act, disallowed the indirect expenses debited in the amount shown therein and completed the assessment.

4. In response to the averments contained in the writ



2025:KER:78610

WPC.No.4193/20

5

petition, a statement was filed by the learned standing counsel on behalf of the respondents 1 to 3, explaining the circumstances under which, Exts.P10 and P11 notices were sent. In the said statement, the sworn statement of the 2nd petitioner was referred to, as per which, the said petitioner left Pattambi on 09.05.2019 at 2 PM with 2700 gms of gold, for sale at Coimbatore. Thereafter, the said gold is claimed to have been sold to the shops at Coimbatore and Rs.88,77,000/- seized by the Police, was the sale proceedings of the said gold, which was hidden by him in a secret chamber in the car. While coming back from Coimbatore, Police party intercepted and seizure was affected. It is claimed that the sale proceeds are belonging to the petitioner and his family, and they are engaged in the business of gold. Thus, by relying upon such statement and also the statutory stipulations contained in various provisions under the Act, the contentions raised by the petitioners in the writ petition are opposed by the respondents.

5. I have heard Sri.S.Vishnu, learned counsel for the petitioners and Sri.Navaneeth N.Nath, learned standing counsel for the respondents.



2025:KER:78610

WPC.No.4193/20

6

6. The learned counsel for the petitioners raised various contentions by highlighting the several aspects which according to the petitioner, are discrepancies and illegalities, in the issuance of Exts.P10 and P11 notices under Section 24 of the Act. It was contended that, Section 24 insists for proper materials before the officer concerned, to make out a case to issue a notice under Section 24 and in this case no such materials are available. The learned counsel for the petitioners specifically relied on the definition of the 'benami transaction' contained in Section 2(9) of the Prohibition of Benami Property Transaction Act,1988, particularly in Sub-Section (D) thereof, which is referred to in Exts.P10 and P11. According to the learned counsel for the petitioners, there are no sufficient materials going by Exts.P10 and P11, to invoke the jurisdiction of the 1st respondent, by treating the cash seized as Benami property, as per sub clause (D) to sub section (9) of Section (2) of the Act.

7. On the other hand, the learned standing counsel for the respondents opposed the said contentions, by placing reliance upon the sworn statement given by the 2nd petitioner.



8. As far as the challenge raised by the petitioner is concerned, it is to be noted that, the same is against the show-cause notice issued under Section 24(1) and therefore, it is premature. Going by the stipulations contained in Section 24(1), it can be seen that, what is necessary for issuing a notice is that, on the basis of the materials in his possession, the officer concerned, must have a reason to believe that, that person is a benamidar. The expression “benamidar” is defined in sub section 10 of Section (2), which reads as follows:

“(10) “benamidar” means a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name.”

7. “Benami property” is defined under Sub Section (8) of Section 2, and it is as follows:

“Benami property” means any property which is the subject matter of a benami transaction and also includes the proceeds from such property.”

9. The procedure for the adjudication of benami



2025:KER:78610

WPC.No.4193/20

8

property is contemplated under Section 26, which reads as follows:

“26. Adjudication of benami property.—(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.

(2) Where the property is held jointly by more than one person, the Adjudicating Authority shall make all endeavours to serve notice to all persons holding the property: Provided that where the notice is served on anyone of the persons, the service of notice shall not be invalid on the ground that the said notice was not served to all the persons holding the property.

(3) The Adjudicating Authority shall, after—



2025:KER:78610

WPC.No.4193/20

9

(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

13

(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—

(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.

(4) Where the Adjudicating Authority is satisfied that some part of the properties in respect of which reference has been made to him is benami property, but is not able to specifically identify such part, he shall record a finding to the best of his judgment as to which part of the properties is held benami.

(5) Where in the course of proceedings before it, the Adjudicating Authority has reason to believe that a property, other than a property referred to it by the Initiating Officer is benami property, it shall provisionally attach the property and the property shall be deemed to be a property referred to it on the date of receipt of the reference under sub-section (5) of section 24.

(6) The Adjudicating Authority may, at any stage of the



2025:KER:78610

WPC.No.4193/20

10

proceedings, either on the application of any party, or suo motu, strike out the name of any party 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.

(7) No order under sub-section (3) shall be passed after the expiry of one year from the end of the month in which the reference under sub-section (5) of section 24 was received.

(8) The benamidar or any other person who claims to be the owner of the property may either appear in person or take the assistance of an authorised representative of his choice to present his case. Explanation.—For the purposes of sub-section (8), authorised representative means a person authorised in writing, being—

- (i) a person related to the benamidar or such other person in any manner, or a person regularly employed by the benamidar or such other person as the case may be; or
- (ii) any officer of a scheduled bank with which the benamidar or such other person maintains an account or has other regular dealings; or
- (iii) any legal practitioner who is entitled to practice in any civil court in India; or
- (iv) any person who has passed any accountancy examination recognised in this behalf by the Board; or
- (v) any person who has acquired such educational



2025:KER:78610

WPC.No.4193/20

11

qualifications as the Board may prescribe for this purpose.”

10. “Benami transaction” is defined under Sub Section (9) of Section 2 , in which sub clause (D) is relevant for this case which reads as follows:

“(9) Benami transaction means....

.....

.....

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;”

11. Thus, going through the aforesaid provisions, the only conclusion that is possible is that, before issuing a show-cause notice, a *prima facie* belief of the officer concerned that, the party concerned is a benamidar, alone is sufficient. In this case, it is evident from the records that, huge amounts in cash were admittedly recovered from the 2nd petitioner. The sworn statement of the 2nd petitioner would indicate that, the said amount is received by him from the sale of gold, which he claimed to have conducted at Coimbatore. Therefore, there are transactions referred to in the sworn statement of the 2nd petitioner, which is relating to the amount that was seized by



2025:KER:78610

WPC.No.4193/20

12

the Police. From the above, a transaction relating the sale of gold has come out and it also contain a statement that the cash in possession of the 2nd petitioner was the proceeds of such transaction of a property, namely gold. Therefore, the documents available on record would indicate the existence of the circumstances that are necessary to arrive at a *prima facie* satisfaction of the officer to issue the show-cause notice under Section 24(1) of the Act.

12. Of course, it is true that, the petitioners have submitted returns disclosing the said amounts as cash in hand, and taxes were already paid. However, as rightly pointed out by the learned standing counsel for the respondents, the fact that the petitioners have disclosed the said income in the return and the same was proceeded against under the provisions of the Income Tax Act, by itself cannot be a reason to interfere with the proceedings under the Prohibition of Benami Property Transactions Act, 1988. This is particularly because, in Section 60 of the Act, it is clearly mentioned that the Act shall be in addition to and not, save as hereinafter expressly provided, in derogation of any other law for the time being in force.



2025:KER:78610

WPC.No.4193/20

13

Besides, Section 67 contemplates that the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore, as far as the proceedings under the Income Tax Act concerned, those are not relevant for the purpose of the proceedings under the Prohibition of Benami Property Transactions Act, 1988. In such circumstances, I am of the view that, challenge now raised against the petitioner, being against the show-cause notice issued, is premature and not to be interfered with at this stage. It is for the petitioner to raise all the contentions in response to Exts.P10 and P11 and to contest the matter on merits.

In such circumstances, this writ petition is dismissed without prejudice to the right of the petitioner to submit their objections against Exts.P10 and P11 respectively. It is clarified that, in case the petitioners are submitting their objections to Exts.P10 and P11, within the period of three weeks from the date of receipt of a copy of this judgment, the 1st respondent shall consider the same and pass appropriate orders in accordance with law, after referring to the objections raised by



2025:KER:78610

WPC.No.4193/20

14

the petitioner and affording an opportunity for being heard. It is clarified that, all the observations made in this judgment were to determine the question whether an interference is required under Article 226 of the Constitution of India, at the stage of a show cause notice itself. Therefore, the 1st respondent shall consider the objections raised by the petitioners untrammelled by any of the observations made in this writ petition.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

DG/23.10.25



2025:KER:78610

WPC.No.4193/20

15

APPENDIX OF WP(C) 4193/2020

PETITIONER EXHIBITS

Exhibit P12	TRUE COPY OF THE ASSESSMENT ORDER ALONG WITH THE COMPETITION SHEET DATED 30.09.2021 WITH RESPECT TO 1ST PETITIONER FOR THE ASSESSMENT YEAR 2019-20 FOR THE 1ST PETITIONER
Exhibit P13	TRUE COPY OF THE ASSESSMENT ORDER ALONG WITH THE COMPETITION SHEET DATED 30.09.2021 WITH RESPECT TO THE 2ND PETITIONER FOR THE ASSESSMENT YEAR 2019-20 FOR THE 2ND PETITIONER
EXHIBIT P3	TRUE COPY OF THE JOINT AFFIDAVIT FILED BY THE PETITIONERS DATED 30.9.2019.
EXHIBIT P4	TRUE COPY OF THE AFFIDAVIT OF THE 1ST PETITIONER DATED 30.09.2019.
EXHIBIT P5	TRUE COPY OF THE AFFIDAVIT OF THE 2ND PETITIONER DATED 30.09.2019.
EXHIBIT P6	TRUE COPY OF THE INCOME TAX RETURNS OF THE 1ST PETITIONER.
EXHIBIT P1	TRUE COPY OF THE FIRST INFORMATION REPORT (FIR) NUMBER 0174 OF 2019 DATED 09.05.2019 ALONG WITH ENGLISH TRANSLATION.
EXHIBIT P8	TRUE COPY OF THE PETITION DATED 12.10.2019 FILED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT.
EXHIBIT P9	TRUE COPY OF THE NOTICE DATED 23.12.2019.
EXHIBIT P10	TRUE COPY OF NOTICE DATED 29.01.2020 UNDER SECTION 24(1) OF THE PROHIBITION OF BENAMI PROPERTY TRANSACTION ACT, 1988 ISSUED TO THE 1ST PETITIONER.
EXHIBIT P11	TRUE COPY OF NOTICE DATED 29.01.2020 UNDER SECTION 24(1) OF THE PROHIBITION OF BENAMI PROPERTY TRANSACTION ACT, 1988 ISSUED TO THE 2ND PETITIONER.
EXHIBIT P7	TRUE COPY OF THE INCOME TAX RETURNS OF THE 2ND PETITIONER.



2025:KER:78610

WPC.No.4193/20

16

EXHIBIT P2

**TRUE COPY
10.05.2019
RESPONDENT.**

**OF THE
ISSUED**

**SUMMONS
BY THE**

**DATED
2ND**