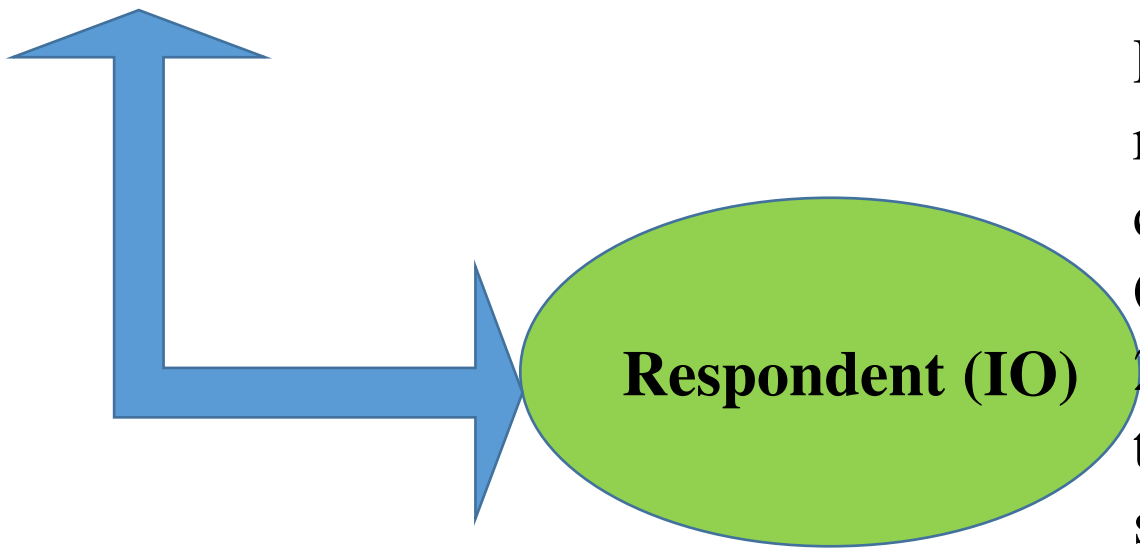
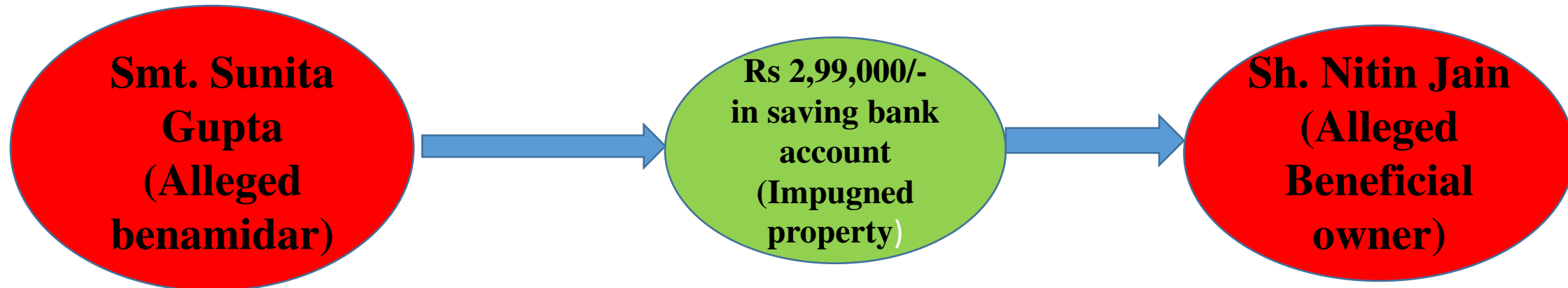



**IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**SMT. SUNITA GUPTA**  
**VS**  
**UNION OF INDIA AND ORS.**



On 25.01.2017, the IO passed an order of Provisional Attachment under section 24(3) restraining Smt. Sunita Gupta from transferring or charging the impugned property.

On 8.02.2017 the IO issued show cause notice u/s 24(1) calling upon Smt. Sunita Gupta to explain as to why an order under section 24(4)(a)(i) of the Act should not be passed.

**On 21.05.2018 Ld. Adjudicating Authority passed an order holding that the property in question is not a benami property by concluding that IO cannot pass an order under section 24(3) prior to issuing a show cause notice under section 24(1).**



**On 26.05.2018 the IO issued a fresh Show Cause Notice under section 24(1) of the Act, calling upon the petitioner to once again show cause that why the property should not be treated as benami.**



**The said show cause notice is contested in the petition filed by Ms Sunita Gupta.**

## High Court held that:-

- The two essential conditions for issuing a show cause notice under section 24(1) of the Act are:-
  - that the IO must have reason to believe on the basis of material in his possession, that any person is a benamidar
  - He must record such reasons in writing.

- The Court held that Adjudicating Officer was required to examine the material on record and after making such inquiries as necessary, take a view whether the properties are benami or not.
- It is well settled that if an order is set aside on account of violation of the principles of natural justice or on account of any procedural defect in the decision making process, the concerned authority is not precluded from reinitiating the proceedings after curing the procedural defects.

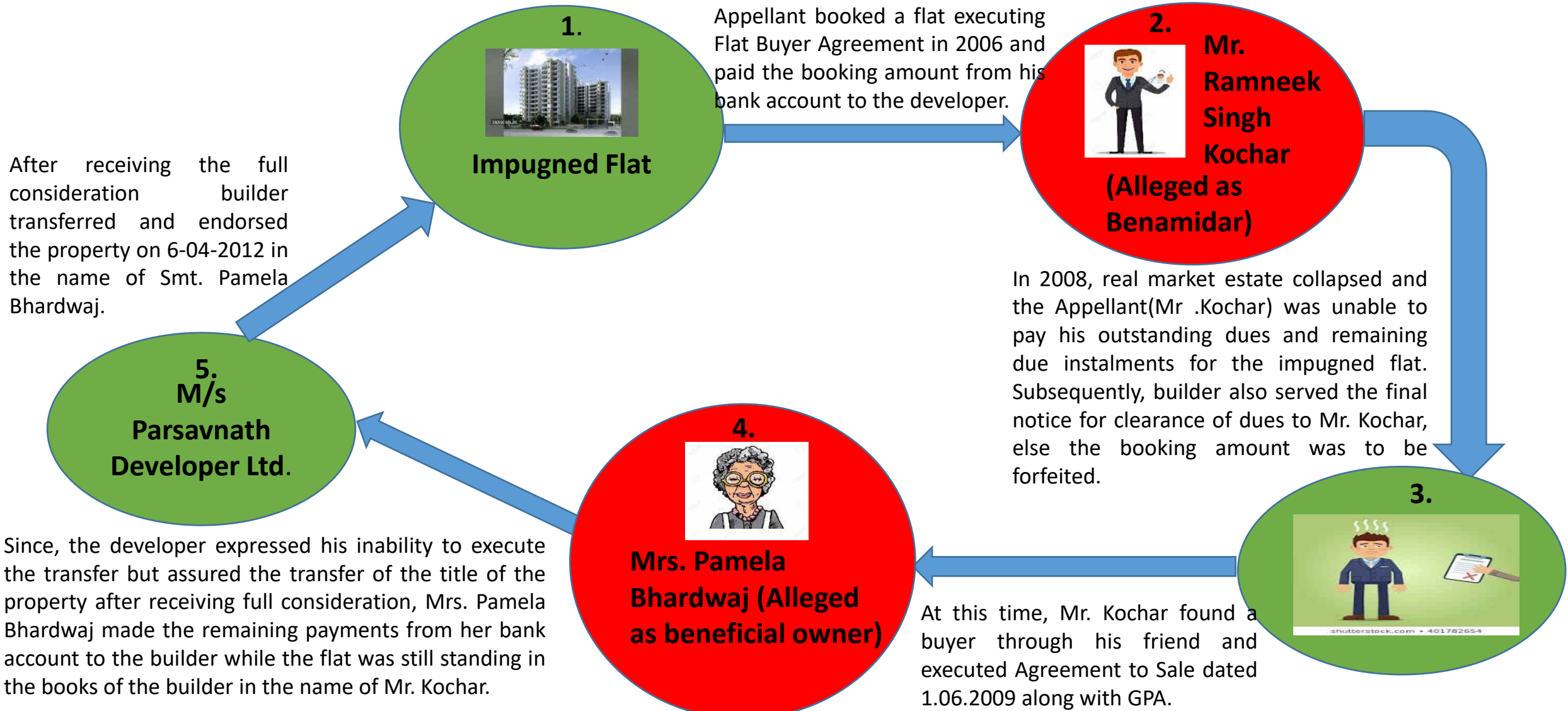
## **CONSEQUENCES AND IMPLICATIONS OF ABOVE JUDGEMENT:**

- Legal and jurisdictional aspects may not be sincerely adhered to by the Initiating officers.
- The actions of the Initiating officer would become immune from any time limits and he will have multiple innings to pass the orders repeatedly related to the same properties or transactions.

- The Adjudicating Authority has stopped dealing with legal issues while deciding the cases, taking shelter of the judgement of the High Court.
- The Adjudicating Authority is not even taking into account the order passed by Hon'ble MP High Court **“Kailash Assudani ”** wherein it has been held that it is statutory duty of Adjudicating authority to decide all legal issues raised before it.

# In the matter of Smt. Pamela Bhardwaj and Sh. Ramneek Singh Vs Initiating Officer, BPU Circle1(1), Chandigarh

## Graphical Representation of the transaction between alleged Benamidar and alleged beneficial owner.



**Important observations and points of law decided by Hon'ble Appellate Tribunal in aforesaid case vide its order dated 21.06.2019**

- If the person who has paid the consideration and thereafter taken the possession, it is difficult to hold that it is the case of *benami* transaction.
- Respondent (the IO) must bring material on record to show as to how benefit is derived by alleged beneficial owner even while **not** holding the property.



➤ Undoubtedly, onus to prove passing of benefit test is upon shoulders of IO, which must be discharged for proving *benami*.

➤ The burden of proof of a fact is the most crucial aspect in any legislation and disputes or litigation arising in the implementation of the legislation. Entire thrust of the litigation and fate of the parties to the litigation depends on this fundamental issue.

- Hon'ble Appellate Tribunal had relied upon the Supreme Court judgement of **Smt. P. Leelavathi**, supra given in 2019 where it is held that the initial burden of showing that a property is *benami* rests on the person making the allegation and the burden can be discharged by leading direct evidence or strong circumstantial evidence to that effect.
- It is well settled by the Courts that there is no room for proceeding simply on the basis of suspicion until backed by strong and incontrovertible evidence. This onus clearly vests on the shoulders of the Respondent.

➤ The judgement **Hon'ble Supreme Court State of Bengal v. Mir Mohammad Omar & Ors. on 29<sup>th</sup> Aug 2000** relied upon by the Respondent can by not stretch of imagination be extended to suggest that it shifts the burden of proof from the Initiating officer to the alleged beneficial owner or benamidar. It is only when the Initiating Officer discharges the said burden in terms of Section 91-92,101-102 and 106 and legal position laid down by Hon'ble Supreme Court in its various judgments which are directly on the issue of benami property.

- The Respondent (IO) had contended that judgement of Supreme Court in the case of Villiammal v. Subramaniam, will not be applicable while interpreting the provisions of PBPT Act,1988 because these were rendered in **the context of civil law wherein PBPT provisions were not discussed.**
- The said contention has not been accepted by Appellate Tribunal and it was observed that there is no provision at all which shifts the burden of proof from the Initiating Officer to the Defendant. Thus, the principle of law laid down and clarified by Hon'ble Supreme Court and **provisions contained in section 91,92,101 and 102 and other provisions of Indian Evidence Act** are applicable here and thus burden of proof to prove a property as 'benami' is upon the Initiating officer, which has not been discharged.

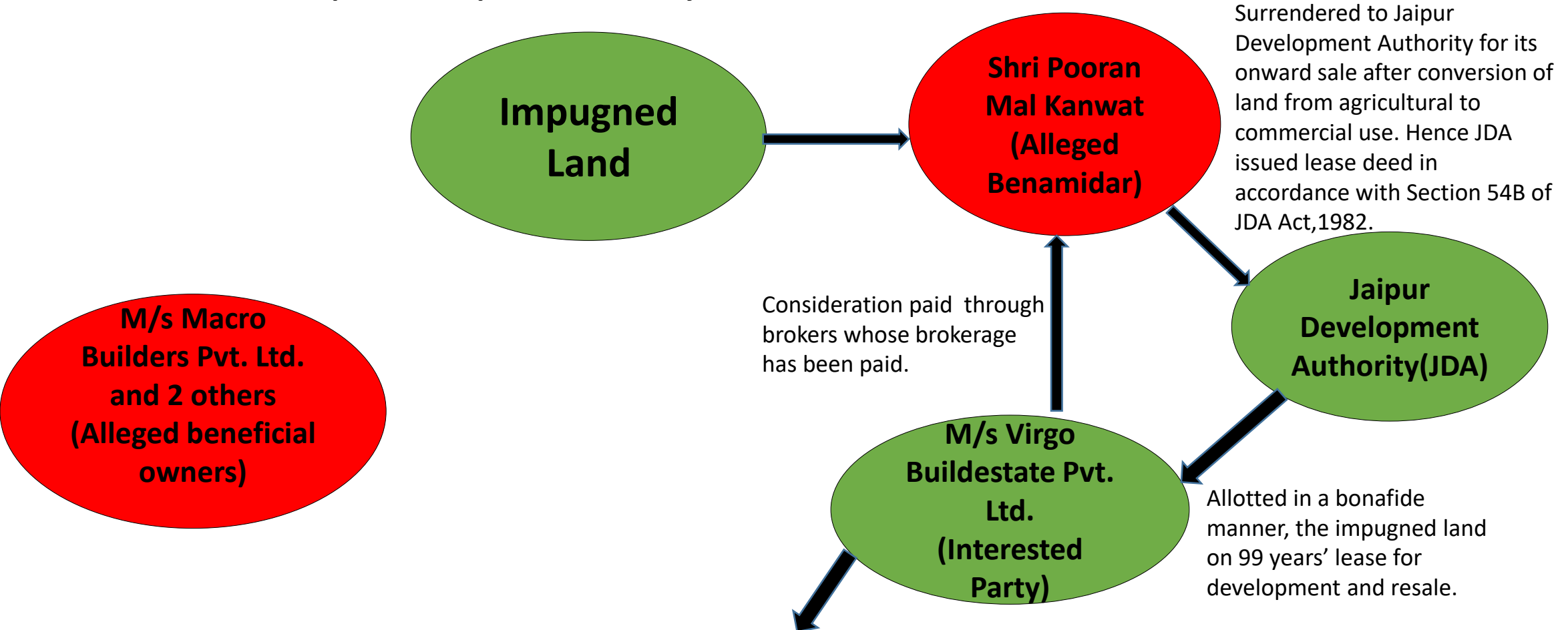
- It is also observed by the Tribunal that as per principle enshrined in **section 106 of the Indian Evidence Act, 1872** which states that **“when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner”**.
- It is also observed by the Tribunal that whoever desires any Court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts, **must prove that those facts exist** and when a person is bound to prove the existence of facts which he asserts, it is said that the burden of proof lies on that person.

➤ The sole belief of Respondent to make the transaction benami was relied upon the statement of appellant (Mr. Kochar) before Income tax Authorities. With regard to the validity of the statement, which was relied by the Respondent (IO) which is not recorded by him but by some other agency, it was held by the Tribunal that the statement taken **was far different from the object, scope and operation of new benami law**, and thus could not be made the sole basis to take action under Benami Law.

- With regard to the weightage of the statement it was observed by the Tribunal that a statement which is based upon and is also matching with the contents of the documentary evidences has got more evidentiary value in the eyes of law as compared to a statement given just in air on the basis of memory only, and that too after a long time gap from the date of event.
- It has also been held by the Tribunal that **cross examination of a witness** whose statement is being relied by the respondent and he makes it as the sole basis of holding the transaction benami is the mandatory requirement which is a normal practice to meet the principles of natural justice.

# M/s Virgo Buildestate Pvt. Ltd. versus Initiating Officer, DCIT, BPU circle., Jaipur

**Graphical Representation of the transaction between Bonafide purchaser and Jaipur Development Authority.**



Surrendered to Jaipur Development Authority for its onward sale after conversion of land from agricultural to commercial use. Hence JDA issued lease deed in accordance with Section 54B of JDA Act, 1982.

Consideration paid through brokers whose brokerage has been paid.

Allotted in a bonafide manner, the impugned land on 99 years' lease for development and resale.



Appellant had already constructed, sold and given physical possession of the Flat/Independent Floor/Villas constructed on the impugned property to the bonafide buyers.



## **Decision of the Hon'ble Appellate Tribunal dated 12.06.2019.**

### **Important points of law decided are as under:-**

- It was held that there is no proper explanation from the side of Respondent (the Initiating Officer) as to why the Appellant Company was not made part of the proceedings u/s 24 before making provisional attachment u/s 24(3) and latest by continuation of POA u/s 24(4)(a)(i) of the PBPT Act, 1988 as the Appellant had already acquired certain legal rights by stepping into the shoes of alleged benamidar.

**Thus, clearly there was violation of principles of natural justice.** Thus, the Bench did not accept the reasoning of the IO that there was no provision under PBPT Act, 1988 to issue notice to the bonafide purchaser and thus since no such requirement was stipulated under the law, the IO did not commit any lapse by not issuing any notice to Virgo.

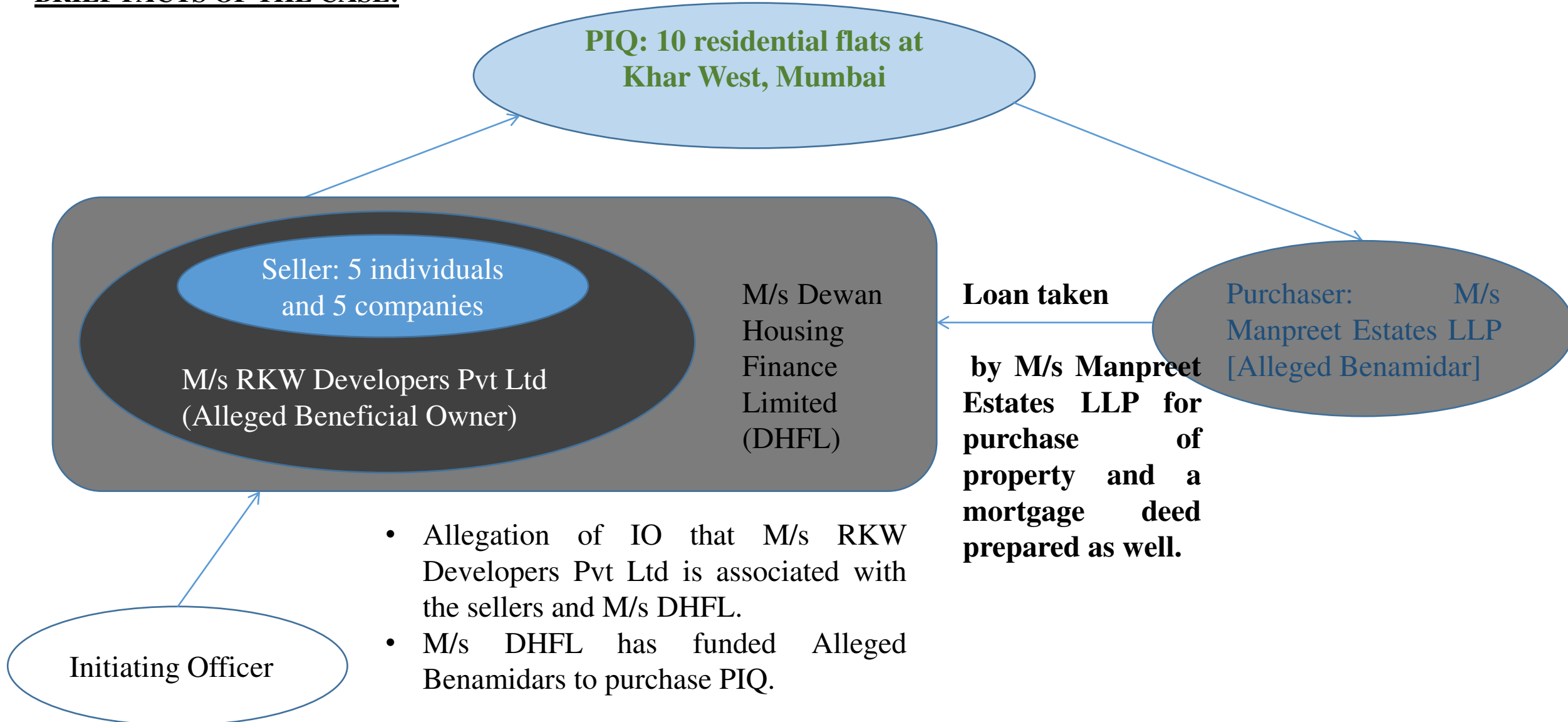
- It has also been held that a purchaser is legally entitled to have **protection under section 27(2) of the PBPT Act, 1988**. The purchaser would have a prima-facie good case of being a bonafide purchaser who has paid amount of adequate consideration of the land through banking channels and directly to the account of erstwhile owner.
- The Purchaser is **not supposed to investigate** or pursue to know that where the consideration amount has further been transferred from the account of previous owner.

➤ With regard to burden of proof, the general rule of law says that it lies on the person who alleges it. In the present case, it is also the allegation made by the IO that the Appellant is not a bonafide purchaser and that it had the knowledge of the property in question are benami properties, **so the initial burden lies on the IO to prove the allegation.** The IO has not been able to produce a single document and has miserably failed to substantiate the said denial/allegations.

➤ It has been further held that contention of the IO that the Appellant Company was **having the knowledge** of alleged benami transaction is based on surmises and conjectures. Not a single evidence/ proof has been submitted by the Respondent to show that the Appellant has any knowledge about the fact of the lands in question are benami properties. Thus, the Bench impliedly held that burden to prove knowledge of benami transaction to the purchaser is upon the IO which has to be proved with cogent material and not merely on the basis of suspicion or surmises and conjectures.

# M/s MANPREET ESTATES LLP – APPELLATE TRIBUNAL (BENAMI)

## BRIEF FACTS OF THE CASE:



## **Appellate Tribunal's Take:**

- Merely because the source of consideration paid by the alleged benamidar is funded by way of loan received from a party related with alleged beneficial owner, it cannot be ipso facto held that the consideration has been provided by the alleged beneficial owner.
- Before treating the transaction as benami and before treating the property as benami u/s 2(9)(A) of the PBPT Act, 1988, it is mandatory under the law to determine that there is a beneficial owner (different from the benamidar) for the alleged benami property.
- Unless it is shown that beneficial interest is held with the alleged Beneficial owner and the alleged Benamidar is holding the property ostensibly for the benefit of the Beneficial owner, the property cannot be treated as benami under the new law.

- To uphold the validity of the sale/conveyance deed executed between the parties, support was taken of the provisions of section 91 and 92 of the Indian Evidence Act, 1872 and it has been held that if a transfer has been done of an immovable property vide a written documentary evidences in the form of a registered sale deed.
- Once it is shown by the parties to the alleged benami transaction that such transaction is done qua registered sale deed and valid loan agreements, the burden of proof would be shifted upon the Initiating Officer to prove the transaction as benami who is taking contrary stand within the meaning of section 91 and 92 of the Evidence Act, 1872.
- The bench also rejected the prayer of the department to refer the matter back and give fresh inning to the department to correct the infirmity & lapses committed by it in the proceedings and to implead a new party as an interested party.

**POSITION OF LAW AND ITS EXPLANATION/ POINTS FOR CONSIDERATION**

- Is the approach of IO correct to attach property merely because they are purchased with help of loans?

# IPSA SINGH & Ors. – ADJUDICATING AUTHORITY (BENAMI)

**PIQ: Factory Building belonging to the alleged Beneficial Owner M/s SLE Ltd.**

## FACTS OF THE CASE:

**M/s SLE Ltd. (BO) purchased the plot of land where the impugned property is located in 2009**

Issued its shares to raise share capital to be utilised for the purpose of business in the F.Y 2010-11

M/s SLE Ltd becomes wholly owned subsidiary of M/s SEPL

Acquired / purchased shares of M/s SLE Ltd. from Alleged Benamidars.

**Alleged Benamidars**

**M/s SEPL**

As consideration allotted equity as well as preference shares of M/s SEPL to the sellers of shares.

## ACTIONS OF THE IO:

SCN u/s  
24(1)/(2)

- **SCN issued by IO on 14.12.2017 to alleged benamidars and BO , without making the impugned property as benami property in this notice.**

PAO u/s  
24(3)

- **On 15.12.2017 PAO issued attaching equity shares and preference shares of SLE which were not held by the alleged benamidars as were sold to M/s SEPL**
- **On 16.02.2018 another PAO issued attaching the bank accounts of the alleged benamidars**

PAO u/s  
24(4)

- **On 13.03.2018 order for attachment of the impugned property i.e. Factory Building of SLE was passed, w/o it ever being mentioned in earlier SCN and twice issued PAO u/s 24(3)**

## POSITION OF LAW/POINTS FOR CONSIDERATION:

- **Can the IO arbitrarily change property at any stage of proceedings?**
- **Can the IO attach any property which is not even purchased out of the alleged benami transaction?**

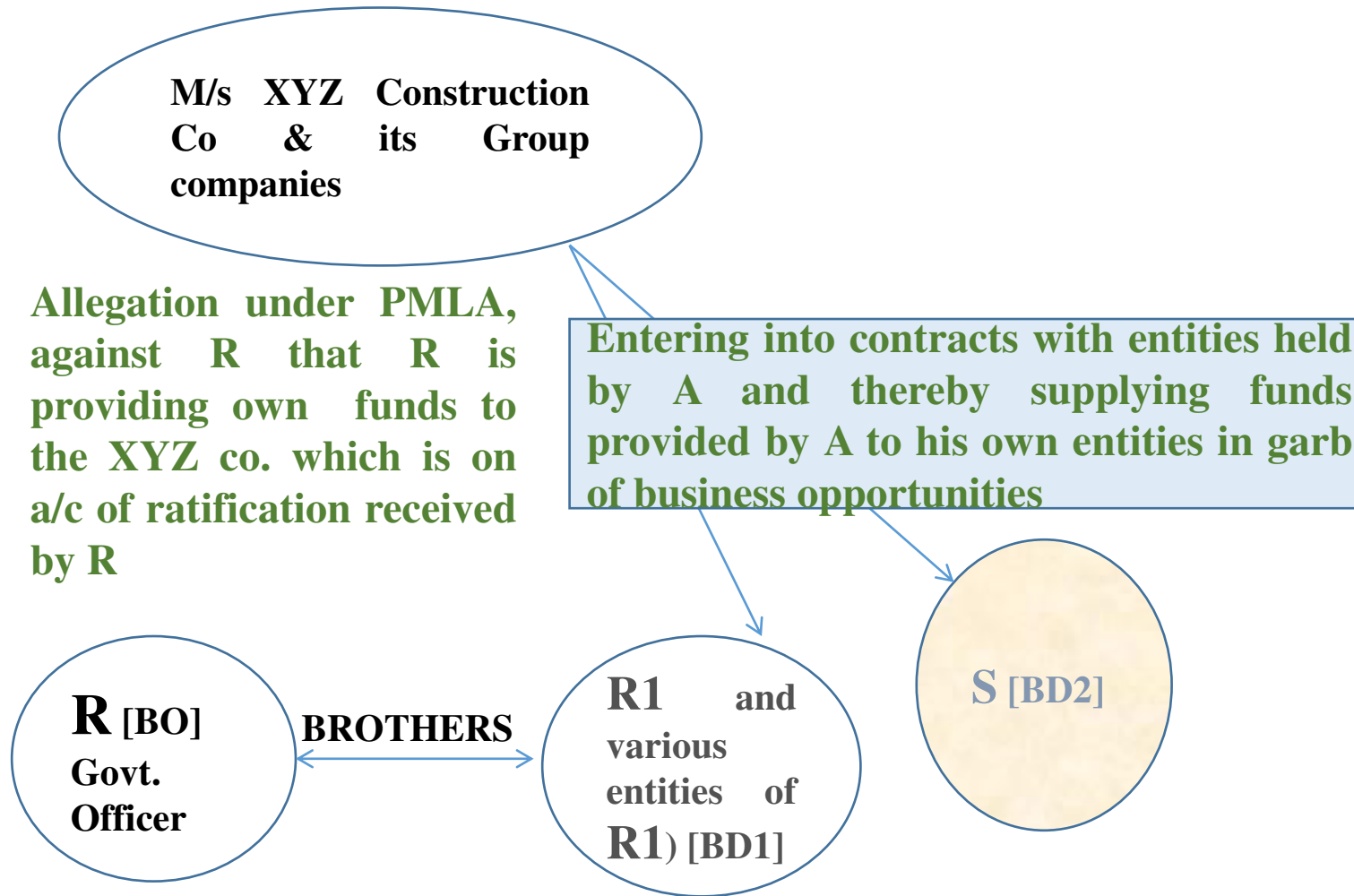


## M/S ABC ENTERPRISES – ADJUDICATING AUTHORITY (BENAMI)

- Allegations of IO

### ACTIONS OF IO

- ❖ Based upon PMLA proceedings against **R and R1** for offences under money laundering.
- ❖ Emphasis from Income Tax proceedings against **R1**.
- ❖ **R** is the Beneficial Owner and R1 and S and other entities owned by R1 are Benamidar
- ❖ Attached 63 properties belonging to **R1** as benami property.
- ❖ Allegation that R1 and his entities and S are holding funds gained out of contracts between them and M/s XYZ co & its Group companies on behalf of R
- ❖ **NONE OF THE PROPERTIES BELONGED TO S**



## **M/S ABC ENTERPRISES – ADJUDICATING AUTHORITY (BENAMI)**

### **FURTHER DEVELOPMENTS:**

- Appellate Tribunal (PMLA) held NO money laundering and cleared the name of R and R1.
- ITAT, Mumbai found the subject transactions as genuine consultancy transactions between R1 and XYZ group.
- Consent Decree already passed by Hon'ble **BHC** stating that the funds and properties belong to M/s XYZ and group companies.

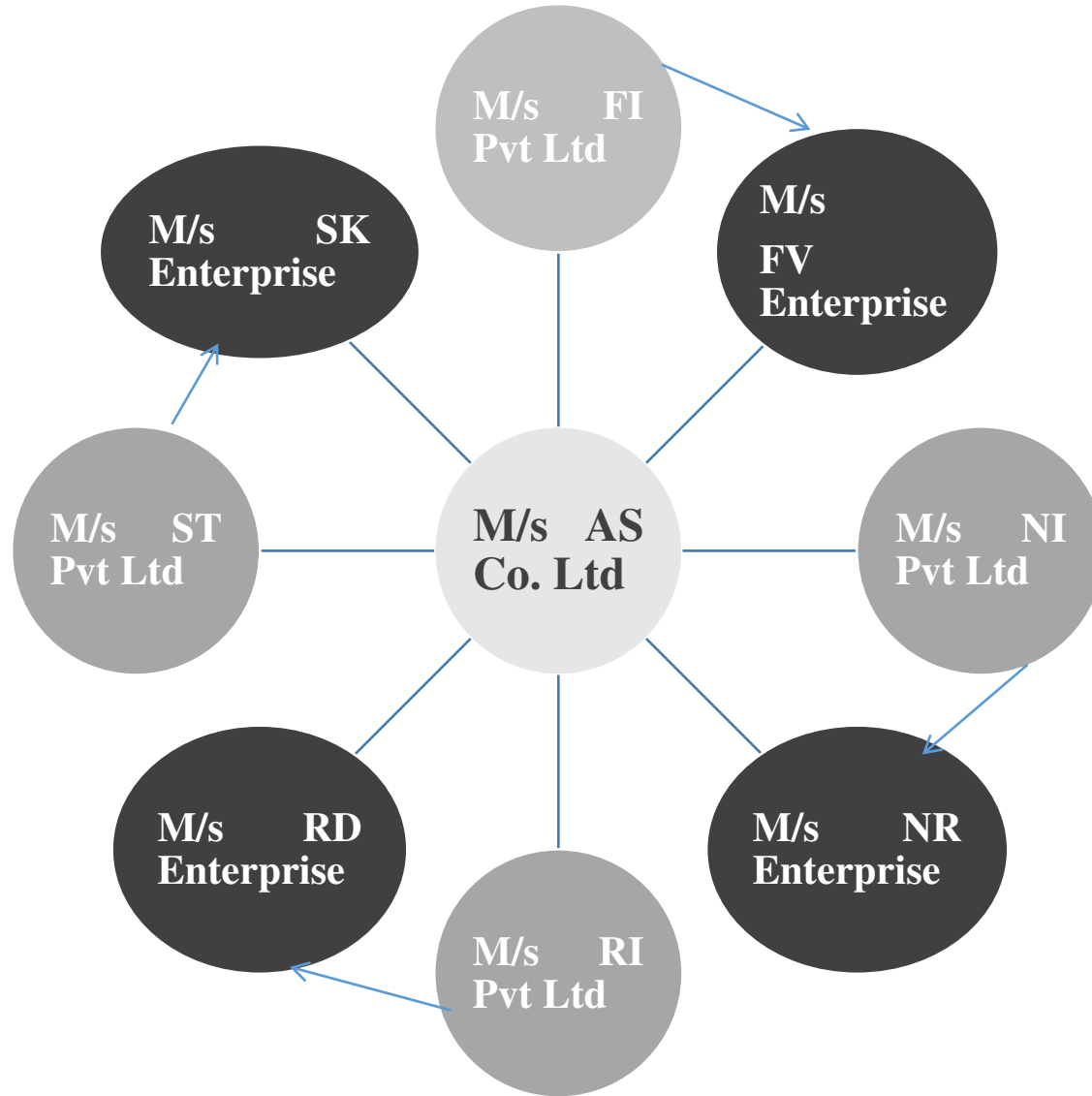
### **ADJUDICATING AUTHORITY 'S DECISION:**

- PMLA TRIBUNAL and ITAT proceedings don't hold any consequence in the present benami proceedings.
- M/s XYZ construction co and its group companies claiming that the PIQ is infact their property, makes them vulnerable to be the beneficial owner.
- Declared R as beneficial owner and R1 and entities held by him and S as benamidar.
- No stand on the point that no property was held by S which was declared as benami property.

## **POSITION OF LAW/POINTS FOR CONSIDERATION:**

- **Is it even logical to allege some entity/ person as benamidar without attaching any property owned by it/him as benami property?**
- **What should be the bearing of PMLA & ITAT orders if passed in favour of alleged benamidars and beneficial owners on Benami proceedings?**
- **Are the allegations of IO really falling under the provisions of PBPT Act?**
- **Will M/s XYZ construction co be held as Beneficial owner ?**

## M/S AS CO. LTD. – ADJUDICATING AUTHORITY (BENAMI)



- **Public Company**
- **Private Limited Company**
- **Partnership Firms**

- The 4 Private Ltd Companies (individually) have made investments in the shares of Public Company,
- The 4 Private Ltd Co. (individually) have created 4 partnership firms, wherein they are majority partners and directors of the respective Pvt Ltd Co. are other partners.

## M/S AS CO. LTD. – ADJUDICATING AUTHORITY (BENAMI)

### ACTION OF THE INITIATING OFFICER

Issued SCN u/s 24(1) & PAO u/s 24(3) in January, 2019 to 4 Pvt Ltd Co. & their respective partnership firms as benamidars but did not identify the BO.

Issued notice u/s 24(2) in April.2019 to the director of AS Co. Ltd and made his the BO

Confirmed PAO u/s 24(4)(a)(i) in April.2019 attaching **PIQ (1)**

Issued AO u/s 24(4)(b)(i) in April.2019 on attaching **PIQ (2)**

1. **PIQ for PAO u/s 24(3): DEMAT A/C OF 4 PVT LTD CO.**
2. **PIQ for AO u/s 24(4)(b)(i) : Bank A/c's of Pvt Ltd Co. and Partnership Firms, Loans given by Partnership firms and Tenancy Rights.**

**Judgment of the Supreme Court in the case of  
Mangathai Ammal (Died)  
VS  
Rajeswari & Ors.  
(Civil Appeal Number 4805 of 2019)**

**Decision of The Supreme Court and fine principles of Benami law discussed therein:**

- The Supreme Court did not agree with the findings and decision given by the Trial Court and the High Court.
- Hon'ble Court held that it appears that both, the Trial Court and the High Court have erred in shifting the burden on the Defendants to prove that the sale transactions were not benami transactions.
- The Supreme Court in its present judgment held that before deciding whether a transaction is benami or not, the principles of law in this regard laid down by the SC in various earlier judgments are required to be considered.

➤ Some of these judgments were discussed in the present order and principles of law decided therein were discussed reiterated in the order, which are stated as under:-

- Jaydayal Poddar v. Bibi Hazra (Mst.) (1974) 1 SCC 3,
- Thakur Bhim Singh v. Thakur Kan Singh (1980) 3 SCC 72
- Valliammal v. Subramaniam (2004) 7 SCC 233
- P. Leelavathi v. V. Shankarnarayana Rao (2019) 6 SCALE 112 it was reiterated that in view of Supreme Court's judgment in the case of Binapani Paul v. Pratima Ghosh (2007) 6 SCC 100, the source of money has never been the sole criteria but one of the relevant criteria's which is not determinative in character.

- It was also observed that the payment of part sale consideration cannot be the sole criteria to hold the sale/transaction as benami.
- While considering a particular transaction as benami, the intention of the person who contributed the purchase money is determinative of the nature of transaction.
- The intention of the person, who contributed the purchase money, 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.



- The most important point to be noted here is that the Hon'ble Supreme Court also took the notice of the original Benami Transaction (Prohibition) Act 1988 as well as amendment made in the year 2016 and it was inter-alia held relying upon the earlier judgment passed by the Supreme Court in the case Binapani Paul v. Pratima Ghosh (2007) 6 SCC 100 that Benami Transaction (Prohibition) Act 1988 **would not be applicable retrospectively.**
- Thus, in nutshell Hon'ble Supreme Court has held that the subject transactions could not be proved as Benami because the person alleging them to be benami could not bring cogent material and evidences on record to prove it so in terms of the six criteria's and principles laid down by the Supreme Court to prove a transaction as benami and thus the subject transactions/properties could not be treated as benami.

**Judgment from Hon'ble Supreme Court on Benami Law  
In the case of**

**P Leelavathi**

**VS**

**V Shankar Narayan Rao (Supreme Court)**

**(In Civil Appeal Number 1099 of 2008 Dt. 9 th April, 2019)**

**Decision of The Supreme Court and fine principles of Benami law discussed therein:**

**➤ 1.Financial Assistance:**

The court observed that merely because some financial assistance was given by a person, it doesn't make the transaction done with those funds as Benami as this cannot be the sole determining factor. In order to make the fund provider as beneficial owner and the property purchased as Benami, the court has to go beyond the source of consideration and there has to be other significant ingredients, which should be proved beyond doubt, in order to prove transaction as Benami.

### ➤ **Burden of Proof:**

The burden of proving that a particular sale is Benami the apparent purchaser is not the real owner, always rests on the person asserting it to be so and that this burden has to be strictly discharged with by adducing legal evidence of a definite character which would either directly prove the fact of Benami or establish circumstances unerringly and reasonably raising an inference of that fact.

### ➤ **The Intention of the Parties Concerned:**

The intention of the parties entering into a Benami transaction has to be proved beyond doubt that the main purpose to enter into the said transaction is to defeat the provisions of Benami law.

➤ **Other Ingredients:**

The court further observed that in addition to the above, the other ingredients, as have been recommended in various earlier decisions of the Supreme Court for proving transactions as Benami transactions, should be established and proved in order to declare a transaction as Benami. The Supreme Court relied heavily upon the ratios decided in the case of

\*Thakur Bhim Singh versus Thakur Kan Singh (1980) 3 SCC 72.

\*Jaydayal Poddar vs Bibi hajra (Mst)(1974)1 SCC 3

\*Bina Pani Paul vs Pratima Ghosh (2007) 6 SCC 100

\*Valliammal vs Subramanyam (2004) 7 233

# **M/S Square Four Housing And Infrastructure Dev. Pvt. Ltd.**

**v/s**

## **Initiating Officer, Kolkata**

**Issue in reference** : Properties acquired by company where source of capital is prima facie from fictitious / shell companies. Principal Officer of company is named as the **Benamidar**. No Beneficial Owner is identified / named. Provisional attachment vide order sheet notes.

**Held** : The impugned property is not a Benami Property and the attachment of the IO is revoked.

- 1.The IO has to demonstrate and prove that the property is not held by the alleged Benamidar for his/its own benefit.
- 2.If there is no valid order passed under sec. 24(3), there cannot be a question or possibility of passing an order continuing / confirming the provisional attachment.
- 3.IO needs to demonstrate independent application of mind as to what inquiries were made to validate / adopt the conclusion of the DDIT and without independent inquiry no reasonable belief can be formed.
- 4.Retrospective applicability of the PBPT Act, to be resolved by either the High Courts' / Supreme Court.

**Smt. A Dhuria**  
**v/s**  
**Initiating Officer, Ludhiana**

- **Issue in reference** : Land acquired in 2012 and registered in the name of Smt. AD of which she has no knowledge. Funds paid by a company owned by her brother who is overseas. AD is named as the **Benamidar**. Company of brother named as Beneficial Owner.
- **Held** : The impugned property falls within the ambit of Benami Property and the provisional attachment of the IO is confirmed. Benamidar admits no knowledge and denies ownership.

**Mr. S Gangaiamaran**  
**v/s**  
**Initiating Officer, Chennai**

- **Issue in reference** : Land acquired in 2013 and registered in the name of SG is funded by two distant relatives of SG. SG is named as the **Benamidar**. Two fund providers named as Beneficial Owners.
- **Held** : The impugned property falls within the ambit of Benami Property and the provisional attachment of the IO is confirmed.

**Mr. Prem Chand Gupta**

**V/s**

**Initiating Officer, New Delhi**

- **Issue in reference** : Old currency of Rs.2.99 lacs deposited in the bank account of PCG by Mr. N Jain (nephew). Bank account provisionally attached u/s 24(3) even before issue of notice u/s 24(1)
- **Held** : Reference filed by IO is rejected and impugned property is held not be a Benami Property and the attachment order is revoked.



**Mr. Prem Chand Gupta**  
**V/s**  
**Initiating Officer, New Delhi**

**Brief reasoning of the bench:**

- The proceedings shall be held as null and void where notice u/s 24(1) is passed after provisional attachment order u/s 24(3) of PBPT Act, 1988.

**M/s Amber Distributors**  
**V/s**  
**Initiating Officer, New Delhi**

- **Issue in reference:** Cash of Rs.3.93 crores deposited in the Axis bank account of M/s AD provisionally attached u/s 24(3). Funds transferred to the account of M/s U Creations – Beneficial Owner. Total amount deposited and transferred was in excess of Rs.50 crs. M/s AD admitted handling cash on commission basis.
- **Held :** Reference filed by IO is accepted despite legal infirmities where 24(3) precedes 24(1) and impugned bank account is held to be a Benami Property and the attachment order is confirmed. Opportunity will be given to defendants at the time of confiscation of property. Directions given to the IO / Addl. CIT to trace and find balance amount which has escaped attachment.

**M/s Amber Distributors**  
**V/s**  
**Initiating Officer, New Delhi**

**Brief**

- Where Benamidar (M/s. AD) admits cash handling on commission basis, funded by Beneficial Owner shall be held as Benami property (Bank Balance), **even if notice u/s 24(3) precedes 24(1) of the PBPT Act, 1988.**

*Thank  
you*

