

CHAPTER - 10

LAW RELATING TO BENAMI TRANSACTIONS AND PROHIBITION

1. *The term 'Benami Transaction' was observed In the case of Union of India Vs. Ganpati Dealcom Pvt. Ltd, by the Hon'ble Supreme Court of India .*
2. *Features of the Benami Transactions (Prohibition) Act, 1988 :*
 - a) *It defines a benami transaction and benami property.*
 - b) *It provides the consequences of entering into a prohibited benami transactions.*
 - c) *It lays down the procedure and related penal consequences in the case of a prohibited benami transaction.*
 - d) *The powers of civil court also extend to authorities under the said Act.*
 - e) *It enables the Central Government in consultation with the Chief Justice of the High Court to designate one or more Courts of Session as Special Court or Special Courts for the purpose of the Act.*
3. *As per sec 2 (9) Benami Transaction includes the following four:*
 - (I) *Any transaction or arrangement in which a property is acquired in the name of one person and the consideration of the same is provided by the other person and the property is held for the immediate or future benefit of the person providing consideration.*
But the above does not include - Korta in case of HUF, person Standing in fiduciary capacity, acquisition of property in the name of spouse or child or in the name of brother/Sister/lineal ascendant/lineal descendant (in all the above cases it should be out of the known sources and in the last case, i.e. brother and sister it should be jointly owned).
 - (II) *When the property Is held in fictitious name*
 - (III) *When the owner of the property us unaware or denies ownership*
 - (IV) *Where the beneficial Owner cannot be traced*

PUNISHMENT

4. *As per section 3 (1) Benami Transaction is prohibited.*
5. *Further under Section 3 (2) any person entering into Benami transaction is liable for Imprisonment which may extend up to 3 years or with fine.*
6. *Further as per Section 3 (3) any person Committing a Benami Transaction after the commencement of The Benami transaction Act, 2016 shall be liable to Imprisonment which Shall not be less than 1 year but which may extend up to 7 years and with fine which may extend up to 25% of Fair Market Value.*

OTHER MISCELLANEOUS TOPICS.

7. *Section 4 (1) prohibits the beneficial owner to recover a property held Benami from the Benamidar.*
8. *Further as per Section 4 (2), a Benamidar is prohibited to use a Benami property as a defense in any proceeding against him.*
9. *Section 5 States that any property which is a subject matter of Benami Transaction is liable to be confiscated to the Central Government*
Note - Property here means movable/immovable tangible/intangible.
10. *As per section 6 a Benamidar is prohibited from re-transferring a property to a beneficial Owner or any other person on his behalf and if any transaction is done in contravention the Same Shall be null and void.*

NOTICE AND ATTACHMENT

11. *As per Sec 24 of the Benami Transaction Act, the Initiating officer if has reason believe that a particular property is a Benami Property then he may send notice to the Benamidar after recording his reason to Show cause.*
12. *If required he may attach the property with the previous approval of Approving Authority*
13. *The provisional attachment can be passed for a period of 90 days and within that time the Initiating officer has to complete its inquiry.*
14. *At the end of enquiry*

- a) where provisional attachment was made and the Initiating officer wants to continue the attachment then he may do so with the Approval of Approving Authority, alternatively if not the read he may revoke prov. attachment.
 - b) Where prov attachment was not made and now the Initiating officer wants to attach he may do so with the previous approval of Approving Auth or he may A choose not to attach the property further.
15. When the officer has ordered continuation of prov. attachment then he has to draw up a statement of the case and refer the same to the Adjudicating Auth. within 15 days.

ADJUDICATION OF BENAMI PROPERTY

16. The adjudicating Auth upon receipt of reference shall send a notice within next 30 days to the following parties:-
- a) Benamidar
 - b) Beneficial owner,
 - c) Any interested party including Bank
 - d) Any person making any claim in respect of the property.
17. The other party must respond within a period of 30 days and the delay may be accepted by Authority if sufficient cause is shown.
18. In case of a property which is held jointly notice Shall be served to all of them and even if the notice sent to either of them the same amounts to a sufficient notice
19. The Adjudicating Authority after considering all the replies, evidence and making all such enquiries as may be required declare a property as Benami and the party involved as Benamidar.
20. Further an Adjudicating Authority may add any property in between the case, add any new person in between the case, and vice versa if it is of the opinion then the same should be added.
21. where some part of the property is Benami but the same cannot be ascertained then the decision of the Auth shall be final as to which part is Benami.

CONFISCATION

22. *Sec 27 deals with confiscation of properties, where an order Under Sec 26 is passed holding a property as Benami Property then the Authority after giving OOBH to the person concerned make an order of confiscation.*
23. *However no confiscation can be done during the period in which an appeal may be preferred or has been filed in which case the confiscation shall be subject to the decision of the Appellate Tribunal.*
24. *When a property is confiscated, the same is done in the name of the cg free from any encumbrance*
25. *If no confiscation order is made then there lies no case against the Govt.*

POSSESSION

26. *The Administrator shall proceed to take the possession of the Benami Property through a notice in writing ordering the person to surrender possession within 7 days.*
27. *In the event of non-compliance or immediate possession is warranted then it shall be the right of the administrator to forcefully takeover possession and if required may take the help of the police officer*
28. *The CG shall establish an Appellate Tribunal for the purpose of hearing appeal against the Adjudicating Authority.*
29. *An Aggrieved person may further file an appeal in front of High Court within 60 days from the decision of AT, the same may be extended if sufficient cause is shown.*
30. *All the appeals in front of High Court are on the question of law and if the High Court feels that it involves a question of law then the High Court formulate the same and the case is heard on that question.*

SPECIAL COURTS

31. *The CG in consultation with chief justice of HC may designate any session court as Special court for purpose of Speedy Disposal of cases.*
32. *The Special Court shall take cognizance only if the complaint is made by the Authority or by, officer of the Govt.*
33. *The special court shall finish the proceeding as expeditious as possible but not later than 6 months.*

OFFENCES

- a) *Benami Transaction: 1 year Imp which may extend to 7 year and Fine of up to 25% of Fair Market value.*
- b) *False Information: 6 months Imp which may extend to 5 years and fine of up to 10% of Fair market value.*