Rajasthan High Court
Ms Avijit Agro Pvt Ltd And Anr vs Dy Commissioner Of Income Tax And ... on 12 July, 2019
Bench: Veerendra Singh Siradhana

(1 of 160) [CW-2915/2019]

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 2915/2019

1. Niharika Jain W/o Shri Andesh Jain, Aged About 39 Years, R/o Sawan, Shiv Marg, Banswara-327001
2. Ashok Jain S/o Shri Madan Lal Jain, Aged About 59 Years, R/o Sawan, Shiv Marg, Banswara-327001
3. Smt. Someshwari Jain W/o Shri Ashok Jain, Aged About 58 Years, R/o Sawan, Shiv Marg, Banswara-327001
4. Smt. Sheela Devi Jain W/o Shri Vinod Kumar Jain, Aged About 48 Years, R/o Sawan, Shiv Marg, Banswara-327001
5. Motiya Dodiyar, S/o Shri Wesiya Bheel, Aged About 56 Years, R/o Village Borda Tehsil Ghantol, Distt. Banswara-327021

----Petitioners

Versus

1. Union Of India, Through Its Secretary, Income Tax Department, Government Of India, New Delhi.
2. Deputy Commissioner (Benami Prohibition) Jaipur And Initiating Officer, Office At Room No. 250, New Central Revenue Building, Income Tax Office, Statue Circle, Jaipur
3. Adjudicating Authority, The Prohibition Of Benami Property Transaction Act 1988, Office At, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001

----Respondents

Connected With S.B. Civil Writ Petition No. 15978/2017

1. M/s Manglam Build Developers Limited (a registered Companies registered under the Companies Act, 1956) through its Director, Shri Rambabu Agarwal son of Shri Madan Lal Agarwal, resident of H-55, Jhakhreshwar Marg, Banipark, Jaipur

2. Shri Rambabu Agarwal Son Of Shri Madan Lal Agarwal, Resident Of H-55, Jhakhreshwar Marg, Banipark, Jaipur

----Petitioners Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) (2 of 160) [CW-2915/2019] and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

----Respondents S.B. Civil Writ Petition No. 19132/2017 Smt. Pallavi Mishra Wife Of Sh. Abhishek Mishra, Resident Of A- 801, Auram Apartment, Tilak Marg, C-Scheme, Jaipur.

----Petitioner Versus

1. Dy. Commissioner Benami Prohibition, Rajasthan And Initiating Officer, Prohibition Of Benami Transa, Ncrb Building, Income Tax Office, Statute Circle, Jaipur.

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

----Respondents S.B. Civil Writ Petition No. 21751/2017

1. M/s Amar Pratap Developers Private Limited, A-21, Sadul Ganj, Bikaner through its Director Shri Ashok Kumar Modi son of Hanuman Prasad Modi, R/o A-21, Sadul Ganj, Bikaner, at present resident of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Centre, Sahakar Marg, Jaipur.

2. Ashok Kumar Modi son of Hanuman Prasad Modi, resident of A- 21, Sadul Ganj, Bikaner, at present resident of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

----Petitioners Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

----Respondents

S.B. Civil Writ Petition No. 9162/2018

1. Dev Kishan Acharya S/o Sh. V.c. Acharya, R/o 3-H-13, 14, R.C. Vyas Colony, Bhilwara.

2. Smt. Kiran Acharya, W/o Shri Dev Kishan Acharya, R/o 3-

H-13, 14, R.C. Vyas Colony, Bhilwara.

3. Shri Mohan Lal S/o Sh. Ganesh Raigar, R/o 3-H-13, 14, R.C. Vyas Colony, Bhilwara.

4. Jai Ram S/o Sh. Ram Singh, R/o 3-H-13, 14, R.C. Vyas Colony, Bhilwara.

5. Smt. Antar Bai W/o Shri Jain Ram, R/o 3-H-13, 14, R.C.

Vyas Colony, Bhilwara.

----Petitioners Versus

1. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

2. Dy. Commissioner Of Income Tax Benami Transaction And Initiating Officer Under The Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur.

3. Additional Commissioner Of Income Tax (BP) Jaipur, Room No. 239, New Central Revenue Building, Income Tax Office, Statue Circle, Jaipur.

----Respondents S.B. Civil Writ Petition No. 10852/2018

1. M/s Epic Vyapaar Pvt Limited, 3rd Floor Madhav Plaza, District Shopping Center Sahakar Marg, Jaipur, (Registered Office at Darpam Appartment, 19/1/A, Mohanlal Bahalwala Road, 3 rd Floor, Bally, Howrah) through its Director Shri Avinash Modi son of Arun Kumar Modi, resident of A-21, Sadul Ganj, Bikaner, at Present resident of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

2. Shri Avinash Modi son of Arun Kumar Modi, resident of A-

21, Sadul Ganj, Bikaner, at present resident Of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

----Petitioners

Versus

(4 of 160) [CW-2915/2019]

1. Dy. Commissioner Of Income Tax Benami Transaction And Initiating Officer Under The Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur.

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4 th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 10853/2018

1. M/s Avijit Agro Private Limited, Room No. 2, 3 rd Floor Madhav Plaza District Shoping Center, Sahakar Jaipur, through its Director Shri Ashok Kumar Modi son of Hanuman Prasad Modi, resident of A-21, Sadul Ganj, Bikaner, at present resident of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

2. Ashok Kumar Modi Son Of Hanuman Prasad Modi, Resident Of A-21, Sadul Ganj, Bikaner, At Present resident of Room No. 3, 3 rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

----Petitioners Versus

1. Dy. Commissioner Of Income Tax Benami Transaction And Initiating Officer Under The Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur.

2. Union Of India Through Its Secretary, Income Tax Department, Government of India, New Delhi.

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4 th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 10868/2018 (5 of 160) [CW-2915/2019] Suman Devi Wife of Shri Pradeep Kumar, resident of Karni Pura Road, Uttar Mohalla, Danta Ramgarh Sikar (Raj.)

----Petitioner Versus

1. Dy. Commissioner Of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act, 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur.

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 11295/2018

1. M/s Vibhuti Integrated Finance Private Limited, 3 rd Floor Madhav Plaza District Shopping Centre, Sahakar Marg, Opp. Near J.P. Phatak, Jaipur, through its Director Shri Avinash Modi son of Shri Arun Kumar Modi, resident of A- 21, Sadul Ganj, Bikaner, at present resident of room no. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

2. Shri Avinash Modi Son Of Shri Arun Kumar Modi, resident of A-21, Sadul Ganj, Bikaner, at present resident of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

----Petitioners Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

3. Adjudicating Authority, Under the Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4 th Floor, (6 of 160) [CW-2915/2019] Jeevan Deep Building, Parliament Street, New Delhi-110001.

----Respondents S.B. Civil Writ Petition No. 11371/2018

1. M/s Amar Pratap Developers Private Limited, A-21, Sadul Ganj, Bikaner through its Director Shri Ashok Kumar Modi son of Hanuman Prasad Modi, resident of A-21, Sadul Ganj, Bikaner, at present resident of Room No. 3, 3 rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

2. Ashok Kumar Modi Son Of Hanuman Prasad Modi, resident of A-21, Sadul Ganj, Bikaner, at present resident of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

----Petitioners Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India through its secretary, Income Tax Department, Government Of India, New Delhi.

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4 th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 11511/2018

1. M/s Natraj Finlease Private Limited, 3 rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Opp. Near J.P. Phatak, Jaipur through its Director Shri Ashok Kumar Modi son of Hanuman Prasad Modi, resident of A-21, Sadul Ganj, Bikaner, At Present Resident of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

2. Ashok Kumar Modi Son Of Hanuman Prasad Modi, Resident Of A-21, Sadul Ganj, Bikaner, At Present Resident Of Room No. 3, 3rd Floor, Madhav Plaza, District Shopping Center, Sahakar Marg, Jaipur.

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----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 11948/2018

1. St. Wilfred Education Society, Sector 10, Meera Marg, Mansarover, Jaipur Through Its Secretary Shri Keshav Gupta S/o Shri Mahesh Kumar Gupta.

2. Adarsh Gyan Vidhalya Samiti, Badaya Chamber, Film Colony, Jaipur Through Its Secretary Shri Suresh Kumar S/o Shri Gopal Das Badaya

----Petitioners Versus

1. Union Of India, Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

2. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax

Office, Jaipur

3. Additional Commissioner Of Income Tax Bp Jaipur, Room No. 239, New Central Revenue Building, Income Tax Office, Statute Circle, Jaipur.

----Respondents S.B. Civil Writ Petition No. 12580/2018 Jaspal Singh Son of Jangir Singh Bawari, Resident Of Chak 28 KYD, Bariyanwali, Tehasil Khajuwala, District Bikaner

----Petitioner Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) (8 of 160) [CW-2915/2019] and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Room No.26, 4 th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 12613/2018

1. Shri Raghav Trading Corporation, A-12, Karni Nagar, Pawanpuri, Bikaner through its Partner Shri Anil Asopa Son of Shri Shyam Sundar Asopa, resident of Plot No. 3,4,5, Flat No. 301, Platinum, Chandra Kala Colony, Dungarpura, Paniki Tankiwali Gali,tonk Road, Jaipur

2. Shri Anil Asopa Son Of Shri Shyam Sundar Asopa, Resident Of Plot No. 3,4,5, Flat No. 301, Platinum, Chandra Kala Colony, Dungarpura, Paniki Tankiwali Gali, Tonk Road, Jaipur

----Petitioners Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi

3. Adjudicating Authority, under The Prohibition Of Benami Property Transaction Act, 1988, Room No. 26, 4 th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 12617/2018

1. M/s Naman Buildcon, A-12, Karni Nagar, Pawanpuri, Bikaner Through Its Partner Shri Vinit Asopa S/o Shri Girija Shankar Asopa R/o Plot No. 3,4,5 Flat No. 301, Platinum, Chandra Kala

Colony, Durgapura, Pani Ki Tankiwali Gali, Tonk Road, Jaipur.

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2. Shri Vinit Asopa S/o Shri Girija Shankar Asopa, R/o Plot No. 3,4,5 Flat No. 301, Platinum, Chandra Kala Colony, Durgapura, Pani Ki Tanki Wali Gali, Tonk Road, Jaipur.

----Petitioners Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

3. Adjudicating Authority Under The Prohibition Of Benami Property Transaction Act, 1988, Room No. 26, 4 th Floor, Jeevan Deep Building, Parliament Street, New Delhi

-110001

----Respondents S.B. Civil Writ Petition No. 14222/2018 Bhanwara Ram Nayak S/o Shera Ram Nayak, aged about 57 yrs, R/o Ridmalsar, Purohitan, Sagar, Bikaner.

----Petitioners Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Room No. 26, 4 th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001

----Respondents S.B. Civil Writ Petition No. 14260/2018 Balram Meghwal S/o Ishwar Ram Meghwal, aged about

36....years, R/o Near Manoj Dal Mill, Sarvoday Basti, Bikaner.

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----Petitioners

Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India , New Delhi

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 14274/2018 Kishan Lal S/o Pira Ram Nayak, aged about 45 years, R/o Nayako ka Mohalla, Village Palana, District Bikaner.

----Petitioners Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India , New Delhi

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 14275/2018 Shyam Lal Mehtar S/o Kalu Ram Mehtar, aged about 36 years, R/o Behind Shiv Mandir, Shivbari, Bikaner.

----Petitioners Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, (11 of 160) [CW-2915/2019] NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India , New Delhi

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 14276/2018 Tejpal Mehtar S/o Kalu Ram Mehtar, aged about 31 years, R/o Behind Shiv Mandir, Shivbari, Bikaner

----Petitioners Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax

Office, Jaipur.

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India, New Delhi

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 14277/2018 Kishan Lal Mehatar S/o Kalu Ram Mehater, aged about 32 yr., R/o Behind shiv Mandir, Shivbari, Bikaner.

----Petitioners Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur.

2. Union Of India Through Its Secretary, Income Tax (12 of 160) [CW-2915/2019] Department, Government Of India , New Delhi

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 14279/2018 Sharwan Singh, S/o Nayak Singh Bawari, aged about 56 years, R/o 28 KYD, Khajuwala, Bikaner, through power of attorney holder Sh. Anil Lohiya S/o Nemi Chand Lohiya, aged 40 years, R/o F-101, Vallabh Garden, Bikaner.

----Petitioners Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India , New Delhi

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 14282/2018 Girja Shankar Asopa S/o Mahadev Asopa, aged 60 years, R/o A-12, Karni Nagar, Pawam Puri, Bikaner.

----Petitioners Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax

Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India , New Delhi (13 of 160) [CW-2915/2019]

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 14285/2018 Jangir Singh, S/o Nanak Singh Bawari, aged about 59 years, R/o 28 KYD, Khajuwala, Bikaner through power of attorney holder Sh. Anil Lohiya S/o Nemi Chand Lohiya, aged 40 years, R/o F-101, Vallabh Garden, Binaker.

----Petitioners Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India , New Delhi

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 14286/2018 Ratan Sirohi S/o Shri Gopal Kishan Sirohi, aged about 40 years, R/o Opposite Karni Market, Phar Bazar, Bikaner.

----Petitioners Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India , New Delhi

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, (14 of 160) [CW-2915/2019] Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 14289/2018 Pratap Singh, S/o Nanak Singh Bawari, aged about 40 years, R/o 28 KYD, Khajuwala, Bikaner, throuth power of attorney holder sh. Anil Lohiya S/o Nemi chand Lohiya, aged 40 years, R/o F-101, Vallabh Garden, Bikaner.

----Petitioners Versus

1. Dy. Commissioner of Income Tax (Benami Transaction) and Initiating Officer under the Prevention of Benami Transaction Act 2016, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union Of India Through Its Secretary, Income Tax Department, Government Of India , New Delhi

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 26, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001.

----Respondents S.B. Civil Writ Petition No. 15308/2018 Smt Beena Singh Wife Of Dr. Jitendra Singh, Aged About 53 Years, Resident Of Village Pidwali, Panchayat Samiti And Tehsil Bayana, District Bharatpur In The State Of Rajasthan

----Petitioner Versus

1. Union Of India, Through The Secretary, Ministry Of Finance (Department Of Revenue) North Block, New Delhi

2. Deputy Commissioner Of Income-Tax (Benami Prohibition) & Initiating Officer, Under The Prohibition Of Benami Property Transactions Act, 1988, New Central Revenue Building, Statue Circle, Bhagwan Das Road, C- Scheme, Jaipur

----Respondents S.B. Civil Writ Petition No. 16304/2018 (15 of 160) [CW-2915/2019] Gulab Singh Yadav alias Ramu Ram Alias Ramu Son Of Brij Lal Alias Virdhi Chand, Aged About 45 Years, R/o Plot No. 804E, Kisan Marg, Opp. Ahinsa Park, Barkat Nagar, Tonk Road, Jaipur

----Petitioner Versus

1. Union Of India Through Its Secretary, Income Tax Department, Government Of India New Delhi

2. Dy. Commissioner Of Income Tax (Benami Prohibition) And Initiating Officer, Under The Prevention Of Benami Property Transaction Act, 1988, Room No. 250, Statue Circle, Ncrb, Statue Circle, Jaipur

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act1988, Room No. 26, 4 th Floor, Jeevan Deep Building, Parliament Street, New Delhi

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----Respondents S.B. Civil Writ Petition No. 21219/2018 M/s Finetech Macro Developers Pvt. Ltd., (a registered companies registered Under The Companies Act, 1956) Registered Office E-666, Prim Pavilion, Nakul Path, Lal Kothi Scheme, Jaipur through its Director, Shri Charan Singh Khangarot, S/o Shri Mukut Singh, By Caste Rajput Aged About 41 Years Resident of Plot No. M-28, Income Tax Colony, Tonk Road, Jaipur, Rajasthan.

----Petitioner Versus

1. Dy. Commissioner (Benami Prohibition), Rajasthan And Initiating Officer, Prohibition Of Benami Transactions Act, 1988, Room No. 250, Statue Circle, NSRB, Income Tax Office, Jaipur

2. Adjudicating Authority, (Under The Prohibition Of Benami Property Transactions Act, 1988), Office At Room No. 26, Fourth Floor, Jeevan Deep Building, New Delhi-110001

3. Union Of India, Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

----Respondents S.B. Civil Writ Petition No. 21220/2018 M/s Finetech Macro Developers Pvt. Ltd., (a registered companies registered Under The Companies Act, 1956) (16 of 160) [CW-2915/2019] Registered Office E-666, Prim Pavilion, Nakul Path, Lal Kothi Scheme, Jaipur Through Its Director, Shri Charan Singh Khangarot, S/o Shri Mukut Singh, By Caste Rajput Aged About 41 years resident of Plot No. M-28, Income Tax Colony, Tonk Road, Jaipur, Rajasthan.

----Petitioner Versus

1. Dy. Commissioner (Benami Prohibition), Rajasthan And Initiating Officer, Prohibition Of Benami Transactions Act, 1988, Room No. 250, Statue Circle, Ncrb, Income Tax Office, Jaipur

2. Adjudicating Authority, (Under The Prohibition Of Benami Property Transactions Act, 1988), Office At Room No. 26, Fourth Floor, Jeevan Deep Building, New Delhi-110001

3. Union Of India, Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

----Respondents S.B. Civil Writ Petition No. 21229/2018 M/s Finetech Macro Developers Pvt. Ltd., (a Registered Companies registered under the Companies Act, 1956) registered office E-666, Prim Pavilion, Nakul Path, Lal Kothi Scheme, Jaipur through its Director, Shri Charan Singh Khangarot, S/o Shri Mukut Singh, By Caste Rajput Aged About 41 Years Resident Of Plot No. M-28, Income Tax Colony, Tonk Road, Jaipur, Rajasthan.

----Petitioner Versus

1. Dy. Commissioner (Benami Prohibition), Rajasthan And Initiating Officer, Prohibition Of Benami Transactions Act, 1988, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Adjudicating Authority, (Under The Prohibition Of Benami Property Transactions Act, 1988), Office At Room No. 26, Fourth Floor, Jeevan Deep Building, New Delhi-110001

3. Union Of India, Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

----Respondents S.B. Civil Writ Petition No. 25438/2018 Dr. Ram Singh Yadav @ Ramu Ram @ Ramu Yadav S/o Late Sh.

(17 of 160) [CW-2915/2019] Braj Lal alias Virdhi Chand Yadav, Aged About 52 Years, R/o Plot No. 10, Achrol House, Civil Lines, Jaipur, Rajasthan.

----Petitioner Versus

1. Union Of India, Through Its Secretary, Ministry Of Finance, Department Of Revenue, Government Of India, New Delhi.

2. Dy. Commissioner Of Income Tax, (Benami Prohibition) and Initiating Officer Under The Prevention Of Benami Property Transaction Act 1988, Room No. 250, NCR Building, Statue Circle, Jaipur.

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Through Its Registrar, Room No. 17, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110001

4. Sh. Gulab Singh Yadav S/o Sh. Braj Lal @ Virdhi Chand Yadav, Aged About 45 Years, R/o Plot No. 804 E, Kisan Marg, In Front of Ahinsa Park, Barkat Nagar, Tonk Road, Jaipur.

----Respondents S.B. Civil Writ Petition No. 25439/2018 Dr. Ram Singh Yadav @ Ramu Ram @ Ramu Yadav S/o Late Sh. Braj Lal Alias Virdhi Chand Yadav, Aged About 52 Years, R/o Plot No. 10, Achrol House, Civil Lines, Jaipur, Rajasthan.

----Petitioner Versus

1. Union Of India, Through Its Secretary, Ministry Of Finance, Department Of Revenue, Government Of India, New Delhi.

2. Dy. Commissioner Of Income Tax, (Benami Prohibition) And Initiating Officer Under The Prevention Of Benami Property Transaction Act 1988, Room No. 250, NCR Building, Statue Circle, Jaipur.

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Through Its Registrar, Room No. 17, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110001

----Respondents (18 of 160) [CW-2915/2019]

4. Sh. Gulab Singh Yadav S/o Sh. Braj Lal @ Virdhi Chand Yadav, R/o Plot No. 804 E, Kisan Marg, in front Of Ahinsa Park, Barkat Nagar, Tonk Road, Jaipur.

5. Smt. Vinita Yadav W/o Sh. Gulab Singh Yadav, R/o Plot No. 804 E, Kisan Marg, In Front Of Ahinsa Park, Barkat Nagar, Tonk Road, Jaipur.

6. Ms. Riya Yadav D/o Sh. Gulab Singh Yadav R/o Plot no.

804 E, Kisan Marg, in Front Of Ahinsa Park, Barkat Nagar, Tonk Road, Jaipur.

----Proforma Respondents S.B. Civil Writ Petition No. 25440/2018 Dr. Ram Singh Yadav @ Ramu Ram @ Ramu Yadav S/o Late Sh. Braj Lal Alias Virdhi Chand Yadav, Aged About 52 Years, R/o Plot No. 10, Achrol House, Civil Lines, Jaipur, Rajasthan.

----Petitioner Versus

1. Union Of India, Through Its Secretary, Ministry Of Finance, Department Of Revenue, Government Of India, New Delhi.

2. Dy. Commissioner Of Income Tax, (Benami Prohibition) and Initiating Officer Under The Prevention Of Benami Property Transaction Act 1988, Room No. 250, NCR Building, Statue Circle, Jaipur.

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Through Its Registrar, Room No. 17, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110001

------Respondents

4. Sh. Gulab Singh Yadav S/o Sh. Braj Lal @ Virdhi Chand Yadav, R/o Plot No. 804 E, Kisan Marg, In Front Of Ahinsa Park, Barkat Nagar, Tonk Road, Jaipur.

----Proforma Respondents S.B. Civil Writ Petition No. 25441/2018 Dr. Ram Singh Yadav @ Ramu Ram @ Ramu Yadav S/o Late Sh. Braj Lal Alias Virdhi Chand Yadav, Aged About 52 Years, R/o Plot No. 10, Achrol House, Civil Lines, Jaipur, Rajasthan.

----Petitioner

Versus

1. Union Of India, Through Its Secretary, Ministry Of Finance, Department Of Revenue, Government Of India, New Delhi.

2. Dy. Commissioner Of Income Tax, (Benami Prohibition) And Initiating Officer Under The

Prevention Of Benami Property Transaction Act 1988, Room No. 250, Ncr Building, Statue Circle, Jaipur.

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Through Its Registrar, Room No. 17, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110001

4. Sh. Gulab Singh Yadav S/o Sh. Braj Lal @ Virdhi Chand Yadav, R/o Plot No. 804 E, Kisan Marg, In Front Of Ahinsa Park, Barkat Nagar, Tonk Road, Jaipur.

----Respondents S.B. Civil Writ Petition No. 25602/2018 Dr. Ram Singh Yadav @ Ramu Ram @ Ramu Yadav S/o. Late Sh. Braj Lal Alias Virdhi Chand Yadav, Aged About 52 Years, R/o. Plot No. 10, Achrol House, Civil Lines, Jaipur, Rajasthan.

----Petitioner Versus

1. Union Of India, Through Its Secretary, Ministry Of Finance, Department Of Revenue, Government Of India, New Delhi.

2. Dy. Commissioner Of Income Tax (Benami Prohibition), And Initiating Officer Under The Prevention Of Benami Property Transaction Act 1988, Room No. 250, NCR Building, Statue Circle, Jaipur.

3. Adjudicating Authority, Under The Prohibition Of Benami Property Transaction Act, 1988, Through Its Registrar, Room No. 17, 4Th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110 001.

----Respondents

4. Sh. Gulab Singh Yadav S/o. Sh. Braj Lal @ Virdhi Chand Yadav, Aged About 45 Years, R/o Plot No. 804 E, Kisan Marg, In Front Of Ahinsa Park, Barkat Nagar, Tonk Road, Jaipur.

----Proforma Respondents S.B. Civil Writ Petition No. 27102/2018 (20 of 160) [CW-2915/2019]

1. Sitaram Meena S/o Shri Phool Chand Meena, aged about 33 Years, By Caste Meena, R/o 199, Patel Colony, Badi Ka Baas, via-Sitapura Tehsil Sanganer, Jaipur (Rajasthan)

2. Charan Singh Khangarot S/o Shri Mukut Singh Khangarot, aged about 40 Years, By Caste Rajput, R/o M-28, Income Tax Colony, Durgapura Tonk Road, Jaipur, Rajasthan

3. Udai Buildhome Pvt. Ltd., having its registered office at 302, Golden Sunrise Apartment, Lajpat Nagar, C-Scheme, Jaipur through its principal officer/ director duly Shri Sandeep Sharma S/o Shri Totaram Sharma aged 36 Years R/o 74-B, Phool Kunj, Gaurav Nagar, Civil Lines, Jaipur duly authorized by the company

----Petitioners Versus

1. Dy Commissioner (Benami Prohibition), Rajasthan And Initiating Officer, Prohibition of Benami Transactions Act, 1988, Room No. 250, Statue Circle, Ncrb, Income Tax Office, Jaipur

2. Union Of India, Through Its Secretary, Income Tax Department, Government Of India, New Delhi

3. Adjudicating Authority (Under The Prohibition Of Benami Property Transactions Act, 1988), Office at Room No. 26, Fourth Floor, Jeevan Deep Building, New Delhi-110001

----Respondents S.B. Civil Writ Petition No. 27114/2018

1. Sitaram Meena S/o Shri Phool Chand Meena, aged about 33 Years, By caste Meena , R/o 199, Patel Colony, Badi Ka Baas, via-Sitapura Tehsil Sanganer, Jaipur (Rajasthan)

2. Charan Singh Khangarot S/o Shri Mukut Singh Khangarot, aged about 40 Years, By Caste Rajput, R/o M-28, Income Tax Colony, Durgapura Tonk Road, Jaipur, Rajasthan

3. Udai Buildhome Pvt. Ltd., having its registered office at 302, Golden Sunrise Apartment, Lajpat Nagar, C-Scheme, Jaipur through its principal officer/ director duly Shri Sandeep Sharma S/o Shri Totaram Sharma aged 36 Years R/o 74-B, Phool Kunj, Gaurav Nagar, Civil Lines, Jaipur duly authorized by the company

----Petitioners Versus (21 of 160) [CW-2915/2019]

1. Dy. Commissioner (Benami Prohibition), Rajasthan and Initiating Officer, Prohibition of Benami Transactions Act, 1988, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur

2. Union of India, Through its Secretary, Income Tax Department, Government Of India, New Delhi

3. Adjudicating Authority (Under The Prohibition Of Benami Property Transactions Act, 1988), Office At Room No. 26, Fourth Floor, Jeevan Deep Building, New Delhi-110001

----Respondents S.B. Civil Writ Petition No. 27550/2018 Kishan Singh, S/o Shri Gopal Singh, aged about 50 Years, R/o 13, Jai Kishan Colony, Tonk Phatak, Jaipur In The State Of Rajasthan.

----Petitioner Versus

1. Union Of India, Through The Secretary, Ministry Of Finance (Department Of Revenue) North Block, New Delhi

2. Deputy Commissioner Of Income-Tax (Benami Prohibition) & Initiating Officer, Under The Prohibition Of Benami Property Transactions Act, 1988, New Central Revenue Building, Statue

Circle, Bhagwan Das Road, C- Scheme, Jaipur

----Respondents S.B. Civil Writ Petition No. 27551/2018 Chandra Mohan Bhati, S/o Shri Gendilal Ji Bhati, Aged About 53 Years, R/o 17, Kalyan Colony, Barkat Nagar, Tonk Phatak, Jaipur In The State of Rajasthan.

----Petitioner Versus

1. Union Of India, Through The Secretary, Ministry Of Finance (Department Of Revenue) North Block, New Delhi

2. Deputy Commissioner Of Income-Tax (Benami Prohibition) & Initiating Officer, Under The Prohibition Of Benami Property Transactions Act, 1988, New Central Revenue Building, Statue Circle, Bhagwan Das Road, C-

Scheme, Jaipur

----Respondents

S.B. Civil Writ Petition No. 27552/2018 Vinika Bhati, D/o Shri Chandra Mohan Bhati, Aged About 26 Years, R/o 17, Kalyan Colony, Barkat Nagar, Tonk Phatak, Jaipur In The State Of Rajasthan

----Petitioner Versus

1. Union Of India, Through The Secretary, Ministry Of Finance (Department Of Revenue) North Block, New Delhi

2. Deputy Commissioner Of Income-Tax (Benami Prohibition) And Initiating Officer, Under The Prohibition Of Benami Property Transactions Act, 1988, New Central Revenue Building, Statue Circle, Bhagwan Das Road, C- Scheme, Jaipur

----Respondents S.B. Civil Writ Petition No. 27553/2018 Laxmi Bhati, W/o Shri Chandra Mohan Bhati, Aged About 51 Years, R/o 17, Kalyan Colony, Barkat Nagar, Tonk Phatak, Jaipur In The State Of Rajasthan

----Petitioner Versus

1. Union Of India, Through The Secretary, Ministry Of Finance (Department Of Revenue) North Block, New Delhi

2. Deputy Commissioner Of Income-Tax (Benami Prohibition) And Initiating Officer, Under The Prohibition Of Benami Property Transactions Act, 1988, New Central Revenue Building, Statue Circle, Bhagwan Das Road, C- Scheme, Jaipur

----Respondents S.B. Civil Writ Petition No. 27554/2018 Anjali Rathore, W/o Shri Kishan Singh, Aged About 49 Years, R/o 13, Jai Kishan Colony, Tonk Phatak, Jaipur In The State Of Rajasthan

----Petitioner Versus

1. Union Of India, Through The Secretary, Ministry Of Finance (Department Of Revenue) North Block, New Delhi

2. Deputy Commissioner Of Income-Tax (Benami Prohibition) & Initiating Officer, Under The Prohibition Of (23 of 160) [CW-2915/2019] Benami Property Transactions Act, 1988, New Central Revenue Building, Statue Circle, Bhagwan Das Road, C- Scheme, Jaipur

----Respondents S.B. Civil Writ Petition No. 4212/2019 Ramdhan Meena S/o Rewad Mal Meena, Village - Langdiyawad, Tehsil- Jamwaramgarh, District- Jaipur.

----Petitioner Versus

1. Deputy Commissioner Of Income Tax, (Benami Prohibition) & Initiating Officer Under The Prohibition Of Benami Property Transactions Act For The State Of Rajasthan, Room No. 250, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur (Rajasthan).

2. Union Of India, Through Secretary, Ministry Of Finance, Department Of Revenue, Income Tax Department, Government Of India, New Delhi.

----Respondents S.B. Civil Writ Petition No. 4396/2019 Ramdhan Meena S/o Rewad Mal Meena, Village- Langdiyawad, Tehsil- Jamwaramgarh, District- Jaipur (Rajasthan).

----Petitioner Versus

1. Deputy Commissioner Of Income Tax, (Benami Prohibition) & Initiating Officer Under The Prohibition Of Benami Property Transactions Act For The State Of Rajasthan, Room No. 250, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur (Rajasthan)

2. Union Of Inida, Through Secretary, Ministry Of Finance, Department Of Revenue, Income Tax Department, Government Of India, New Delhi.

----Respondents S.B. Civil Writ Petition No. 4704/2019 Sita Devi W/o Shri Ramdhan Meena, Aged About 28 Years, R/o Village - Langdiyawad, Tehsil - Jamwaramgarh, District - Jaipur. (Rajasthan).

----Petitioner

Versus

1. Deputy Commissioner Of Income Tax, (Benami Prohibition) & Initiating Officer Under The Prohibition Of Benami Property Transactions Act For The State Of Rajasthan, Room No. 250, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur (Rajasthan).

2. Union Of India, Through Secretary, Ministry Of Finance, Department Of Revenue, Income Tax Department, Government Of India, New Delhi.

----Respondents S.B. Civil Writ Petition No. 4897/2019 Ramdhan Meena S/o Rewad Mal Meena, Village- Langdiyawad, Tehsil- Jamwaramgarh, District- Jaipur. (Rajasthan).

----Petitioner Versus

1. Deputy Commissioner Of Income Tax, (Benami Prohibition) & Initiating Officer Under The Prohibition Of Benami Property Transactions Act For The State Of Rajasthan, Room No. 250, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur (Rajasthan).

2. Union Of India, Through Secretary, Ministry Of Finance, Department Of Revenue, Income Tax Department, Government Of India, New Delhi.

----Respondents S.B. Civil Writ Petition No. 5284/2019

1. M/s Manglam Build Developers Limited, (a registered companies registered under The Companies Act, 1956) through its Authorized Signatory, Shri Sanjay Gupta Son Of Shri Nand Kishore Gupta, resident of C-9, Barwada House, Civil Lines, Jaipur.

2. Shri Sanjay Gupta Son Of Shri Nand Kishore Gupta, Resident Of C-9, Barwada House, Civil Lines, Jaipur.

----Petitioners Versus

1. Dy. Commissioner Of Income Tax, (Benami Transaction) and Initiating Officer Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 250, Statue Circle, NCRB, Income Tax Office, Jaipur.

2. Union Of India Through Its Secretary, Income Tax (25 of 160) [CW-2915/2019] Department, Government Of India, New Delhi.

----Respondents S.B. Civil Writ Petition No. 5352/2019 Ram Singh Meena S/o Sh. Ramkaran, Aged About 50 Years, R/o Mohalla Mainpura, Sawaimadhopur (Rajasthan).

----Petitioner Versus

1. Dy. Commissioner Of Income Tax, (Benami Transaction) And Initiating Officer Under The Prohibition Of Benami Property Transaction Act 1988, Room No. 250, Statue Circle, Ncrb, Income Tax Office, Jaipur.

2. Union Of India, Through Its Secretary, Income Tax Department, Government Of India, New Delhi.

----Respondents For Petitioner(s) : Mr. K.K. Sharma, Sr. Adv. with Mr. Sandeep Taneja Mr. M.M. Ranjan, Sr. Adv. with Mr. Rohan Agarwal Mr. Anant Kasliwal with Mr. Vaibhav Kasliwal, Ms. Charu Pareek, Mr. Pradeep Kumar Mr. Gunjan Pathak Mr. N.L. Agarwal For Respondent(s) : Mr. Prabhuling K Navadgi, Sr. Adv.

with Mr. Prabhansh Sharma, Mr. R.B. Mathur HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA Order 12th July, 2019 The above noted batch of writ applications, projects a challenge to the jurisdiction of the income tax authorities in initiation of proceedings under section 24 of the Prohibition of Benami Property Transactions Act, 1988 (for short, Benami Act of 1988), as amended vide Benami Transactions (Prohibition) Amendment Act, 2016 (for short, Benami Amendment Act of (26 of 160) [CW-2915/2019] 2016), which came into effect on 01st November, 2016. Hence, the matters have been entertained collectively for final adjudication at this stage by this common order consented by the counsel for the parties.

2. Shorn off unnecessary details, the essential skeletal material facts needs to be taken note of for adjudication of the controversy are: that the Income Tax Department conducted search and seizure under Section 132 of the Income Tax Act, 1961, on various premises belonging to the petitioners and in course of search and seizure, several incriminating documents were found, indicating several benami transactions in purchase of lands involved herein.

Accordingly, show cause notices were issued under section 24 (1) of the amended Benami Act of 1988, to show cause why action should not be taken against them under Section 24 (4) of the amended Benami Act of 1988, as the consideration was actually paid by the petitioners but the land was purchased in the name and by another person, thus, making it a clear case of benami transaction. The respondent department made order of provisional attachment under Section 24 (3) of the amended Benami Act, in respect of the properties mentioned in the show cause notices. It is pleaded case of the petitioners that the initiating officer has acted without jurisdiction, as the Benami Transaction (Prohibition) Amendment Act, 2016, came into effect on 01 st November, 2016 and the alleged benami transactions took place prior to that date.

The said notices were responded in the same terms. However, the Initiating Officer of the respondent department made order under Section 24 (4) of the amended Benami Amendment Act

of 2016, continuing the provisional attachment of the properties involved (27 of 160) [CW-2915/2019] herein. Thereafter, further show cause notices were issued by the Adjudicating Authority under the provisions of the Benami Amendment Act of 2016, as to why the order of provisional attachment of the benami properties should not be confirmed and the matters are still pending before the said authority. The petitioners, aggrieved of initiation of the proceedings and orders aforesaid, for being without jurisdiction, have instituted the instant writ petitions before this court.

3. Mr. Kamlakar Sharma, learned senior counsel for the petitioner(s), stated that the initiation of the very proceedings for provisional attachment of the alleged benami properties, from the very beginning is per se illegal and arbitrary, as the alleged benami transactions took place before the search proceedings and the Benami Amendment Act of 2016, that came into existence with effect from 01st November, 2016, vide notification dated 25 th October, 2016, and therefore, the Benami Amendment Act of 2016, shall have prospective effect. Since the alleged benami transactions and date of discovery of the alleged benami transactions, are, of a date prior to coming into force of the Benami Amendment Act of 2016; hence, the provisions as such are inapplicable to the present cases.

4. Learned counsel for the petitioners vehemently asserted that the intent in introduction of the Benami Amendment Act of 2016, was to eradicate the discrepancies and loop holes that have crept in with passage of time after the introduction of the Benami Act of 1988. Further, referring to the text of section 1 and 6 of the Benami Amendment Act of 2016, it is vociferously contended that it was never the intention of either the legislation or the executive (28 of 160) [CW-2915/2019] that the provisions of the Benami Amendment Act of 2016; be applicable with retrospective effect. According to the learned counsel for the petitioners, the language employed with the statement that whoever enters into any benami transaction on and after the date of commencement of the Benami Amendment Act of 2016, that is on 1st November, 2016 or afterwards; leaves no room for any doubt that the alleged benami transactions so transacted by the petitioners, before the commencement of the Benami Amendment Act of 2016, doesn't fall under its purview.

5. In the backdrop of section 3 (3) of Benami Act of 1988 and new section 53 of Benami Amendment Act of 2016, it is pointed out that the punishment for benami transaction under Benami Act of 1988, was imprisonment for 3 years, which has been now extended to 7 years, through the Benami Amendment Act of 2016. Therefore, the said amendment and provisions introduced, cannot be applied retrospectively with penal consequences.

6. It was further added by the learned senior counsel for the petitioners that as per the earlier provisions of the Benami Act of 1988, the benami property was to be acquired by the Government by acquisition and no compensation was to be paid for the such acquisition. Rules and Regulations for the acquisition aforesaid, were supposed to follow the Act of 1988, but the same were never framed and notified thus making the acquisition of land through benami transaction, under the old/un-amended provisions redundant. Now, as per the provisions of the Benami Amendment Act of 2016, the said benami property shall be confiscated instead of acquisition. For confiscation of property, is a penal provision which can only be prospective and if the penal provision is to be (29 of 160) [CW-2915/2019] applied retrospectively, that would be arbitrary, illegal and in violation of the

Article 20 of the Constitution of India in absence of any contemplation to that effect under the amended Act. Thus, Benami Amendment Act of 2016; cannot have retrospective application.

7. Counsel for the petitioners repelling the preliminary contention as to the very maintainability of the instant writ petitions for the matters were stated to be pending before the Adjudicating Authority, and therefore, being pre-mature and not maintainable before this court; contended that a glance of section 24 of the Benami Amendment Act of 2016; would reflect that writ petitions are very much maintainable. For as per Section 24 (1) of the Benami Amendment Act of 2016, the Initiating Officer shall issue notice to show cause as to why the property in question shall not be considered a benami property and further issue notice of provisional attachment of the said benami property. Moreover, there is no provision provided in section 24 of the Benami Amendment Act of 2016, to file an appeal against the provisional attachment of the alleged benami property. Thus, the petitioners are left with no option other than to invoke the jurisdiction of this court under Article 226 and/or 227 of the Constitution of India.

Further, the petitioners have challenged the very jurisdiction and authority of the respondent department to make such a provisional attachment of the alleged benami property, and therefore, the instant writ petitions are maintainable as the petitioners have no other remedy for redressal of their grievance.

8. It is further alleged that the respondent department has initiated the proceeding involved herein in order to harass and (30 of 160) [CW-2915/2019] torment the petitioners for it is evident from the fact that the respondent department referred the matters to the Adjudicating Authority so soon they learned of the institution of the instant writ applications by the petitioners before this court. Furthermore, the respondent department issued notices under Section 24 (3) of the Benami Amendment Act of 2016, to the petitioners on the very same day when it issued notice to the local authorities to provide information with respect to the transactions made in regard to the alleged subject benami property. The notices under Section 24 (3) of the Benami Amendment Act of 2016; are to be issued after making thorough inquires and examination of reports or evidences and not after issuing notices. Therefore, oblique intent of the respondent department is apparent on the face of record.

9. It is also pointed that no Rules could have been framed in exercise of powers under section 68 of the Benami Amendment Act of 2016, before 1st November, 2016 i.e. the date of its commencement. Hence, the Rules framed under the Benami Amendment Act of 2016, are of no consequence. In order to fortify their stand learned counsel for the petitioners have relied upon the following dictionary meaning of term confiscation, phrase 'Jaipur Region', Notifications, and opinions:

1. Notification of Ministry of Finance (Central Board of Direct Taxes), dated 25th October, 2016.

2. Notification of Ministry of Finance (Department of Revenue), dated 25th October, 2016.

3. Notification of Ministry of Finance (Department of Revenue), dated 25th October, 2016, S.O. 3288 (E), S.O. 3289(E) and 6A. 6.

(31 of 160) [CW-2915/2019] Notification of Ministry of Finance (Department of Revenue), dated 19th May, 2016, S.O. 1830 (E), (iii)

4. The Benami Transactions (Prohibition) Act, 1988 (for short, 'the Act of 1988')

5. In the case of R. Rajagopal Reddy (dead) by LRs. And Ors. Vs. Padmini Chandrashekharan (Dead) by LRs.: (1995)2 SCC 630.

6. In the case of Mangathai Ammal (died) through Lrs and Ors. Vs. Rajeshwari & Ors.:Civil Appeal No. 4805 of 2019, decided by the Apex Court of the land, on 9th May, 2019.

7. In the case of K.T. Plantation Pvt. Ltd. and Anr. Vs. State of Karnataka: AIR 2011 SC 3430.

8. In the case of Garikapati Veeraya vs. N. Subbiah Choudhary and Ors. : AIR 1957 SC 540.

9. In the case of Keshavan Madhava Menon Vs State of Bombay: AIR 1951 SC 128.

10. In the case of Monnet Ispat & Energy Ltd. Vs. UOI & Ors. (2012) 11 SCC 1.

11. Commissioner of Income Tax vs. Vatika Township Private Limited (2015) 1 SCC 1

12. Prakash and Ors. vs. Phulavati and Ors. (2016) 2 SCC 36

13. Sukhdev Singh vs. State of Haryana (2013) 2 SCC 212

14. J.S Yadav Vs. State of U.P. & Ors. 2011 6 Scc 570

15. Shakti Tubes Ltd. vs. State of Bihar and Ors. (2009) 7 SCC (32 of 160) [CW-2915/2019]

16. O. Konavalov vs. Commander, Coast Guard Region and Ors. (2006)4SCC620

17. M/S Pepsi Foods Ltd. and Ors. vs. Special Judicial Magistrate and Ors. AIR 1998 SC 128

18. Collector of Central Excise, Ahmedabad vs. Orient Fabrics Pvt. Ltd. (2004) 1 SCC 597

19. Suhas H. Pophale vs. Oriental Insurance Co. Ltd. and its Estate Officer (2014) 4 SCC 657

20. State of Punjab and Ors. vs. Bhajan Kaur and Ors. (2008) 12SCC 112

21. Jeans Knit (P) Ltd. vs. Deputy Commissioner of Income Tax and Ors (2018) 12 SCC 36

22. Calcutta Discount Company Limited vs. Income Tax Officer, Companies District, I and Ors. AIR 1961 SC 372

23. Raza Textiles Ltd. vs. Income Tax Officer, Rampur (1973) 1 SCC 633

24. Malayala Manorama Co. Ltd vs Assistant Commissioner, Commercial Taxes , Civil Appeal No. 2267/2007, decided on July 8, 2010

25. In the case of Bhibhuti Bhusan Bankura Vs. Sate of West Bengal: 1994 (1) CLJ 353

26. In the case of Thakur Bhim Singh (dead) By Lrs and Ors. Vs. Thakur Kan Singh: AIR 1980 SC 727.

27. Joseph Isharat vs. Rozy Nishikant Gaikwad 2017(5)ABR706 (33 of 160) [CW-2915/2019]

10. Per contra: Mr. Prabhuling K. Navadgi, learned Sr. counsel with Mr. Prabhansh Sharma and Mr. R.B. Mathur, advocates, resisted the claim of the petitioners raising preliminary objections as to the very maintainability of the writ applications at this stage while the entire proceedings are pending consideration before the Adjudicating Authority. Learned counsel vehemently contended that it is well settled proposition of law that jurisdiction under Article 226 and/or 227 of the Constitution of India can only be exercised when there is no remedy available to the parties.

According to the learned counsel for the respondents, law in this reference is no more res-integra, as has been declared by the Apex Court of the land on several occasions. In the backdrop of the provisions of Benami Act of 1988, as amended vide Benami Amendment Act of 2016, it is contended that any order made by the authority therein, would be open to inquiry before the Adjudicating Authority under Section 25 and 26 of the amended Act. Further, the order made by Adjudicating Authority under Section 26 (3), is open to an appeal before the Appellate Tribunal as would be evident from Section 46 of the amended Benami Act of 1988. And finally, Section 49 contemplates an appeal to the High Court, to any party aggrieved by any decision or order of the Appellate Tribunal within a period of 60 days, from the date of communication of the order made by the Appellate Tribunal, on any question of law arising out of such an order.

11. Furthermore, according to learned senior counsel, the petitioners have admitted the fact that the matters are still pending before the Adjudicating Authority. Thus, the petitioners have instituted the present writ applications, contrary to the (34 of 160) [CW-2915/2019] Scheme of the Benami Act of 1988, as amended in the year 2016, which provides a complete self contained procedure for resolution of the matters arising therein; hence, the instant batch of writ applications is premature and is not maintainable, and therefore, deserve to be dismissed on that ground alone.

12. Learned Senior Counsel for the respondents also emphasized that the provisions introduced by way of Benami Amendment Act of 2016, would have retrospective application and cannot be considered to be prospective keeping in view of the underlying object and intendment in introduction of amended Benami Act of 1988. It is urged that the main object behind introduction of the Benami Act of 1988, on 19 May 1988, was to make benami transactions offence and to acquire such benami properties through acquisition without compensation as per the procedure prescribed therein, so that the unjust gains and benefits of evasion of taxes could be avoided. Hence, keeping in

view the intendment and object in introduction of amended Benami Act of 1988; incorporating necessary amendments introduced through Benami Amendment Act of 2016, only clarified and amplified the intention of legislature in order to effectively cure and curb the mischief of ever increasing corruption, which was the also intended under the Principal Act i.e. Benami Act of 1988; enacted on 19 May 1988.

13. According to learned counsel for the respondents, confiscation of the benami property, a replacement, by way of amendment, is not a new introduction in totality to the Benami Act of 1988. Acquisition without compensation is nothing but confiscation only; therefore, substitution of the term (35 of 160) [CW-2915/2019] acquisition by another term i.e. confiscation, cannot be termed as penal, in the backdrop of the object sought to be achieved through the Benami Amendment Act of 2016.

14. It is further pointed out that similarly, change in the definition of all 'Benami Transaction' would not alter the object and purpose which remains the same as contemplated under the principal Benami Act of 1988. The change in definition only clarifies and amplifies the existing definition, without imposing any new liability or right accruing to the parties. Thus, the amendment in the definition of 'Benami Transaction' is only descriptive and explanatory substitution. Referring to Rule of Hayden's case, it is contended that Lord Edverd Coke evolved the well accepted test to understand the effectiveness of a new amendment on the following criteria:

(i) what was the law before making of the law;

(ii) what was the mischief and defect before the Act was passed;

(iii) what remedy the Parliament as appointed; and

(iv) what was the reason of the remedy.

15. Hence, applying the test aforesaid, to the question of retrospective application of the amended provisions, involved in the instant batch of writ applications, would make it evident that the object in introduction of the amendments, through Benami Amendment Act of 2016, is to effectively cure the mischief which could not be checked effectively, as intended by the Principal Act of 1988. Therefore, if the amendments are not applied retrospectively, that would defeat the very purpose and object of its introduction. Hence, provisions of Benami Amendment (36 of 160) [CW-2915/2019] Act of 2016, keeping in view the underlying object, shall have retrospective application in order to effectively cure the mischief that persisted all along even after enactment of the unamended Benami Act of 1988, which consisted only of 9 Sections.

16. Learned counsel would further contend that a glance of text of section 3 (3) of the Benami Amendment Act of 2016, in no uncertain terms contemplates that penalty for benami transactions, on or after commencement of the Benami Amendment Act of 2016, would only be punishable in accordance with the provisions contained under Chapter VII of the Amendment Act of 2016. Since, the provision itself contemplates penalty for benami transactions on or after the commencement of

the Benami Amendment Act of 2016, that would not mean that the benami transactions prior to its commencement, shall be free from liability. According to learned counsel, the intended object of the statute by amendment, involved herein is two fold; firstly, benami transactions entered into on or after commencement of Benami Amendment Act of 2016, shall be punishable under the amended provisions contained in Chapter VII by imprisonment for seven years, and; secondly, the benami transactions prior to the commencement of Benami Amendment Act of 2016, shall be penalized by the existing provisions contained in the unamended Benami Act of 1988, i.e by three years imprisonment. Thus, the provision only provides for an enhanced punishment for benami transactions entered into on or after commencement of Benami Amendment Act of 2016. Hence, no right to any party has accrued nor a new liability created as to the pending benami transactions.

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17. Reference has also been made to text of Section 65 of the amended Benami Act of 1988, which contemplates transfer of pending cases. According to learned senior counsel, a glance of the text of Section 65 would reflect that the procedure provided therein for prevention of 'Benami Transactions' under the provisions of Benami Amendment Act of 2016, shall also apply to all the 'Benami Transactions' pending on enactment of the Benami Amendment Act of 2016. Hence, retrospective applicability of the amended Act of the Benami Act of 1988, is explicit. In order to buttress his contentions reliance is placed on the following opinions:

1. Sree Bank Ltd. vs. Sarkar Dutt Roy and Co. AIR 1966 SC 1953

2. The Buckingham and Carnatic Co.Ltd. vs. Venkatiah and Ors. [1964]4SCR 265

3. Rai Bahadur Seth Shreeram Durgaprasad vs. Director of Enforcement (1987)3SCC 27

4. Nar Bahadur Bhandari and Ors. vs. State of Sikkim and Ors. (1998) 5 SCC 39

5. State of Punjab vs. Mohar Singh [1955]1SCR 893

6. Zile Singh vs. State of Haryana and Ors. (2004) 8 SCC 1

7. Yogendra Kumar Jaiswal and Ors. vs. State of Bihar and Ors. (2016)3SCC 183

8. Titaghur Paper Mills Co. Ltd. and Ors. vs. State of Orissa and Ors. (1983)2SCC 433

9. Thansingh Nathmal and Ors. vs. A. Mazid [1964]6SCR 654 (38 of 160) [CW-2915/2019]

10. State of H.P. and Ors. vs. Gujarat Ambuja Cement Ltd. and Ors. AIR2005SC3936

11. Commissioner of Income Tax and Ors. vs. Chhabil Dass Agarwal (2014)1SCC 603

12. Harbanslal Sahnia and Ors. vs. Indian Oil Corpn. Ltd. and Ors. (2003) 2 SCC 107

13. Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors. (1998)8 SCC 1

14. Vodafone International Holdings B.V. vs. Union of India (UOI) and Ors. (2009) 321 CTR 617 (SC)

15. The Management of Express Newspapers Ltd. vs. Workers and Staff Employed under it and Ors. (1963) 3 SCR 540

16. Raghuvinder Singh Vs Dy. Commissioner Of Income Tax, (Benami Transaction) And Initiating Officer Under The Prevention Of Benami Transaction Act 2016, S.B. Civil Writs No. 18701/2018 decided on 27/08/2018 Rajasthan High Court, Jaipur

17. S.B. Civil Writ Petition No. 2426 / 2018 Great Pacific General Trading Company (Limited Liability Partnership), Vs. Union of India, Through the Secretary, Ministry of Finance, Department of Revenue, Decided on 27/02/2018 Rajasthan High Court, Jodhpur. The same judgement was challenged in D.B. Spl. Appl. Writ No. 1315/2018 , decided on 22/10/2018.

18. MP-531-2017,decided on 09-01-2018, Dheeru Gond Vs. Union of India, High Court of Madeya Pradesh

19. CIT, New Delhi Vs. Ram Kishan Dass 2019 (5) SCALE 312 (39 of 160) [CW-2915/2019]

20. Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C. (2018) 3 SCC 85

21. R. Rajgopal Reddy (Dead) by L.Rs. And Ors. Vs. Padmini Chandrasekhara (Dead) by L.Rs. (1995) 2 SCC 630

22. WA-704-2017, Kailash Assudani vs Commissioner Of Income Tax decided on 16 August, 2017

23. His Highness Maharaja Pratap Singh Vs. Maharani Sajojani Devi and ors. :1994 supp (1) SCC 734

24. Kapur Chand Pokhraj Vs. State of Bombay: AIR 1958 SC 993

25. Canbank Financial Services Ltd. vs. The Custodian and Ors. (2004) 8 SCC 355

18. Heard the learned counsel for the parties and with their assistance perused the materials available on record as well as gave my thoughtful consideration to the rival submissions at bar and the opinions referred to and relied upon.

19. Considering the entire factual matrix, materials available on record and pleadings of the parties, in the above noted writ applications in totality, this court concluded to deal with the larger question of retrospective applicability of the Benami Amendment Act, 2016, consented by the counsel for the parties. Thus, the question framed for determination, in substance, is:

Whether the provisions of Benami Amendment Act, 2016, shall be applicable retrospectively or not?

20. At the very outset, it will be in the fitness of things to deal with the preliminary objection raised by the learned senior counsel, appearing on behalf of the respondents as to the (40 of 160) [CW-2915/2019] maintainability of the writ applications in view of the scheme of the Benami Amendment Act, 2016, and in view of the opinion of the Supreme Court in the case of Vodafone International Holdings B.V. (supra). A glance of the opinion referred to and relied upon would reflect that the Supreme Court while relying upon earlier opinion in the case of the Management of Express Newspapers Ltd. vs. Workers and Staff Employed under it and Ors.: AIR 1963 SC 569; observed that normally, the questions of facts, though they may be jurisdictional facts, the decision of which depends upon the appreciation of evidence, should be left to be tried by the Special Tribunals constituted for that purpose. The Supreme Court in no uncertain terms, in the same opinion, observed that it did not lay down any fixed or inflexible rule; whether or not even the preliminary facts should be tried by a High Court in a writ petition, for the same would depend upon the facts and circumstances of each case and upon the nature of the preliminary issue raised between the parties.

21. The factual matrix of the matters at hand, is entirely different and distinguishable, wherein the fact that the alleged benami transactions, involved herein, are of a date prior to seizure and search conducted by the respondent-department, and also, of the date the provisions of Benami Amendment Act of 2016, brought into force i.e. 1 st November, 2016. Hence, the question in the instant batch of writ applications for determination and adjudication, as to the retrospective application of the amended provisions introduced vide Benami Amendment Act of 2016, amending the Prohibition of Benami Transactions Act, 1988;

is a pure question of law. Thus, there is no factual matrix which (41 of 160) [CW-2915/2019] requires evidence and consequent appreciation and determination thereon, in view of the undisputed statement as to the alleged benami transactions, which happens to be of dates precedent to the enactment of Benami Amendment Act of 2016.

22. It is also not in dispute that the rules in exercise of powers conferred by virtue of Section 68 of the Benami Amendment Act of 2016, have been notified on 25th October, 2016, even before the substantive section 68 of the Benami Amendment Act of 2016, was made effective for which date appointed is 1 st November, 2016.

23. In the case of Whirlpool Corporation (supra), the Apex Court of the land held thus:

> "13. Learned counsel for the appellant has contended that since suo motu action Under Section 56(4) could be taken only by the High Court and not by the Registrar, the notice issued to the appellant was wholly without jurisdiction and, therefore, a writ petition even at that stage was maintainable. The appellant, in these circumstances, was not obliged to wait for the Registrar to complete the proceedings as any further order passed by the Registrar would also have been without jurisdiction.

14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, prohibition, Qua Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court (42 of 160) [CW-2915/2019] would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

20. Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

21. That being so, the High Court was not justified in dismissing the Writ Petition at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "TRIBUNAL"."

24. A glance of the observations of the Apex Court of the land, as extracted herein-above, would reflect that factual matrix of the matters at hand, is entirely different and distinguishable from the factual matrix of the Vodafone International Holdings B.V.

(supra), that fell for consideration of the Supreme Court. Hence, the opinion referred to and relied upon is of no help to the respondents in support of preliminary objection as to maintainability of the writ applications under Article 226 of the Constitution.

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25. In the case of Calcutta Discount Company Limited (supra), a Constitution Bench of the Apex Court of the land while examining the rejection order on a writ application under Article 226 of the Constitution of India, in the backdrop of notices issued under Section 34 of the Indian Income Tax Act, 1922, wherein the Income Tax Officer called upon the Company to submit fresh returns of its total income; in no uncertain terms observed that the pretended notice was issued without existence of the necessary conditions precedent, which confers jurisdiction under section 34; and therefore, the aggrieved party approaching the court at the earliest opportunity, could not be denied relief for existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action. At this juncture, it will relevant to take note of the text of the opinion aforesaid, which reads thus:

> "1. This appeal is against an appellate decision of a Bench of the Calcutta High Court by which in reversal of the order made by the Trial Judge the Bench rejected the present appellant's application under Article 226 of the Constitution. The appellant is a private limited company incorporated under the Indian Company's Act and has its registered office in Calcutta. It was assessed to income-tax for the assessment years, 1942-43, 1943-44 and 1944-45 by three separate orders dated January 26, 1944, February 12, 1944, and February 15, 1945, respectively. These assessments were made under section 23(3) of the Indian Income-tax Act upon returns filed by it accompanied by statements of account. The first two assessments were made by Mr. L.

D. Rozario the then Income-tax Officer had the last one by Mr. K. D. Banerjee. The taxes assessed were duly paid up. On March 28, 1951, three notices purporting to be under section 34 of the Indian Income-tax Act, 1922, were issued by the Income-tax Officer calling upon the company to submit fresh returns of its total income and (44 of 160) [CW-2915/2019] the total world income assessable for the three accounting years relating to the three assessment years, 1942-43 1943-44 and 1944-45. The appellant company furnished returns in compliance with the notices but on September 18, 1951, applied to the High Court of Calcutta for issue under article 226 of the Constitution of appropriate writs or orders directing the Income-tax Officer not to proceed to assess it on the basis of these notices. The first ground on which this prayer was based was mentioned in the petition in these terms: - "The said pretended notice was issued without the existence of the necessary conditions precedent which confers jurisdiction under section 34 aforementioned, whether before or after the amendment in 1948." The other ground urged was that the amendment to section 34 of the Income-tax Act in 1948 was not retrospective and that the assessment for the years 1942-43, 1943-44 and 1944-45 became barred long before March 1951.

2. The Trial Judge held that the first ground was not made out but being of opinion that the amending Act of 1948 was not retrospective, he held that the notices issued were without jurisdiction. Accordingly he made an order prohibiting the Income-tax Officer from continuing the assessment proceedings on the basis of the impugned notices.

3. The learned Judges who heard the appeal agreed with the Trial Judge that the first ground had not been made out. They held however that in consequence of the amendment of section 34 in 1948 the objection on the ground of limitation must also fail. A point of constitutional law which appears to have been raised before the appeal court was also rejected. The appeal was allowed and the company's application under article 226 was dismissed with costs.

6. To confer jurisdiction under this section to issue notice in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year two conditions have therefore to be satisfied. The first is that the Income-tax Officer must have reason to believe that income, profits or gains chargeable to income-tax have been under- assessed. The second is that he must have also reason to believe that such "under assessment" has occurred (45 of 160) [CW-2915/2019] by reason of either (i) omission or failure on the part of an assessee to make a return of his income under section 22, or (ii) omission or failure on the part of an assessee to disclose fully and truly and all material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income-tax Officer could have jurisdiction to issue a notice for the assessment or reassessment beyond the period of four years but within the period of eight years, from the end of the year in question.

24. We are therefore bound to hold that the conditions precedent to the exercise of jurisdiction under section 34 of the Income-tax Act did not exist and the Income- tax Officer had therefore no jurisdiction to issue the impugned notices under section 34 in respect of the years 1942-43, 1943-44 and 1944-45 after the expiry of four years.

25. Mr. Sastri argued that the question whether the Income-tax Officer had reason to believe that under- assessment had occurred "by reason of non-disclosure of material facts" should not be investigated by the courts in an application under article 226. Learned Counsel seems to suggest that as soon as the Income- tax Officer has reason to believe that there has been under-assessment in any year he has jurisdiction to start proceedings under section 34 by issuing a notice provided 8 years have not elapsed from the end of the year in question, but whether the notices should have been issued within a period of 4 years or not is only a question of limitation which could and should properly be raised in the assessment proceedings. It is wholly incorrect however to suppose that this is a question of limitation only not touching the question of jurisdiction. The scheme of the law clearly is that where the Income- tax Officer has reason to believe that an under assessment has resulted from non-disclosure he shall have jurisdiction to start proceedings for re-assessment within a period of 8 years; and where he has reason to believe that an under assessment has resulted from other causes he shall have jurisdiction to start proceedings for reassessment within 4 years. Both the conditions, (i) the Income-tax Officer having reason to believe that there has been under assessment and (ii) his having reason to believe that such under assessment has resulted from non-disclosure of material (46 of 160) [CW-2915/2019] facts, must co-exist before the Income-tax Officer has jurisdiction to start proceedings after the expiry of 4 years. The argument that the Court ought not to investigate the existence of one of these conditions, viz., that the Income-tax Officer has reason to believe that under assessment has resulted from non-disclosure of material facts cannot therefore be accepted.

26. Mr. Sastri next pointed out that at the stage when the Income-tax Officer issued the notices he was not acting judicially or quasi-judicially and so a writ of certiorari or prohibition cannot issue. It is well settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority from acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well settled, will issue appropriate orders or directions to prevent such consequences.

27. Mr. Sastri mentioned more than once the fact that the company would have sufficient opportunity to raise this question, viz., whether the Income-tax Officer had reason to believe that under assessment had resulted from non-disclosure of material facts, before the Income-tax Officer himself in the assessment proceedings and, if unsuccessful there, before the appellate Officer or the appellate tribunal or in the High Court under section 66(2) of the Indian Income-tax Act. The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.

28. In the present case the company contends that the conditions precedent for the assumption of jurisdiction under section 34 were not satisfied and came to the court at the earliest opportunity. There is nothing in its conduct which would justify the refusal of proper relief under article 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is (47 of 160) [CW-2915/2019] refused without adequate reasons. In the present case we can find no reason for which relief should be refused.

38. That the Income Tax Officer has reason to believe that there was under assessment in the material years was not challenged by the appellant and in our opinion rightly. There are on the record the reports of Income Tax Officer in which the belief is expressly set out. It also appears from the assessment orders for the years 1945-46 and 1946-47 that tax has been assessed on the profits made by sale of shares by the company in those years."

26. In the Raza Textiles Ltd. (supra), while examining the question as to whether the order of Income Tax Officer, a quasi judicial authority, is, subject to review by the High Court under Article 226 of the Constitution of India, was ruled in affirmative. At this stage, it will be profitable to take note of contents of paragraph 3 of the opinion aforesaid, which reads thus:

> "3. Aggrieved by that order the appellant went up in appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner rejected the appeal on the ground that the same was not maintainable. He took the view that an appeal lay only under Section 30(1A). But before such an appeal can be entertained the appellant must satisfy two conditions, namely, (1) he had deducted the tax due from the non-resident in accordance with the provisions of Sub-section 3(B) and (2) that he had paid the sum deducted to the Government. The appellant having not complied

> with those two conditions, the Appellate Assistant Commissioner held that the appeal was incompetent. The order of the Appellate Assistant Commissioner was confirmed by- the Tribunal. Thereafter the appellant moved the High Court under Article 226 of the Constitution. That application came up before a single Judge. The single Judge after going into the matter in detail came to the conclusion that M/s. Nathirmal and Sons is not a non-resident firm and that being so the appellant was not required to act under Section 18(3B). He accordingly, set aside the order impugned. The revenue went up in appeal against the order of the (48 of 160) [CW-2915/2019] learned single Judge to the Appellate Bench. That Bench allowed the appeal with the observations, "In the present case the question before the Income-tax Officer, Rampur, was whether the firm Nathirmal and Sons was non-resident or not. There was material before him on this question. He had jurisdiction to decide the question either way. It cannot be said that the officer assumed jurisdiction by wrong decision on this question of residence". The Appellate Bench appears to have been under the impression that the Income-tax Officer was the sole judge of the fact whether the firm in question was resident or non-resident. This conclusion, in our opinion, is wholly wrong. No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly. The question whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. If the High Court comes to the conclusion, as the learned single Judge has done in this case, that the Income-tax Officer had clutched at the jurisdiction by deciding a jurisdictional fact erroneously, then the assesses was entitled for the writ of certiorari prayed for by him. It is incomprehensible to think that a quasi- judicial authority like the Income-tax Officer can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen. In our opinion the Appellate Bench is wholly wrong in opining that the Income-tax Officer can "decide either way".

27. In the case of Malayala Manorama Co. Ltd. (supra), the Apex Court of the land on a survey of earlier opinions including Whirlpool Corporation (supra), repelling the plea of availability of statutory alternative remedy while remanding the matter back to the High Court, observed thus:

> "5. The assessee firm did not take recourse to the statutory remedies available under the Act but questioned the very correctness and legality of the issuance of the notice as well as the order passed by the Assistant Commissioner before the High Court of (49 of 160) [CW-2915/2019] Kerala at Ernakulam, by filing a writ petition under Article 226 of the Constitution of India.

6. This writ petition was contested by the Department which filed detailed counter affidavit. It was specifically pleaded by the Department that for availability of statutory alternative remedy as well as for other reasons and facts stated in the reply, the writ petition itself was not maintainable. The Division Bench of the High Court while considering this primary objection raised by the Department before the High Court, came to the conclusion that as the facts were not in dispute and questions raised were purely legal and are to be tested in view of the judgment of this Court in the case of

Printers (Mysore) Ltd. v. Assistant Commercial Tax Officer [(1994) 93 Sales Tax Cases 95 : (1994) 2 SCC 434], Whirlpool Corporation v. Registrar of Trade Marks [(1998) 8 SCC 1] as well as the judgment in the case of State of H.P. & Ors. v. Gujarat Ambuja Cements Ltd. [(2005) 6 SCC 499 : (2005) 142 Sales Tax Cases 1], the writ petition was maintainable. However, while laying emphasis that the newspaper would not fall within the expression `goods' under sub-section 3 of Section 5 of the Act, the High Court held that the notice issued was proper as Form No. 18 which gives benefit of concessional rate of tax was factually not correct. While dismissing the writ petition, however, the Bench issued a direction to the assessing authority to examine whether the imposition of penalty at double the rate is justified in the facts and circumstances of the case, within a period of two months from the date of receipt of the copy of the judgment. It is this judgment of the High Court which has been assailed in the present appeal under Article 136 of the Constitution of India.

9. Having heard the learned senior counsel appearing for the parties, we are of the considered view that the order under challenge requires interference by this Court. There is no dispute to the fact that the material amendments were carried out in the provisions of Section 5(3) of the Act with effect from 01.04.2002. The existing 1st proviso to Section 5(3)(i) was deleted as well as the expression `or uses the same in the manufacture of any goods which are not liable to tax in this Act' in Section 5(3)(i) was also deleted. Despite these amendments, as it appears from the record (50 of 160) [CW-2915/2019] before the Court, format of Form No. 18 has not been amended consequently. However, the fact of thematter remains that the High Court has not dwelt upon these legal issues which are the core issues involved in the present case. In our view, the discussion on the first issue would certainly have some bearing on the alternative argument raised on behalf of the appellant before us. Thus, it may not be possible for this Court to sustain the finding recorded by the High Court in that regard. Of course, we are not ruling out all the possibilities of the High Court arriving at the same conclusion if it is of that view after examining the amendments as well as the submissions made on behalf of the appellant with regard to its alternative submissions. In light of this discussion, we pass the following order :

> (a) The impugned order dated 2nd August, 2006 passed by the High Court is hereby set aside.
>
> (b) The matter is remanded to the High Court for consideration afresh in accordance with law on both the aforesaid submissions while leaving all the contentions of the assessee and the Department open for the year 2000- 2001, in relation to imposition of penalty under Section 45 (A) of the Act.

(c) The legality and validity or otherwise of the notice dated 16.01.2006 and 17.01.2006 shall be subject to the final decision of the High Court.

28. Applying the principle deducible from the opinions supra, to the preliminary objections raised by the learned senior counsel for the respondents, as to maintainability of the writ applications;

merits rejection, and is, hereby rejected.

29. Indisputably, in all the writ applications constituting the batch; the alleged benami transactions are of a date preceding 1 st November, 2016. In some of the matters, even prior to the (51 of 160) [CW-2915/2019] commencement of unamended Benami Act of 1988, which came into effect on 5th September, 1988 whereas Sections 3, 5 and 8 of the unamended Benami Act, 1988, were deemed to have come into force on 19th day of May, 1988 i.e with retrospective effect.

The Benami Amendment Act, 2016 (43 of 2016), has been made applicable from the date appointed by the Central Government vide notification dated 25 th October, 2016. And the appointed date determined, is, 1st November, 2016, as the date on which the provisions of the Benami Amendment Act, 2016, shall come into force.

30. A comparative consideration of Section 2 of the Benami Act, 1988 and the Benami Amendment Act, 2016, would reflect that the definitions under the unamended Act contains sub-section (1) to (4) only, whereas the amending Benami Amendment Act, 2016, contains sub-section (1) to (31), defining various terms and phrases elaborately. Learned counsel for the parties referring to the aims, objects and scope of amendment in the Principal Act of 1988 vide Benami Transactions (Prohibition) Amendment Act, 2016, contended that while the earlier unamended Benami Act, 1988, consisted of only 9 Sections, the Benami Amendment Act, 2016, consisted of as many as 72 Sections.

31. However, the unamended Benami Act of 1988, for the first time contemplated prohibition of benami transactions vide Section

3. Section 4 prohibited right to recover property held benami.

Section 5 contemplated properties held benami subject to acquisition by such authority in such manner and following such procedure as may be prescribed; without payment of any amount for acquisition of any property that was held benami. The (52 of 160) [CW-2915/2019] unamended Benami Act, 1988, vested the Central Government with the power to frame rules for carrying out the purpose of the Benami Act, 1988, by notification in the official gazette. Since no rules were framed by the Central Government in exercise of powers under Section 8 of the unamended Benami Act, 1988, for acquisition of properties held benami; no property was acquired despite the unamended Benami Act of 1988, remained in force all along until amnedments interoduced in the year 2016.

Admittedly, the unamended Benami Act, of 1988, did not contain any specific provision for vesting of benami property with Central Government. Furthermore, there was no provision for an appellate mechanism against action taken by the authorities under the unamended the Benami Act, 1988 while barring the jurisdiction of Civil Court. No powers with the authorities concerned for its implementation. However, in order to deal with the benami transactions involving large amounts of unaccounted black money, a mechanism has been introduced to make operative the intention and object of the unamended Benami Act of 1988 by the Benami Amendment Act, 2016; is the plea in support of its retrospective applicability of amended the Benami Act, 1988 through the Benami Amendment Act, 2016.

32. In order to appreciate the rival contentions of the parties on the question for determination, it will be profitable to take note of the relevant provisions of the unamended Benami Act of 1988 so also the relevant provisions of the Benami Amendment Act, 2016 along with text of Article 20 of the Constitution of India, which reads thus:

> Article 20 of the Constitution:-
>
> (53 of 160) [CW-2915/2019] "20. Protection in respect of conviction for offences:
>
> (1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence (2) No person shall be prosecuted and punished for the same offence more than once (3)No person accused of any offence shall be compelled to be a witness against himself."

Unamended Benami Transactions (Prohibition) Act,

1. Short title, extent and commencement- (1) This Act may be called the Benami Transactions (Prohibition) Act, 1988.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) The provisions of sections 3, 5 and 8 shall come into force at once, and the remaining provisions of this Act shall be deemed to have come into force on the 19th day of May, 1988.

2. Definitions- In this Act, unless the context otherwise requires,--

(a) benami transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person;

(b) prescribed means prescribed by rules made under this Act;

(c) property means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.

3. Prohibition of benami transactions- (1) No person shall enter into any benami transaction.

(54 of 160) [CW-2915/2019] (2) Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife of the unmarried daughter.

(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this section shall be non-cognizable and bailable.

4. Prohibition of the right to recover property held benami- (1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply,--

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.

5. Property of benami liable to acquisition- (1) All properties held benami shall be subject to acquisition by such authority, in such manner and after following such procedure as may be prescribed.

(55 of 160) [CW-2915/2019] (2) For the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under sub-section (1).

8. Power to make rules- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the authority competent to acquire properties under section 5;

(b) the manner in which, and the procedure to be followed for, the acquisition of properties under section 5;

(c) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, so soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Benami Transactions (Prohibition) Amendment Act, 2016.

(1) This Act may be called the Benami Transactions (Prohibition) Amendment Act, 2016.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any (56 of 160) [CW-2915/2019] reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

(8) "benami property" means any property which is the subject matter of a benami transaction and also includes the proceeds from such property; (9) "benami transaction" means,-

(A) a transaction or an arrangement-

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by-

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as

joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or (B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or (57 of 160) [CW-2915/2019] (C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership; (D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

(19) "Initiating Officer" means an Assistant Commissioner or a Deputy Commissioner as defined in clauses (9A) and (19A) respectively of section 2 of the Income-tax Act, 1961 (43 of 1961);

In section 3 of the principal Act,-

(a) sub-section (2) shall be omitted;

(b) sub-section (3) shall be renumbered as sub-section (2) thereof;

(c) after sub-section (2) as so renumbered, the following sub-section shall be inserted, namely:- "(3) Whoever enters into any benami transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016, shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII.";

24. Notice and attachment of property involved in benami transaction (1) Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as benami property.

(2) Where a notice under sub-section (1) specifies any property as being held by a benamidar referred to in that sub-section, a copy of the notice shall also be issued to the beneficial owner if his identity is known. (3) Where the Initiating Officer is of the opinion that the person in possession of the property held benami may alienate the property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property in the manner as may be prescribed, for a period not exceeding ninety days from the date of issue of notice under sub-section (1).

(58 of 160) [CW-2915/2019] (4) The Initiating Officer, after making such inquires and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of ninety days from the date of issue of notice under sub-section (1),-

(a) where the provisional attachment has been made under sub-section (3), -

(i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or

(ii) revoke the provisional attachment of the property with the prior approval of the Approving Authority;

(b) where provisional attachment has not been made under sub-section (3),-

(i) pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or

(ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.

(5) Where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) of sub-section (4) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of that sub-section, he shall, within fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

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:

(59 of 160) [CW-2915/2019] 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-

(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

(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.

(60 of 160) [CW-2915/2019] (6) The Adjudicating Authority may, at any stage of the 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 qualifications as the Board may prescribe for this purpose.

53. Penalty for benami transaction (1) Where any person enters into a benami transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction.

(2) Whoever is found guilty of the offence of benami transaction referred to in sub-section (1) shall be punishable with rigorous imprisonment for a term (61 of 160) [CW-2915/2019] which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty-five per cent. of the fair market value of the property.

65. Transfer of pending cases (1) Every suit or proceeding in respect of a benami transaction pending in any Court (other than a High Court) or Tribunal or before any forum on the date of the commencement of this Act shall stand transferred to the Adjudicating Authority or the Appellate Tribunal, as the case may be, having jurisdiction in the matter. (2) Where any suit, or other proceeding stands transferred to the Adjudicating Authority or the Appellate Tribunal under sub-section (1),-

(a) the court, Tribunal or other forum shall, as soon as may be, after the transfer, forward the records of the suit, or other proceeding to the Adjudicating Authority or the Appellate Tribunal, as the case may be;

(b) the Adjudicating Authority may, on receipt of the records, proceed to deal with the suit, or other proceeding, so far as may be, in the same manner as in the case of a reference made under sub-section (5) of section 24, from the stage which was reached before the transfer or from any earlier stage or de novo as the Adjudicating Authority may deem fit.

68. Power to make rules (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) manner of ascertaining the fair market value under clause 16 of section 2;

(b) the manner of appointing the Chairperson and the Member of the Adjudicating Authorities under sub- section (2) of section 9;

(c) the salaries and allowances payable to the Chairperson and the Members of the Adjudicating Authority under sub-section (1) of section 13;

(d) the powers and functions of the authorities under sub-section (2) of section 18;

(e) other powers of the authorities under clause (f) of sub-section (1) of section 19;

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(f) the form and manner of furnishing any information to the authority under sub-section (2) of section 21;

(g) the manner of provisional attachment of property under sub-section (3) of section 24;

(h) the procedure for confiscation of benami property under the second proviso to sub-section (1) of section 27;

(i) the manner and conditions to receive and manage the property under sub-section (1) of section 28;

(j) the manner and conditions of disposal of property vested in the Central Government under sub-section (3) of section 28;

(k) the salaries and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 33;

(l) the manner of prescribing procedure for removal of Chairperson or Member under sub-section (4) of section 35;

(m) the salaries and allowances payable to and the other terms and conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 39;

(n) any power of the Appellate Tribunal under clause (i) of sub-section (2) of section 40;

(o) the form in which appeal shall be filed and the fee for filing the appeal under sub-section (1) of section 46;

(p) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

71. Transitional provision The Central Government may, by notification, provide that until the Adjudicating Authorities are appointed and the Appellate Tribunal is established under this Act, the Adjudicating Authority appointed under sub-section (1) of section 6 of the Money-Laundering Act, 2002 (15 of 2003) and the Appellate Tribunal established under section 25 of that Act may discharge the functions of the Adjudicating Authority and Appellate Tribunal, respectively, under this Act." (63 of 160) [CW-2915/2019]

33. From a glance of notification dated 25th October, 2016, it is evident that Central Government, in exercise of powers conferred by Section 68 of the Benami Amendment Act, 2016; has framed the rules and made them effective w.e.f. 1 st November, 2016, i.e. the date from which the Benami Amendment Act, 2016, has been enacted. Thus, it is evident that the Central Government exercised

the powers, to frame the rules, conferred by virtue of Section 68, introduced vide Benami Amendment Act, 2016, which itself came into effect from the appointed date i.e. 1st November, 2016.

Hence, the rules framed, in exercise of power under Section 68, have been framed and notified by notification dated 25 th October, 2016, even before the amendement incorporating Section 68, was made operative that is w.e.f. 1 st November, 2016. Therefore, the plea of the petitioners as to the rules having been framed contrary to and in absence of power available to the Central Government under Section 68 of the Benami Amendment Act, 2016, which was made operative and effective w.e.f. 1 st November, 2016; has substance.

34. Further, to understand the true character and meaning of Benami Transactions, under the English law and Indian Law; it will be relevant to take note of the text of para 14 of the Apex Court of the land in the case of Thakur Bhim Singh (dead) By Lrs and Ors. (supra), which reads thus:

> "14. Under the English law, when real or personal property is purchased in the name of a stranger, a resulting trust will be presumed in favour of the person who is proved to have paid the purchase money in the character of the purchaser. It is, however, open to the transferee to rebut that presumption by showing that the intention of the person who contributed the (64 of 160) [CW-2915/2019] purchase money was that the transferee should himself acquire the beneficial interest in the property. There is, however, an exception to the above rule of presumption made by the English law when the person who gets the legal title under the conveyance is either a child or the wife of the person who contributes the purchase money or his grand child, whose father is dead. The rule applicable in such cases is known as the doctrine of advancement which requires the court to presume that the purchase is for the benefit of the person in whose favour the legal title is transferred even though the purchase money may have been contributed by the father or the husband or the grandfather, as the case may be, unless such presumption is rebutted by evidence showing that it was the intention of the person who paid the purchase money that the transferee should not become the real owner of the property in question. The doctrine of advancement is not in vogue in India. The counterpart of the English law of resulting trust referred to above is the Indian law of benami transactions. Two kinds of benami transactions are generally recognized in India. Where a person buys a property with his own money but in the name of another person without any intention to benefit such other person, the transaction is called benami. In that case, the transferee holds the property for the benefit of the person who has contributed the purchase money, and he is the real owner. The second case which is loosely termed as a benami transaction is a case where a person who is the owner of the property executes a conveyance in favour of another without the intention of transferring the title to the property thereunder. In this case, the transferor continues to be the real owner. The difference between the two kinds of benami transactions referred to above lies in the fact that whereas in the former case, there is an operative transfer from the transferor to the transferee though the transferee holds the property for the benefit of the person who

has contributed the purchase money, in the latter case, there is no operative transfer at all and the title rests with the transferor notwithstanding the execution of the conveyance. One common feature, however, in both these cases is that the real title is divorced from the ostensible title and they are vested in different persons. The question whether a transaction is a benami transaction or not mainly depends upon the intention of the person who has contributed the purchase money in the former case and (65 of 160) [CW-2915/2019] upon the intention of the person who has executed the conveyance in the latter case. The principle underlying the former case is also statutorily recognized in Section 82 of the Indian Trusts Act, 1882 which provides that where property is transferred to one person for a consideration paid or provided by another person and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration. This view is in accord with the following observations made by this Court in Meenakshi Mills. Madurai v. The Commissioner of Income-Tax, Madras MANU/SC/0044/1956 : [1956]1SCR691 .:

In this connection, it is necessary to note that the word 'benami' is used to denote two classes of transactions which differ from each other in their legal character and incidents. In one sense, it signifies a transaction which is real, as for example when A sells properties to B but the sale deed mentions X as the purchaser. Here the sale itself is genuine, but the real purchaser is B, X being his benamidar. This is the class of transactions which is usually termed as benami. But the word 'benami' is also occasionally used, perhaps not quite accurately, to refer to a sham transaction, as for example, when A purports to sell his property to B without intending that his title should cease or pass to B. The fundamental difference between these two classes of transactions is that whereas in the former there is an operative transfer resulting in the vesting of title in the transferee, in the latter there is none such, the transferor continuing to retain the title notwithstanding the execution of the transfer deed. It is only in the former class of cases that it would be necessary, when a dispute arises as to whether the person named in the deed is the real transferee or B, to enquire into the question as to who paid the consideration for the transfer, X or B. But in the latter class of cases, when the question is whether the transfer is genuine or sham, the point for decision would be, not who paid the consideration but whether any consideration was paid."

35. In the case of Calcutta Discount Company Limited (supra), Supreme Court, held thus:

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6. To confer jurisdiction under this section to issue notice in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year two conditions have therefore to be satisfied. The first is that the Income-tax Officer must have reason to believe that income, profits or gains chargeable to income-tax have been under- assessed. The

second is that he must have also reason to believe that such "under assessment" has occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income under section 22, or (ii) omission or failure on the part of an assessee to disclose fully and truly and all material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income-tax Officer could have jurisdiction to issue a notice for the assessment or reassessment beyond the period of four years but within the period of eight years, from the end of the year in question.

24. We are therefore bound to hold that the conditions precedent to the exercise of jurisdiction under section 34 of the Income-tax Act did not exist and the Income- tax Officer had therefore no jurisdiction to issue the impugned notices under section 34 in respect of the years 1942-43, 1943-44 and 1944-45 after the expiry of four years.

25. Mr. Sastri argued that the question whether the Income-tax Officer had reason to believe that under- assessment had occurred "by reason of non-disclosure of material facts" should not be investigated by the courts in an application under article 226. Learned Counsel seems to suggest that as soon as the Income- tax Officer has reason to believe that there has been under-assessment in any year he has jurisdiction to start proceedings under section 34 by issuing a notice provided 8 years have not elapsed from the end of the year in question, but whether the notices should have been issued within a period of 4 years or not is only a question of limitation which could and should properly be raised in the assessment proceedings. It is wholly incorrect however to suppose that this is a question of limitation only not touching the question of jurisdiction. The scheme of the law clearly is that where the Income-tax Officer has reason to believe that an under assessment has resulted from non-disclosure he shall (67 of 160) [CW-2915/2019] have jurisdiction to start proceedings for re-assessment within a period of 8 years; and where he has reason to believe that an under assessment has resulted from other causes he shall have jurisdiction to start proceedings for reassessment within 4 years. Both the conditions, (i) the Income-tax Officer having reason to believe that there has been under assessment and (ii) his having reason to believe that such under assessment has resulted from non-disclosure of material facts, must co-exist before the Income-tax Officer has jurisdiction to start proceedings after the expiry of 4 years. The argument that the Court ought not to investigate the existence of one of these conditions, viz., that the Income-tax Officer has reason to believe that under assessment has resulted from non-disclosure of material facts cannot therefore be accepted.

26. Mr. Sastri next pointed out that at the stage when the Income-tax Officer issued the notices he was not acting judicially or quasi-judicially and so a writ of certiorari or prohibition cannot issue. It is well settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority from acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well settled, will issue appropriate orders or directions to prevent such consequences.

27. Mr. Sastri mentioned more than once the fact that the company would have sufficient opportunity to raise this question, viz., whether the Income-tax Officer had reason to believe that under assessment had resulted from non-disclosure of material facts, before the Income-tax Officer himself in the assessment proceedings and, if unsuccessful there, before the appellate Officer or the appellate tribunal or in the High Court under section 66(2) of the Indian Income-tax Act. The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.

28. In the present case the company contends that the conditions precedent for the assumption of jurisdiction (68 of 160) [CW-2915/2019] under section 34 were not satisfied and came to the court at the earliest opportunity. There is nothing in its conduct which would justify the refusal of proper relief under article 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons. In the present case we can find no reason for which relief should be refused.

29. We have therefore come to the conclusion that the company was entitled to an order directing the Income- tax Officer not to take any action on the basis of the three impugned notices.

30. We are informed that assessment orders were in fact made on March 25, 1952, by the Income-tax Officer in the proceedings started on the basis of these impugned notices. This was done with the permission of the learned Judge before whom the petition under article 226 was pending, on the distinct understanding that these orders would be without prejudice to the contentions of the parties on the several questions raised in the petition and without prejudice to the orders that may ultimately be passed by the Court. The fact that the assessment orders have already been made does not therefore affect the company's right to obtain relief under article 226. In view however of the fact that the assessment orders have already been made we think it proper that in addition to an order directing the Income-tax Officer not to take any action on the basis of the impugned notices a further order quashing the assessment made be also issued.

36. In the case of Commissioner of Income Tax vs. Vatika Township Private Limited (supra), the Supreme Court, observed thus:

> 27. A legislation, be it a statutory Act or a statutory Rule or a statutory Notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of (69 of 160) [CW-2915/2019] statements, such as one finds in a work of fiction/non fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of 'Interpretation of Statutes'. Vis-à-

vis ordinary prose, a legislation differs in its provenance, lay-out and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre (1870) LR 6 QB 1, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. (1994) 1 AC (70 of 160) [CW-2915/2019]

486. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

32. Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labeled as "declaratory statutes". The circumstances under which a provision can be termed as "declaratory statutes" is explained by Justice G.P. Singh in the following manner:

"Declaratory statutes The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES and approved by the Supreme Court: "For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word 'declared' as well as the (71 of 160) [CW-2915/2019] word 'enacted'. But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the

form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law.

The above summing up is factually based on the judgments of this Court as well as English decisions.

37. When we examine the insertion of proviso in Section 113 of the Act, keeping in view the aforesaid principles, our irresistible conclusion is that the intention of the legislature was to make it prospective in nature. This proviso cannot be treated as declaratory/statutory or curative in nature.

42.2 Thus, it was a conscious decision of the legislature, even when the legislature knew the

implication thereof and took note of the reasons which led to the insertion of the proviso, that the amendment is to operate prospectively. Learned Counsel appearing for the Assessees sagaciously contrasted the aforesaid stipulation while effecting amendment in Section 113 of the Act, with various other provisions not only in the same Finance Act but Finance Acts pertaining to other years where the legislature specifically provided such amendment to be either retrospective or clarificatory. In so far as amendment to Section 113 is concerned, there is no such language used and on the contrary, specific stipulation is added making the provision effective from 1st June, 2002.

44. Finance Act, 2003, again makes the position clear that surcharge in respect of block assessment of undisclosed income was made prospective. Such a stipulation is contained in second proviso to Sub- section (3) of Section 2 of Finance Act, 2003. This proviso reads as under:

> "Provided further that the amount of income-
>
> tax computed in accordance with the provisions of Section 113 shall be increased by a surcharge for purposes of the Union as provided in Paragraph A, B, C, D or E, as the case may be, of Part III of the First Schedule of the Finance Act of the year in which the search is initiated Under Section 132 or requisition is made Under Section 132A of the income-tax Act."

Addition of this proviso in the Finance Act, 2003 further makes it clear that such a provision was necessary to provide for surcharge in the cases of block assessments and thereby making it prospective in nature. The charge in respect of the surcharge, having been created for the (73 of 160) [CW-2915/2019] first time by the insertion of the proviso to Section 113, is clearly a substantive provision and hence is to be construed prospective in operation. The amendment neither purports to be merely clarificatory nor is there any material to suggest that it was intended by Parliament. Furthermore, an amendment made to a taxing statute can be said to be intended to remove 'hardships' only of the Assessee, not of the Department. On the contrary, imposing a retrospective levy on the Assessee would have caused undue hardship and for that reason Parliament specifically chose to make the proviso effective from 1.6.2002.

37. In the case of Commissioner of Prakash and Ors. vs. Phulavati and Ors. (supra), the Apex Court of the land, held thus:

> 17. The text of the amendment itself clearly provides that the right conferred on a 'daughter of a coparcener' is 'on and from the commencement of Hindu Succession (Amendment) Act, 2005'. Section 6(3) talks of death after the amendment for its applicability. In view of plain language of the statute, there is no scope for a different interpretation than the one suggested by the text of the amendment. An amendment of a substantive provision is always prospective unless either expressly or by necessary intendment it is retrospective Shyam Sunder v. Ram Kumar (2001) 8 SCC 24, Paras 22 to 27. In the present case, there is neither any express provision for giving retrospective effect to the amended provision nor necessary intendment to that effect. Requirement of partition being registered can have no application to statutory notional partition on opening of succession as per unamended provision, having regard to nature of such partition which is by operation of law. The intent and effect of the Amendment will be considered a little later. On this finding, the view of the High Court cannot be sustained.
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> 18. Contention of the Respondents that the Amendment should be read as retrospective being a piece of social legislation cannot be accepted. Even a social legislation cannot be given retrospective effect (74 of 160) [CW-2915/2019] unless so provided for or so intended by the legislature. In the present case, the legislature has expressly made the Amendment applicable on and from its commencement and only if death of the coparcener in question is after the Amendment. Thus, no other interpretation is possible in view of express language of the statute. The proviso keeping dispositions or alienations or partitions prior to 20th December, 2004 unaffected can also not lead to the inference that the daughter could be a coparcener prior to the commencement of the Act. The proviso only means that the transactions not covered thereby will not affect the extent of coparcenary property which may be available when the main provision is applicable. Similarly, Explanation has to be read harmoniously with the substantive provision of Section 6(5) by being limited to a transaction of partition effected after 20th December, 2004. Notional partition, by its very nature, is not covered either under proviso or under Sub- section 5 or under the

Explanation.

38. In the case of Sukhdev Singh vs. State of Haryana: (supra), the Supreme Court, observed thus:

> "Another Bench of this Court in the case of Jawahar Singh @ Bhagat Ji. v. State of GNCT of Delhi (2009) 6 SCC 490], while dealing with the amendments of Section 21 of the NDPS Act, the Court took the view that amendments made by Act 9 of 2001 could not be given retrospective effect as if it was so given, it would warrant a retrial which is not the object of the Act. The Court held as under:
>
> "9. It is now beyond any doubt or dispute that the quantum of punishment to be inflicted on an accused upon recording a judgment of conviction would be as per the law which was prevailing at the relevant time. As on the date of commission of the offence and/or the date of conviction, there was no distinction between a small quantity and a commercial quantity, question of infliction of a lesser sentence by reason of the provisions of the amending Act, in our considered opinion, would not arise.
>
> 10. It is also a well-settled principle of law that a substantive provision unless (75 of 160) [CW-2915/2019] specifically provided for or otherwise intended by Parliament should be held to have a prospective operation. One of the facets of the rule of law is also that all statutes should be presumed to have a prospective operation only."
>
> 18. No law can be interpreted so as to frustrate the very basic rule of law. It is a settled principle of interpretation of criminal jurisprudence that the provisions have to be strictly construed and cannot be given a retrospective effect unless legislative intent and expression is clear beyond ambiguity. The amendments to criminal law would not intend that there should be undue delay in disposal of criminal trials or there should be retrial just because the law has changed. Such an approach would be contrary to the doctrine of finality as well as avoidance of delay in conclusion of criminal trial."

39. In the case of J.S. Yadav vs. State of U.P. and Ors. (supra), the Supreme Court held thus:

> 24. The Legislature is competent to unilaterally alter the service conditions of the employee and that can be done with retrospective effect also, but the intention of the Legislature to apply the amended provisions with retrospective effect must be evident from the Amendment Act itself expressly or by necessary implication. The aforesaid power of the Legislature is qualified further that such a unilateral alteration of service conditions should be in conformity with legal and constitutional provisions. Roshan Lal Tandon v. Union of India and Ors. AIR 1967 SC 1889; State of Mysore v. Krishna Murthy and Ors. AIR 1973 SC 1146; Raj Kumar v. Union of India and Ors. AIR 1975 SC 1116; Ex-Capt. K.C. Arora and Anr. v. State of Haryana and Ors. (1984) 3 SCC 281; and State of Gujarat and Anr. v. Raman Lal Keshav Lal Soni and Ors. AIR 1984 SC

161.

25. In Union of India and Ors. v. Tushar Ranjan Mohanty and Ors. (1994) 5 SCC 450, this Court declared the amendment with retrospective operation as ultra vires as it takes away the vested rights of the Petitioners therein and thus, was unreasonable, arbitrary and violative of Articles 14 and 16 of the Constitution. While deciding the said case, this Court (76 of 160) [CW-2915/2019] placed very heavy reliance on the judgment in P.D. Aggarwal and Ors. v. State of U.P. and Ors.AIR 1987 SC 1676, wherein this Court has held as under:

"18. ...the Government has power to make retrospective amendments to the Rules but if the Rules purport to take away the vested rights and are arbitrary and not reasonable then such retrospective amendments are subject to judicial scrutiny if they have infringed Articles 14 and 16 of the Constitution."

40. In the case of Shakti Tubes Ltd. vs. State of Bihar and Ors.:(supra), the Apex Court of the land observed thus:

"24. Generally, an Act should always be regarded as prospective in nature unless the legislature has clearly intended the provisions of the said Act to be made applicable with retrospective effect.

"13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. The aforesaid rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only -- "nova Constitution futuris formam imponere debet non praeteritis" -- a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p.

438.). It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440).

(77 of 160) [CW-2915/2019]

25. There is no dispute with regard to the fact that the Act in question is a welfare legislation which was enacted to protect the interest of the suppliers especially suppliers of the nature of a small scale industry. But, at the same time, the intention and the purpose of the Act cannot be lost sight of and the Act in question cannot be given a retrospective effect so long as such an intention is not clearly made out and

derived from the Act itself."

41. In the case of O. Konavalov vs. Commander, Coast Guard Region and Ors.: (supra), the Supreme Court observed thus:

"POWER TO CONFISCATE

30. The power to confiscate and the consequent forfeiture of rights or interests are drastic, being penal in nature. Statutes conferring such powers must be read very strictly. There can be no exercise of power under such statutes by way of extension or implication. No expansive meaning can be given therefore to Section 115 of the Customs Act merely from the dictionary meaning the word absolute as has been done by the Division Bench of the High Court.

42. In the case of M/S Pepsi Foods Ltd. and Ors. vs. Special Judicial Magistrate and Ors.(supra), the Supreme Court held thus:

"29. No doubt the magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. It was submitted before us on behalf of the State that in case we find that the High Court failed to exercise its jurisdiction the matter should be remanded back to it to consider if the complaint and the evidence on record did not make out any case against the appellants. If, however, we refer to the impugned judgment of the High Court it has come to (78 of 160) [CW-2915/2019] the conclusion, though without referring to any material on record, that "in the present case it cannot be said at this stage that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists no sufficient ground for proceedings against the accused." We do not think that the High Court was correct in coming to such a conclusion and in coming to that it has also foreclosed the matter for the magistrate as well, as the magistrate will not give any different conclusion on an application filed under Section 245 of the Code. The High Court says that the appellants could very well appear before the court and move an application under Section 245(2) of the Code and that the magistrate could discharge them if he found the charge to be groundless and at the same time it has itself returned the finding that there are sufficient grounds for proceeding against the appellants. If we now refer to the facts of the case before us it is clear to us that not only that allegations against the appellants do not make out any case for an offence under Section 7 of the Act and also that there is no basis for the complainant to make such allegations. The allegations in the complaint merely show that the appellants have given their brand name to "Residency Foods and Beverages Ltd." for bottling the beverage "Lehar Pepsi '. The complaint does not show what is the role of the

appellants in the manufacture of the beverage which is said to be adulterated. The only allegation is that the appellants are the manufacturer of bottle. There is no averment as to how the complainant could say so and also if the appellants manufactured the alleged bottle or its contents. His sole information is from A.K. Jain who is impleaded as accused No. 3. The preliminary evidence on which the 1st respondent relied in issuing summon to the appellants also does not show as to how it could be said that the appellants are manufacturers of either the bottle or the beverage or both. There is another aspect of the matter. The Central Government in the exercise of their powers under Section 3 of the Essential Commodities Act, 1955 made Fruit Products Order, 1955 (for short, the "Fruit Order"). It is not disputed that the beverage in the question is a "fruit product" within the meaning of Clause (2)(b) of the Fruit Order and that for the manufacture thereof certain licence is required. The Fruit Order defines the manufacturer and also sets out as to what the (79 of 160) [CW-2915/2019] manufacturer is required to do in regard to the packaging, marking and labelling of containers of fruit products. One of such requirement is that when a bottle is used in packing any fruit products, it shall be so sealed that it cannot be opened without destroying the licence number and the special identification mark of the manufacturer to be displayed on the top or neck of the bottle. The licence number of manufacturer shall also be exhibited prominently on the side label on such bottle [Clause (8) (1) (b)]. Admittedly, the name of the first appellant is not mentioned as a manufacturer on the top cap of the bottle. It is not necessary to refer in detail to other requirements of the Fruit Order and the consequences of infringement of the Order and to the penalty to which the manufacturer would be exposed under the provisions of the Essential Commodities Act, 1955. We may, however, note that in The Hamdard Dawakhana .(WAKF) Delhi and Anr. v.

The Union of India and Ors.,[1965]2SCR192 , an argument was raised that the Fruit Order was invalid because its provision indicated that it was an Order which could have been appropriately issued under the Prevention of Food Adulteration Act, 1954. This Court negatived this plea and said that the Fruit order was validly issued under the Essential Commodities Act.

What we find in the present case is that there was nothing on record to show if the appellants held the licence for the manufacture of the offending beverage and if, as noted above, the first appellant was the manufacturer thereof.

29. It is no comfortable thought for the appellants to be told that they could appear before the court which is at a far off place in the Ghazipur in the State of Uttar Pradesh, seek their release on bail and then to either move an application under Section 245(2) of the Code or to face trial when the complaint and the preliminary evidence recorded makes out no case against them. It is certainly one of those cases where there is an abuse of the process of the law and the courts and the High Court should not have shied away in exercising its jurisdiction. Provisions of Articles 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it. In our view High Court should not have adopted such a rigid approach which certainly has led to

miscarriage of justice in the case. Power of judicial review is (80 of 160) [CW-2915/2019] discretionary but this was a case where the High Court should have exercised it."

43. In the case of Collector of Central Excise, Ahmedabad vs. Orient Fabrics Pvt. Ltd.: (supra) , the Apex Court of the land, held thus:

> "3. The Tribunal relying upon the decision in the case of Pioneer Silk Mills Pvt. Ltd. v. Union of India, reported in 1995(80)ELT507(Del) , allowed the appeals, holding that the provisions of Central Excise Act and the Rules made thereunder, so far as they relate to confiscation cannot be made applicable for the breach of provisions of the Act. It is against the said judgment and order of the Tribunal, the appellant is in appeal before us.
>
> 4. Mr. S.R. Bhat, learned counsel appearing for the appellant, urged that the view taken by the Tribunal in allowing the appeals was erroneous inasmuch as it is contrary to the decisions in the case of Khema & Co. (Agencies) Pvt. Ltd. v. State of Maharashtra, reported in [1975]3SCR753 and Commissioner of Central Excise v. Ashok Fashion Ltd., reported in 2002(141)ELT606(Guj).
>
> 5. In order to appreciate the issue, it is relevant to set out the Sub-section (3) of Section 3 of the Act, as applicable in this matter and which runs as under:
>
> "SECTION 3: Levy and collection of additional duties:
>
> (1)..... (2).....
> (3) The provisions of the Central Excise and Salt Act, 1944 and the rules made thereunder including those relating to refunds and exemptions from duty shall, so far as may be apply in relation to the levy and collection of the additional duties as they apply in relation to the levy and collection of duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in Sub-section (1)."
>
> (81 of 160) [CW-2915/2019]
>
> 6. A perusal of the said provision shows that the breach of the provision of the Act has not been made penal or an offence and no power has been given to confiscate the goods. It only provides for application of the procedural provisions of the Central Excise and Salt Act, 1944 and the Rules made thereunder. It is no longer res integra that when the breach of the provisions of the Act is penal in nature or a penalty is imposed by way of additional tax, the constitutional mandate requires a clear authority of law for imposition for the same. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. The authority has to be specific and explicit and expressly provided. The Act created liability for additional duty for excise, but created no liability for any penalty. That being so, the confiscation proceedings against the respondents were unwarranted and without authority of law.

> 7. The Parliament by reason of Section 63(a) of the Finance Act, 1994 (Act No. 32 of 1994) substituted Sub-section (3) of Section 3 of the said Act, which now reads as under:
>
> "3. Levy and collection of Additional Duties:-
>
> (1)..... (2).....
> (3) The provisions of the [Central Excise Act, 1944] (1 of 1944), and the rules made thereunder, including those relating to refunds, exemptions from duty, offences and penalties, shall, so far as may be, apply in relation to the levy and collection of the additional duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in Sub-section (1)."
>
> 19. It is now a well settled principles of law that expropriatory legislation must be strictly construed (see D.L.F. Qutab Enclave Complex Educational Charitable Trust v. State of Haryana and Ors., reported in :

[2003]2SCR1). It is further trite that a penal statute must receive strict construction.

20. The matter may be considered from another angle. The Parliament by reason of the Amending Act 32 of (82 of 160) [CW-2915/2019] 1994 consciously brought in the expression offences and penalties' in Sub-section (3) of Section 3 of the Act. The mischief rule, if applied, would clearly show that such amendment was brought with a view to remedy the defect contained in the unamended provisions of Sub-section (3) of Section 3 of the Act. Offences having regard to the provisions contained in Article 20 of the Constitution of India cannot be given a retrospective effect. In that view of the matter too Sub- section (3) of Section 3 of the Act as amended cannot be said to have any application at all.

21. In view of the aforesaid decisions, it must be held that the confiscation proceedings taken against the respondents and the penalty imposed upon them were totally without the authority of law and were rightly set aside by the Tribunal."

44. In the case of Suhas H. Pophale vs. Oriental Insurance Co. Ltd. and its Estate Officer: (supra) , the Supreme Court, held thus:

> "45. It has been laid down by this Court time and again that if there are rights created in favour of any person, whether they are property rights or rights arising from a transaction in the nature of a contract, and particularly if they are protected under a statute, and if they are to be taken away by any legislation, that legislation will have to say so specifically by giving it a retrospective effect. This is because prima facie every legislation is prospective (see para 7 of the Constitution Bench judgment in Janardan Reddy v. The State reported in AIR 1951 SC 124). In the instant case, the Appellant was undoubtedly protected as a 'deemed tenant' under Section 15A of the Bombay Rent Act, prior to the merger of the erstwhile insurance company with a Government

> Company, and he could be removed only by following the procedure available under the Bombay Rent Act. A 'deemed tenant' under the Bombay Rent Act, continued to be protected under the succeeding Act, in view of the definition of a 'tenant' under Section 7(15)(a)(ii) of the Maharashtra Rent Control Act, 1999. Thus, as far as the tenants of the premises which are not covered under the Public Premises Act are concerned, those tenants who were deemed tenants under the Bombay Rent Act continued (83 of 160) [CW-2915/2019] to have their protection under the Maharashtra Rent Control Act, 1999. Should the coverage of their premises under the Public Premises Act make a difference to the tenants or occupants of such premises, and if so, from which date?

46. It has been laid down by this Court through a number of judgments rendered over the years, that a legislation is not be given a retrospective effect unless specifically provided for, and not beyond the period that is provided therein. Thus, a Constitution Bench held in Garkiapati Veeraya v. N. Subbiah Choudhry reported in AIR 1957 SC 540 that in the absence of anything in the enactment to show that it is to be retrospective, it cannot be so constructed, as to have the effect of altering the law applicable to a claim in litigation at the time when the act was passed. In that matter, the Court was concerned with the issue as to whether the Appellant's right to file an appeal continued to be available to him for filing an appeal to the Andhra Pradesh High Court after it was created from the erstwhile Madras High Court. The Constitution Bench held that the right very much survived, and the vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

49. The same has been the view taken by a bench of three Judges of this Court in J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad v. Induprasad Devshanker Bhatt reported in AIR 1969 SC 778 in the context of a provision of the Income Tax Act, 1961, in the matter of reopening of assessment orders. In that matter the Court was concerned with the issue as to whether the Income Tax Officer could re-open the assessment under Section 297(2) (d)(ii) and 148 of the Income Tax Act, 1961, although the right to re-open was barred by that time under the earlier Income Tax Act, 1922. This Court held that the same was impermissible and observed in paragraph 5 as follows:

> 5……The reason is that such a construction of Section 297(2)(d)(ii) would be tantamount to giving of retrospective operation to that section which is not warranted either by the express language of the section or by necessary implication. The principle is based on the well-known (84 of 160) [CW-2915/2019] rule of interpretation that unless the terms of the statute expressly so provide or unless there is a necessary implication, retrospective operation should not be given to the statute so as to affect, alter or destroy any right already acquired or to revive any remedy already lost by efflux of time.

50. In Arjan Singh v. State of Punjab reported in AIR 1970 SC 703, this Court was concerned with the issue of date of application of Section 32KK added into the Pepsu Tenancy and Agricultural Lands Act, 1955. This Court held in paragraph 4 thereof as follows:

> 4. It is a well-settled rule of construction that no provision in a statute should be given retrospective effect unless the legislature by express terms or by necessary implication has made it retrospective and that where a provision is made retrospective, care should be taken not to extend its retrospective effect beyond what was intended.

52. In the case of K.S. Paripoornan v. State of Kerala reported in AIR 1995 SC 1012, a Constitution Bench of this Court was concerned with the retrospective effect of Section 23(1A) introduced in the Land Acquisition Act. While dealing with this provision, this Court has observed as follows:

> 64. A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the legislature. A statute is regarded retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it (85 of 160) [CW-2915/2019] affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. By virtue of the presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently conferred. They are also not rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings. (See: Halsbury's Laws of England, 4th Edn. Vol. 44, paras 921, 922, 925 and 926).
>
> 54. Having noted the aforesaid observations, it is very clear that in the facts of the present case, the Appellant's status as a deemed tenant was accepted under the state enactment, and therefore he could not be said to be in "unauthorised occupation". His right granted by the state enactment cannot be destroyed by giving any retrospective application to the provisions of Public Premises Act, since there is no such express provision in the statute, nor is it warranted by any implication. In fact his premises would not come within the ambit of the Public Premises Act, until they belonged to the Respondent No. 1, i.e. until 1.1.1974. The corollary is that if the Respondent No. 1 wanted to evict the Appellant, the remedy was to resort to the procedure available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, by approaching the forum thereunder, and not by resorting to the provisions of the Public Premises Act."

45. In the case of State of Punjab and Ors. vs. Bhajan Kaur and Ors.: (supra) , the Apex Court of the land, held thus:

(86 of 160) [CW-2915/2019] "9. A statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. A substantive law is presumed to be prospective. It is one of the facets of rule of law.

10. Section 92-A of the 1939 Act created a right and a liability on the owner of the vehicle. It is a statutory liability. Per se it is not a tortuous liability. Where a right is created by an enactment, in absence of a clear provision in the statute, it is not to be applied retrospectively.

13. No reason has been assigned as to why the 1988 Act should be held to be retrospective in character. The rights and liabilities of the parties are determined when cause of action for filing the claim petition arises. As indicated hereinbefore, the liability under the Act is a statutory liability. The liability could, thus, be made retrospective only by reason of a statute or statutory rules. It was required to be so stated expressly by the Parliament. Applying the principles of interpretation of statute, the 1988 Act cannot be given retrospective effect, more particularly, when it came into force on or about 1.07.1989.

17. In Garikapati v. Subbaiah Chowdhary [1957]1SCR488 , the law is stated, thus:

> 25...The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed....

23. In Madishetti Bala Ramul (D) by LRs. v. The Land Acquisition Officer: (2007)9SCC650 , this Court observed:

> "19. In Land Acquisition Officer-cum-
>
> DSWO, A.P. v. B.V. Reddy and Sons this Court opined that Section 25 being not a procedural provision will have no retrospective effect, holding:
>
> 6. Coming to the second question, it is a well- settled principle of construction that a (87 of 160) [CW-2915/2019] substantive provision cannot be retrospective in nature unless the provision itself indicates the same. The amended provision of Section 25 nowhere indicates that the same would have any retrospective effect. Consequently, therefore, it would apply to all acquisitions made subsequent to 24-9-1984, the date on which Act 68 of 1984 came into force. The Land Acquisition (Amendment) Bill of 1982 was introduced in Parliament on 30- 4-1982 and came into operation with effect from 24-9-1984....

27. For the reasons aforementioned, the decisions of Kerala and Punjab & Haryana High Court do not lay down a good law. They are overruled accordingly. However, as the State has not asked for any relief against the respondents, this appeal is dismissed. No costs.

46. In the case of Joseph Isharat vs. Rozy Nishikant Gaikwad:(supra), the Bombay High Court, held thus:

"4. Under the Benami Act, as it stood on the date of the suit as well as on the date of filing of written statement and passing of the decree by the courts below, provided for the definition of a "benami transaction" under clause (a) of Section 2. Under that provision, any transaction in which property is transferred to one person for consideration paid or provided by another came within the definition of "benami transaction". Section 3 of the Benami Act, in sub-section (1), provided that no person shall enter into any benami transaction. Sub-section (2) contained two exceptions to the prohibition contained in sub-section (1). The first exception, contained in clause (a) of sub-section (2), was in respect of purchase of property by any person in the name of his wife or unmarried daughter. In the case of such purchase, it was to be presumed, unless the contrary was proved, that the property was purchased for the benefit of the wife or unmarried daughter, as the case may be. Simultaneously, Section 4 of the Benami Act contained a prohibition in respect of right to recover property held benami. Sub-section (1) provided that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held, or against any other person, shall lie by or on behalf of a person claiming to be the real owner of such property. Sub-section (2) made provisions likewise in respect of a defence based on a plea of benami transaction. Sub-

(88 of 160) [CW-2915/2019] section (2) provided that no defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. There was a twofold exception to this restriction. First was in respect of the person in whose name the property is held being a coparcener in a Hindu undivided family and the property being held for the benefit of the coparceners of the family. The second exception was in respect of the person, in whose name the property was held, being a trustee or other person standing in a fiduciary capacity and the property being held for the benefit of another person for whom he was such trustee or towards whom he stood in such capacity. The present suit was filed when these provisions were in operation. These provisions continued to apply even when the written statement was filed by the Defendant and the suit was heard and decreed by both the courts below. The legal provisions continued to apply even when the second appeal was filed before this court. It is only now during the pendency of the second appeal, when it has come up for final hearing, that there is a change in law. The Benami Act has been amended

by the Parliament in 2016 with the passing of the Benami Transactions (Prohibition) Amendment Act, 2016. This amendment has come into effect from 01 November 2016. In the Amended Act the definition of "benami transaction" has undergone a change. Under the Amended Act "benami transaction" means (under Section 2(9) of the Act) a transaction or an arrangement where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration. There are four exceptions to this rule. The first is in respect of a karta or a member of a Hindu undivided family holding the property for the benefit of the family. The second exception is in respect of a person standing in a fiduciary capacity holding the property for the benefit of another person towards whom he stands in such capacity. The third exception is in the case of an individual who purchases the property in the name of his spouse or child, the consideration being provided or paid out of the known sources of the individual. The fourth exception is in the case of purchase of property in the name of brother or sister or lineal ascendant or descendant where the names of such brother or sister or lineal ascendant or descendant, as the case may be, and the individual appear as joint owners in any document. Sub-section (1) of Section 3 contains the very same prohibition as under the unamended Act, in (89 of 160) [CW-2915/2019] that it prohibits all benami transactions. Section 4 likewise prohibits suits, claims or actions or defences based on the plea of benami as in the case of the unamended Act. The submission is that under this scheme of law, step-daughter not having been defined under the Benami Act, but having been defined under the Income Tax Act, 1961, by virtue of sub-section (31) of Section 2 of the amended Benami Act, the meaning of the expression will be the one assigned to it under the Income Tax Act. The definition of daughter under the Income Tax Act admits of a step-child within it. It is submitted that under the amended definition of "benami transaction", thus, there is a clear exception in respect of a purchase made in the name of a step-

daughter by an individual provided, of course, the consideration has been provided or paid out of known sources of the individual.

7. What is crucial here is, in the first place, whether the change effected by the legislature in the Benami Act is a matter of procedure or is it a matter of substantial rights between the parties. If it is merely a procedural law, then, of course, procedure applicable as on the date of hearing may be relevant. If, on the other hand, it is a matter of substantive rights, then prima facie it will only have a prospective application unless the amended law speaks in a language "which expressly or by clear intention, takes in even pending matters.". Short of such intendment, the law shall be applied prospectively and not retrospectively.

8. As held by the Supreme Court in the case of R. Rajagopal Reddy v. Padmini Chandrasekharan (1995) 2 SCC 630, Section 4 of the Benami Act, or for that matter, the Benami Act as a whole, creates substantive rights in favour of benamidars and destroys substantive rights of real owners who are parties to such transaction and for whom new liabilities are created under the Act. Merely

because it uses the word "it is declared", the Act is not a piece of declaratory or curative legislation. If one has regard to the substance of the law rather than to its form, it is quite clear, as noted by the Supreme Court in R. Rajagopal Reddy, that the Benami Act affects substantive rights and cannot be regarded as having a retrospective operation. The Supreme Court in R. Rajagopal Reddy also held that since the law nullifies the defences available to the real owners in recovering the properties held benami, the law must apply irrespective of the time of the benami transaction and that the expression "shall lie" in Section 4(1) or "shall be allowed" in Section 4(2) are prospective and apply to the present (90 of 160) [CW-2915/2019] (future stages) as well as future suits, claims and actions only. These observations clearly hold the field even as regards the present amendment to the Benami Act. The amendments introduced by the Legislature affect substantive rights of the parties and must be applied prospectively."

47. In the case of Jeans Knit (P) Ltd. vs. Deputy Commissioner of Income Tax and Ors (supra), the Supreme Court, held thus:

> "2. We may make it clear that this Court has not made any observations on the merits of the cases, i.e. the contentions which are raised by the Appellant challenging the move of the IT authorities to reopen the assessment. Each case shall be examined on its own merits keeping in view the scope of judicial review while entertaining such matters, as laid down by this Court in various judgments.
>
> 3. We are conscious of the fact that the High Court has referred to the judgment of this Court in CIT v. Chhabil Dass Agarwal (2013) 261 CTR (SC) 113 : (2013) 91 DTR (SC) 193 : (2013) 357 ITR 357 (SC). We find that the principle laid down in the said case does not apply to these cases.
>
> 4. During the pendency of these appeals, stay of reassessment was granted, which shall continue till the disposal of the writ petitions before the High Courts. The appeals are allowed in the aforesaid terms.

48. In the case of Raza Textiles Ltd. vs. Income Tax Officer, Rampur:(supra), the Apex Court of the land, observed thus:

> 3. There was material before him on this question. He had jurisdiction to decide the question either way. It cannot be said that the officer assumed jurisdiction by wrong decision on this question of residence". The Appellate Bench appears to have been under the impression that the Income-tax Officer was the sole judge of the fact whether the firm in question was resident or non-resident. This conclusion, in our opinion, is wholly wrong. No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly The question (91 of 160) [CW-2915/2019] whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. If the High Court comes to the conclusion, as the learned single Judge has done in this case, that the Income-tax Officer had clutched at the

> jurisdiction by deciding a jurisdictional fact erroneously, then the assesses was entitled for the writ of certiorari prayed for by him. It is incomprehensible to think that a quasi-judicial authority like the Income-tax Officer can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen. In our opinion the Appellate Bench is wholly wrong in opining that the Income-tax Officer can "decide either way".

49. In the case of Malayala Manorama Co. Ltd vs Assistant Commissioner, Commercial Taxes, (supra), it has been held thus:

> "4. The Assistant Commissioner, Commercial Tax, who had issued the notice, came to the conclusion that the concession has been extended to non-taxable goods also and formed an opinion that the concession is applicable only to `goods' and newspaper was not a `goods' within the meaning of Section 2 of the Act. While referring to another judgment of this Court in Collector of Central Excise v. Ballarpur Industries Ltd. [(1989) 4 SCC 566 : (1990) 77 Sales Tax Cases 282], the said Assistant Commissioner concluded that newspaper was not a `goods' and, therefore, the declaration was not appropriate and imposed a penalty of Rs. 14,66,256 for the year 2000-2001.
>
> 5. The assessee firm did not take recourse to the statutory remedies available under the Act but questioned the very correctness and legality of the issuance of the notice as well as the order passed by the Assistant Commissioner before the High Court of Kerala at Ernakulam, by filing a writ petition under Article 226 of the Constitution of India.

6. This writ petition was contested by the Department which filed detailed counter affidavit. It was specifically pleaded by the Department that for availability of statutory alternative remedy as well as for other reasons and facts stated in the reply, the writ petition (92 of 160) [CW-2915/2019] itself was not maintainable. The Division Bench of the High Court while considering this primary objection raised by the Department before the High Court, came to the conclusion that as the facts were not in dispute and questions raised were purely legal and are to be tested in view of the judgment of this Court in the case of Printers (Mysore) Ltd. v. Assistant Commercial Tax Officer [(1994) 93 Sales Tax Cases 95 : (1994) 2 SCC 434], Whirlpool Corporation v. Registrar of Trade Marks [(1998) 8 SCC 1] as well as the judgment in the case of State of H.P. & Ors. v. Gujarat Ambuja Cements Ltd. [(2005) 6 SCC 499 : (2005) 142 Sales Tax Cases 1], the writ petition was maintainable. However, while laying emphasis that the newspaper would not fall within the expression `goods' under sub-section 3 of Section 5 of the Act, the High Court held that the notice issued was proper as Form No. 18 which gives benefit of concessional rate of tax was factually not correct. While dismissing the writ petition, however, the Bench issued a direction to the assessing authority to examine whether the imposition of penalty at double the rate is justified in the facts and circumstances of the case, within a period of two months from the date of receipt of the copy of the judgment. It is this judgment of the High Court which has been assailed in the present appeal under Article 136 of the Constitution of India.

9. Having heard the learned senior counsel appearing for the parties, we are of the considered view that the order under challenge requires interference by this Court. There is no dispute to the fact that the material amendments were carried out in the provisions of Section 5(3) of the Act with effect from 01.04.2002. The existing 1st proviso to Section 5(3)(i) was deleted as well as the expression `or uses the same in the manufacture of any goods which are not liable to tax in this Act' in Section 5(3)(i) was also deleted. Despite these amendments, as it appears from the record before the Court, format of Form No. 18 has not been amended consequently. However, the fact of the matter remains that the High Court has not dwelt upon these legal issues which are the core issues involved in the present case. In our view, the discussion on the first issue would certainly have some bearing on the alternative argument raised on behalf of the appellant before us. Thus, it may not be possible for this Court to sustain the finding recorded by the High Court in that (93 of 160) [CW-2915/2019] regard. Of course, we are not ruling out all the possibilities of the High Court arriving at the same conclusion if it is of that view after examining the amendments as well as the submissions made on behalf of the appellant with regard to its alternative submissions. In light of this discussion, we pass the following order :

(a) The impugned order dated 2nd August, 2006 passed by the High Court is hereby set aside.

(b) The matter is remanded to the High Court for consideration afresh in accordance with law on both the aforesaid submissions while leaving all the contentions of the assessee and the Department open for the year 2000- 2001, in relation to imposition of penalty under Section 45 (A) of the Act.

(c) The legality and validity or otherwise of the notice dated 16.01.2006 and 17.01.2006 shall be subject to the final decision of the High Court."

50. In the case of K.T. Plantation Pvt. Ltd. and Ors. vs. State of Karnataka, (supra), the Supreme Court observed thus:

> "110. Article 300A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression 'Property' in Article 300A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognised by law. This Court in State of W.B. and Ors. v. Vishnunarayan and Associates (P) Ltd and Anr. MANU/SC/0199/2002 : (2002) 4 SCC 134, while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, held in the context of Article 300A that the State or executive offices cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights. Article 300A, therefore, protects private property against executive action. But the question that looms large is as to what extent their rights will be protected when they are sought to be illegally deprived of their properties on the strength of a legislation. Further, it was also (94 of 160) [CW-2915/2019] argued that the twin requirements of 'public purpose' and 'compensation' in case of

deprivation of property are inherent and essential elements or ingredients, or "inseparable concomitants" of the power of eminent domain and, therefore, of entry 42, List III, as well and, hence, would apply when the validity of a statute is in question. On the other hand, it was the contention of the State that since the Constitution consciously omitted Article 19(1)(f), Articles 31(1) and 31(2), the intention of the Parliament was to do away the doctrine of eminent domain which highlights the principles of public purpose and compensation.

111. Seervai in his celebrated book 'Constitutional Law of India' (Edn. IV), spent a whole Chapter XIV on the 44th Amendment, while dealing with Article 300A. In paragraph 15.2 (pages 1157-1158) the author opined that confiscation of property of innocent people for the benefit of private persons is a kind of confiscation unknown to our law and whatever meaning the word "acquisition" may have does not cover "confiscation" for, to confiscate means "to appropriate to the public treasury (by way of penalty)". Consequently, the law taking private property for a public purpose without compensation would fall outside Entry 42 List III and cannot be supported by another Entry in List III. Requirements of a public purpose and the payment of compensation according to the learned author be read into Entry 42 List III. Further the learned author has also opined that the repeal of Article 19(1)(f) and 31(2) could have repercussions on other fundamental rights or other provisions which are to be regarded as part of the basic structure and also stated that notwithstanding the repeal of Article 31(2), the word "compensation" or the concept thereof is still retained in Article 30(1A) and in the second proviso to Article 31A(1) meaning thereby that payment of compensation is a condition of legislative power in Entry 42 List III.

51. In the case of Mangathai Ammal (Died) through L.Rs.

and Ors. vs. Rajeswari and Ors. (supra), it has been held thus:

"12. It is required to be noted that the benami transaction came to be amended in the year 2016. As per Section 3 of the Benami Transaction (Prohibition) (95 of 160) [CW-2915/2019] Act 1988, there was a presumption that the transaction made in the name of the wife and children is for their benefit. By Benami Amendment Act, 2016, Section 3(2) of the Benami Transaction Act, 1988 the statutory presumption, which was rebuttable, has been omitted. It is the case on behalf of the Respondents that therefore in view of omission of Section 3(2) of the Benami Transaction Act, the plea of statutory transaction that the purchase made in the name of wife or children is for their benefit would not be available in the present case. Aforesaid cannot be accepted. As held by this Court in the case of Binapani Paul (Supra) the Benami Transaction (Prohibition) Act would not be applicable retrospectively. Even otherwise and as observed hereinabove, the Plaintiff has miserably failed to discharge his onus to prove that the Sale Deeds executed in favour of Defendant No. 1 were benami transactions and the same properties were purchased in the name of Defendant No. 1 by Narayanasamy Mudaliar from the amount received by him from the sale of other

ancestral properties.

52. In the case of R. Rajagopal Reddy (Dead) by L.Rs. and Ors. vs. Padmini Chandrasekharan (Dead) by L.Rs. (supra), the Supreme Court held thus:

> "A mere look at the above provisions shows that the prohibition under Section 3(1) is against persons who are to enter into benami transactions and it has laid down that no person shall enter into any benami transaction which obviously means from the date on which this prohibition comes into operation i.e. with effect from September 5, 1988. That takes care of future benami transactions. We are not concerned with Sub-section (2) but subsection (3) of Section 3 also throws light on this aspect. As seen above, it states that whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. Therefore, the provision creates a new offence of entering into such benami transactions.

It is made non-cognizable and bailable as laid down under Sub-section (4). It is obvious that when a statutory provision creates new liability and new offence, it would naturally have prospective operation and would cover only those offences which (96 of 160) [CW-2915/2019] take place after Section 3(1) comes into operation. In fact Saikia J. speaking for the Court in Mithilesh Kumari's case (supra) has in terms observed at page 635 of the report that Section 3 obviously cannot have retrospective operation. We respectfully concur with this part of the learned Judge's view. The real problem centers round the effect of Section 4(1) on pending proceedings wherein claim to any property on account of it being held benami by other side is on the anvil and such proceeding had not been finally disposed of by the time Section 4(1) came into operation, namely, on 19th May, 1988. Saikia J. speaking for the Division Bench in the case of Mithilesh Kumari (supra) gave the following reasons for taking the view that though Section 3 is prospective and though Section 4(1) is also not expressly made retrospective, by the legislature, by necessary implication, it appears to be retrospective and would apply to all pending proceedings wherein right to property allegedly held benami is in dispute between parties and that Section 4(1) will apply at whatever stage the litigation might be pending in the hierarchy of the proceedings :-

(1).....

(2).....

(3) When an Act is declaratory in nature, the presumption against retrospectivity is not applicable. A statute declaring the benami transactions to be unenforceable belongs to this type. The presumption against taking away vested right will not apply in this case in as much as under law it is the benamidar in whose name the property stands, and law only enabled the real owner to recover the property from him which right has now been ceased by the Act. In one sense there was a right to recover or resist in the real owner against the benamidar. Ubi Jus ibi remedium. Where the remedy is barred, the right is rendered unenforceable.

(4) When the law nullifies the defences available to the real owners in recovering the benami property from the benamidar, the law must apply irrespective of the time of the benami transactions. The expression "shall lie" under Section 4(1) and "shall be allowed" in Section 4(2) are prospective and shall apply to present (future stages) and future suits, claims or action only.

(5)..... (6) .....

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11. Before we deal with these six considerations which weighed with the Division Bench for taking the view that Section 4 will apply retrospectively in the sense that it will get telescoped into all pending proceedings, howsoever earlier they might have been filed, if they were pending at different stages in the hierarchy of the proceedings even upto this Court, when Section 4 came into operation, it would be apposite to recapitulate the salient feature of the Act. As seen earlier, the preamble of the Act itself states that it is an act to prohibit benami transactions and the right to recover property held benami, for matters connected therewith or incidental thereto. Thus it was enacted to efface the then existing rights of the real owners of properties held by others benami. Such an act was not given any retrospective effect by the legislature. Even when we come to Section 4, it is easy to visualise that Sub- section (1). of Section 4 states that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other shall lie by or on behalf of a person claiming to be the real owner of such property. As per Section 4(1) no such suit shall thenceforth lie to recover the possession of the property held benami by the defendant. Plaintiffs right to that effect is sought to be taken away and any suit to enforce such a right after coming into operation of Section 4(1) that is 19th May, 1988, shall not lie. The legislature in its wisdom has nowhere provided in Section 4(1) that no such suit, claim or action pending on the date when Section 4 came into force shall not be proceeded with and shall stand abated. On the contrary, clear legislative intention is seen from the words "no such claim, suit or action shall lie", meaning thereby no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any Court for seeking such a relief after coming into force of Section 4(1). In Collins English Dictionary, 1979 Edition as reprinted subsequently, the word 'lie' has been defined in connection with suits and proceedings. At page 848 of the Dictionary while dealing with topic No. 9 under the definition of term 'lie' it is stated as under :-

"For an action, claim appeal ect. to subsist; be maintainable or admissible."

(98 of 160) [CW-2915/2019] The word 'lie' in connection with the suit, claim or action is not defined by the Act. If we go by the aforesaid dictionary meaning it would mean that such suit, claim or action to get any property declared benami will not be admitted on behalf of such plaintiff or applicant against the concerned defendant in whose name the property is held on and from the date on which this prohibition against entertaining of such suits comes into force. With respect, the view taken by that Section 4(1) would apply even to such pending suits which were already filed and entertained prior to the date when the Section came into force and which has the effect of destroying the then existing right of plaintiff in connection with the suit property cannot be sustained in the face of the clear language of Section 4(1). It has to be visualised that the legislature in its wisdom has not

expressly made Section 4 retrospective. Then to imply by necessary implication that Section 4 would have retrospective effect and would cover pending litigations filed prior to coming into force of the Section would amount to taking a view which would run counter to the legislative scheme and intent projected by various provisions of the Act to which we have referred earlier. It is, however, true as held by the Division Bench that on the express language of Section 4(1) any right inhering in the real owner in respect of any property held benami would get effaced once Section 4(1) operated, even if such transaction had been entered into prior to the coming into operation of Section 4(1), and hence-after Section 4(1) applied no suit can lie in respect to such a past benami transaction. To that extent the Section may be retroactive. To highlight this aspect we may take an illustration. If a benami transaction has taken place in 1980 and suit is filed in June 1988 by the plaintiff claiming that he is the real owner of the property and defendant is merely a benamidar and the consideration has flown from him then such a suit would not lie on account of the provisions of Section 4(1). Bar against filing, entertaining and admission of such suits would have become operative by June, 1988 and to that extent Section 4(1) would take in its sweep even past benami transactions which are sought to be litigated upon after coming into force of the prohibitory provision of Section 4(1); but that is the only effect of the retroactivity of Section 4(1) and nothing more than that. From the conclusion that Section 4(1) shall apply even to past benami transactions to the aforesaid (99 of 160) [CW-2915/2019] extent, the next step taken by the Division Bench that therefore, the then existing rights got destroyed and even though suits by real owners were filed prior to coming into operation of Section 4(1) they would not survive, does not logically follow.

"17. As regards, reason No. 3, we are of the considered view that the Act cannot be treated to be declaratory in nature.

Declaratory enactment declares and clarifies the real intention of the legislature in connection with an earlier existing transaction or enactment, it does not create new rights or obligations. On the express language of Section 3, the Act cannot be said to be declaratory but in substance it is prohibitory in nature and seeks to destroy the rights of the real owner qua properties held benami and in this connection it has taken away the right of the real owner both for filing a suit or for taking such a defence in a suit by benamidar. Such an Act which prohibits benami transactions and destroys rights flowing from such transactions as existing earlier is really not a declaratory enactment. With respect, we disagree with the line of reasoning which commanded to the Division Bench. In this connection, we may refer to the following observations in 'Principles of Statutory Interpretation', 5th Edition 1992, by Shri G.P. Singh, at page 315 under the caption 'Declaratory statutes' :-

The presumption against retrospective operation is not applicable to declaratory statutes. As states in CRAIES and approved by the Supreme Court : "For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word 'declared' as well as the word enacted". But the use of the words 'it is declared' (100 of 160) [CW-2915/2019] is not conclusive that the Act is declaratory for these words

may, at times be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is to explain an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the constitution came into force the amending Act also will be part of the existing law.

In Mithilesh Kumari v. Prem Bihari Khare, Section 4 of the Benami Transactions (Prohibition) Act, 1988 was, it is submitted, wrongly held to be an Act declaratory in nature for it was not passed to clear any doubt existing as to the common law or the meaning or effect of any statute. The conclusion however, that Section 4 applied also to past benami transactions may be supportable on the language used in the section.

18. No exception can be taken to the aforesaid observations of learned author which in our view can certainly be pressed in service for judging whether the impugned section is declaratory in nature or not. Accordingly it must be held that Section 4 or for that matter the Act as a whole is not a piece of declaratory or curative legislation. It creates substantive rights in favour of benamidars and destroys substantive rights of real owners (101 of 160) [CW-2915/2019] who are parties to such transactions and for whom new liabilities are created by the Act."

53. In the case of Garikapatti Veeraya Vs. N. Subbiah Choudhury, AIR 1957 SC 540, the Supreme Court observed thus:

> 25. In construing the articles of the Constitution we must bear in mind certain cardinal rules of construction. It has been said in Hough v. Windus [1884] 12 Q.B.D. 224, that "statutes should be interpreted, if possible, so as to respect vested right."
>
> The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed [Leeds and County Bank Ltd. v. Walker (1883) 11 Q.B.D. 84; Moon v. Durden (1848) 2 Ex. 22; 76 R.R.
>
> 479. The following observation of Rankin C.J. in Sadar Ali v. Dalimuddin (supra) at page 520 is also apposite and helpful : "Unless the contrary can be shown the provision which takes away the jurisdiction is itself subject to the implied saving of the litigant's right." In Janardan Reddy v. The State [1950]1SCR940 Kania C.J. in

> delivering the judgment of the Court observed that our Constitution is generally speaking prospective in its operation and is not to have retroactive operation in the absence of any express provision to that effect. The same principle was reiterated in Keshavan Madhava Menon v. The State of Bombay 1951CriLJ680 and finally in Dajisaheb Mane and Others v. Shankar Rao Vithal Rao [1955]2SCR872 to which reference will be made in greater detail hereafter.

54. In the case of Keshavan Madhava Menon vs. The State of Bombay, (supra), the Supreme Court held thus:

> 7. It will be noticed that all that this clause declares is that all existing laws, in so far as they are inconsistent with the provisions of Part III shall, to the extent of such inconsistency, be void. Every statute is prima facie prospective unless it is expressly or by necessary implications made to have retrospective operation.
>
> (102 of 160) [CW-2915/2019] There is no reason why this rule of interpretation should not be applied for the purpose of interpreting our Constitution. We find nothing in the language of article 13(1) which may be read as indicating an intention to give it retrospective operation. On the contrary, the language clearly points the other way. The provisions of Part III guarantee what are called fundamental rights. Indeed, the heading of Part III is "Fundamental Rights". These rights are given, for the first time, by and under our Constitution. Before the Constitution came into force there was no such thing as fundamental right.

What article 13(1) provides is that all existing laws which clash with the exercise of the fundamental rights (which are for the first time created by the Constitution) shall to that extent be void. As the fundamental rights became operative only on and from the date of the Constitution the question of the inconsistency of the existing laws with those rights must necessarily arise on and from the date those rights came into being. It must follow, therefore, that article 13(1) can have no retrospective effect but is wholly prospective in its operation. After this first point is noted, it should further be seen that article 13(1) does not in terms make the existing laws which are inconsistent with the fundamental rights void ab initio or for all purposes. On the contrary, it provides that all existing laws, in so far as they are inconsistent with the fundamental rights, shall be void to the extent of their inconsistency.

They are not void for all purposes but they are void only to the extent they come into conflict with the fundamental rights. In other words, on and after the commencement of the Constitution no existing law will be permitted to stand in the way of the exercise of any of the fundamental rights. Therefore, the voidness of the existing law is limited to the future exercise of the fundamental rights.

Article 13(1) cannot be read as obliterating the entire operation of the inconsistent laws, or to wipe them out altogether from the statute book, for to do so will be to give them retrospective effect which, we have said, they do not possess.

Such laws exist for all past transactions and for enforcing all rights and liabilities accrued before the date of the Constitution.

(103 of 160) [CW-2915/2019] Learned counsel for the appellant has drawn our attention to articles 249(3), 250, 357, 358 and 369 where express provision has been made for saving things done under the laws which expired. It will be noticed that each of those articles was concerned with expiry of temporary statutes. It is well known that on the expiry of a temporary statute no further proceedings can be taken under it, unless the statute itself saved pending proceedings. If, therefore, an offence had been committed under a temporary statute and the proceedings were initiated but the offender had not been prosecuted and punished before the expiry of the statute, then, in the absence of any saving clause, the pending prosecution could not be proceeded with after the expiry of the statute by efflux of time. It was on this principle that express provision was made in the several articles noted above for saving things done or omitted to be done under the expiring laws referred to therein. As explained above, article 13(1) is entirely prospective in its operation and as it was not intended to have any retrospective effect there was no necessity at all for inserting in that article any such saving clause. The effect of article 13(1) is quite different from the effect of the expiry of a temporary statute or the repeal of a statute by a subsequent statute. As already explained, article 13(1) only has the effect of nullifying or rendering all inconsistent existing laws ineffectual or nugatory and devoid of any legal force or binding effect only with respect to the exercise of fundamental rights on and after the date of the commencement of the Constitution. It has no retrospective effect and if, therefore, an act was done before the commencement of the Constitution in contravention of the provisions of any law which, after the Constitution, becomes void with respect to the exercise of any of the fundamental rights, the inconsistent law is not wiped out so far as the past act is concerned for, to say that it is, will be to give the law retrospective effect.

There is no fundamental right that a person shall not be prosecuted and punished for an offence committed before the Constitution came into force. So far as the past acts are concerned the law exists, notwithstanding that it does not exist with respect to the future exercise of fundamental rights. We, therefore, agree with the conclusion arrived at by the High Court on the second question, although on (104 of 160) [CW-2915/2019] different grounds. In view of that conclusion, we do not consider it necessary to examine the reasons of the High Court for its conclusion. In our opinion, therefore, this appeal fails, and is dismissed.

19. A reference to the Constitution will show that the framers thereof have used the word "repeal" wherever necessary (see articles 252, 254, 357, 372 and 395). They have also used such words as "invalid" (see articles 245, 255 and 276), "cease to have effect" (see articles 358 and 372), "shall be inoperative", etc. They have used the word "void" only in two articles, these being article 13(1) and article 154, and both these articles deal with cases where a certain law is repugnant to another law to which greater sanctity is attached. It further appears that where they wanted to save things done or omitted to be done under the existing law, they have used apt language for the purpose; see for example articles 249, 250, 357, 358 and 369. The thoroughness and precision which the framers of the Constitution have observed in the matters to which reference has been made, disinclines me to read into article 13(1) a saving provision of the kind which we are asked to read into it.

Nor can I be persuaded to hold that treating an Act as void under article 13(1) should have a milder effect upon transactions not past and closed than the repeal of an Act or its expiry in due course of time. In my opinion, the strong sense in which the word "void" is normally used and the context in which it has been used are not to be completely ignored. Evidently, the framers of the Constitution did not approve of the laws which are in conflict with the fundamental rights, and, in my judgment, it would not be giving full effect to their intention to hold that even after the Constitution has come into force, the laws which are inconsistent with the fundamental rights will continue to be treated as good and effectual laws in regard to certain matters, as if the Constitution had never been passed. How such a meaning can be read into the words used in article 13(1), it is difficult for me to understand. There can be no doubt that article 13(1) will have no retrospective operation, and transactions which are past and closed, and rights which have already vested, will remain untouched. But with regard to inchoate matters which were still not determined when the Constitution came into force, and as regards proceedings whether not yet (105 of 160) [CW-2915/2019] begun, or pending at the time of enforcement of the Constitution and not yet prosecuted to a final judgment, the very serious question arises as to whether a law which has been declared by the Constitution to be completely ineffectual can yet be applied. On principle and on good authority, the answer to this question would appear to me to be that the law having ceased to be effectual can no longer be applied. In R. v. Mawgan (Inhabitants) (1888) 8 A. & E. 496 a presentment as to the non-repair of a highway had been made under 13 Geo. 3, c. 78, s. 24, but before the case came on to be tried, the Act was repealed. In that case, Lord Denman C.J. said :

"If the question had related merely to the presentment, that no doubt is complete. But dum loquimur, we have lost the power of giving effect to anything that takes place under that proceeding."And Littledale J. added : "I do not say that what is already done has become bad, but that no more can be done." In my opinion, this is precisely the way in which we should deal with the present case.

55. In the case of Thakur Bhim Singh (Dead) by Lrs and Ors. vs. Thakur Kan Singh (1980) 3 SCC 72, the Supreme Court held thus:

> 14. Under the English law, when real or personal property is purchased in the name of a stranger, a resulting trust will be presumed in favour of the person who is proved to have paid the purchase money in the character of the purchaser. It is, however, open to the transferee to rebut that presumption by showing that the intention of the person who contributed the purchase money was that the transferee should himself acquire the beneficial interest in the property. There is, however, an exception to the above rule of presumption made by the English law when the person who gets the legal title under the conveyance is either a child or the wife of the person who contributes the purchase money or his grand child, whose father is dead. The rule applicable in such cases is known as the doctrine of advancement which requires the court to presume that the purchase is for the benefit of the person in whose favour the legal title is transferred even though the purchase money may have been contributed by the father or the husband or the grandfather, as the case (106 of 160) [CW-2915/2019] may be, unless such presumption is rebutted by evidence showing

that it was the intention of the person who paid the purchase money that the transferee should not become the real owner of the property in question. The doctrine of advancement is not in vogue in India. The counterpart of the English law of resulting trust referred to above is the Indian law of benami transactions. Two kinds of benami transactions are generally recognized in India. Where a person buys a property with his own money but in the name of another person without any intention to benefit such other person, the transaction is called benami. In that case, the transferee holds the property for the benefit of the person who has contributed the purchase money, and he is the real owner. The second case which is loosely termed as a benami transaction is a case where a person who is the owner of the property executes a conveyance in favour of another without the intention of transferring the title to the property thereunder. In this case, the transferor continues to be the real owner. The difference between the two kinds of benami transactions referred to above lies in the fact that whereas in the former case, there is an operative transfer from the transferor to the transferee though the transferee holds the property for the benefit of the person who has contributed the purchase money, in the latter case, there is no operative transfer at all and the title rests with the transferor notwithstanding the execution of the conveyance. One common feature, however, in both these cases is that the real title is divorced from the ostensible title and they are vested in different persons. The question whether a transaction is a benami transaction or not mainly depends upon the intention of the person who has contributed the purchase money in the former case and upon the intention of the person who has executed the conveyance in the latter case. The principle underlying the former case is also statutorily recognized in Section 82 of the Indian Trusts Act, 1882 which provides that where property is transferred to one person for a consideration paid or provided by another person and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration. This view is in accord with the following observations made by this Court in Meenakshi Mills.

(107 of 160) [CW-2915/2019] Madurai v. The Commissioner of Income-Tax, Madras [1956]1SCR691 .:

In this connection, it is necessary to note that the word 'benami' is used to denote two classes of transactions which differ from each other in their legal character and incidents. In one sense, it signifies a transaction which is real, as for example when A sells properties to B but the sale deed mentions X as the purchaser. Here the sale itself is genuine, but the real purchaser is B, X being his benamidar. This is the class of transactions which is usually termed as benami. But the word 'benami' is also occasionally used, perhaps not quite accurately, to refer to a sham transaction, as for example, when A purports to sell his property to B without intending that his title should cease or pass to B. The fundamental difference between these two classes of transactions is that whereas in the former there is an operative transfer resulting in

> the vesting of title in the transferee, in the latter there is none such, the transferor continuing to retain the title notwithstanding the execution of the transfer deed. It is only in the former class of cases that it would be necessary, when a dispute arises as to whether the person named in the deed is the real transferee or B, to enquire into the question as to who paid the consideration for the transfer, X or B. But in the latter class of cases, when the question is whether the transfer is genuine or sham, the point for decision would be, not who paid the consideration but whether any consideration was paid.
>
> The Buckingham and Carnatic Co.Ltd. vs. Venkatiah and Ors.

(supra)

10. Section 73 of the Act reads as under :

'Employer not to dismiss or punish employee during period of sickness, etc. -

(108 of 160) [CW-2915/2019] (1) No employer shall dismiss, discharge, or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit, nor shall he, except as provided under the regulations, dismiss, discharge or reduce or otherwise punish an employee during the period he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of the pregnancy or confinement rendering the employee unfit for work.

(2) No notice of dismissal or discharge or reduction given to an employee during the period specified in sub-section (1) shall be valid or operative."

Mr. Dolia contends that since this Act has been passed for conferring certain benefits on employees in case of sickness, maternity and employment injury, it is necessary that the operative provisions of the Act should receive a liberal and beneficent construction from the court.

It is a piece of social legislation intended to confer specified benefits on workmen to whom it applies, and so, it would be inappropriate to attempt to construe the relevant provisions in a technical or a narrow sense. This position cannot be disputed. But in dealing with the plea raised by Mr. Dolia that the section should be liberally construed, we cannot overlook the fact that the liberal construction must ultimately flow from the words used in the section. If the words used in the section are capable of two constructions one of which is shown patently to assist the achievement of the object of the Act, courts would be justified in preferring that construction to the other which may not be able to further the object of the Act.

But, on the other hand, if the words used in the section are reasonably capable of only one construction and are clearly intractable in regard to the construction for which Mr. Dolia contends, the doctrine of liberal construction can be of no assistance.

56. In the case of Sree Bank Ltd. vs. Sarkar Dutt Roy and Co.

(Supra), the Supreme Court observed thus:

(109 of 160) [CW-2915/2019]

5. Two reasons have operated on my mind to lead me to the conclusion that the general rule should not be applied in the present case. First, it is recognised that the general rule is not invariable and that it is a sound principle in considering whether the intention was that the general rule should not be applied, to "look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law and what it was that the Legislature contemplated." : see Pardo v. Bingham (1869) L.R. 4 Ch. A. 735. Again in Craies on Statute Law, 6th ed., it is stated at p. 395, "If a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right." To the same effect is the observation in Halsbury's Laws of England, 3rd ed., vol. 36 p. 425. This seems to me to be plain commonsense. In ascertaining the intention of the legislature it is certainly relevant to enquire what the Act aimed to achieve. In Pardo v. Bingham L.R(1869)Ch. A. 735 a statute which took away the benefit of a longer period of limitation for a suit provided by an earlier Act was held to have retrospective operation as otherwise it would not have any operation for fifty years or more in the case of persons who were at the time of its passing residing beyond the seas. It was thought that such an extraordinary result could not have been intended. In R. v. Vine (1875) 10 Q.B. 195 the words "Every person convicted of felony shall for ever be disqualified from selling spirits by retail.... and if any person shall, after having been so convicted, take out or have any licence to sell spirits by retail, the same shall be void to all intents and purposes" were applied to a person who had been convicted of felony before the Act was passed though by doing so vested rights were affected. Mellor J. observed, (pp. 200-201). "It appears to me to be the general object of this statute that there should be restrains as to the persons who should be qualified to hold licences, not as a punishment, but for the public good, upon the ground of character... A man convicted before the Act passed is quite as much tainted as a man convicted after; and it appears to me not only the possible but the natural interpretation of the section that any one convicted of felony shall be ipso facto disqualified, and the licenses, if granted, void."

(110 of 160) [CW-2915/2019]

8. If that is not the intention, then it is clear to me that sub-s. (3) need not have been enacted at all for clearly the first sub-section would by its own terms have applied to cases of winding up on a petition presented before the amending Act. It applies to all banking companies being wound up and, therefore, also to such companies as are being wound up on a petition presented before that Act. It could be said that even then the first sub-section would not have a retrospective operation but would only apply prospectively to a banking company being wound up on a petition presented before the Act. This may be illustrated by two cases. In R. v. St. Mary, Whitechapel (Inhabitants) (1848) 12 Q.B. 120 Lord Denman C.J. said that a statute "is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing." Again in Master Ladies Tailors Organisation v. Minister of Labour and National Service (1950) 2 All.

F.R. 525 it was observed, "The fact that a prospective benefit is in certain cases to be measured by or depends on antecedent facts does not necessarily... make the provision retrospective."

57. In the case of Rai Bahadur Seth Shreeram Durgaprasad vs. Director of Enforcement (supra), the Supreme Court observed thus:

> "8. The contention of the learned Counsel that recourse could not be had to the amended Section 23(1) read with Section 23C of the Act in respect of the contravention of Section 12(2) for failure on the part of the appellants to repatriate foreign exchange on shipments of manganese ore made prior to September 20, 1957, and there could be no initiation of adjudication proceedings under the amended Section 23(1) read with Section 23C or levy of penalty on the appellants must also fail for another reason. In Sukumar Pyne's case the Court reversed the decision of the Calcutta High Court in Sukumar Pyne v. Union of India and Ors., AIR 1962 Cal 590 striking down Section 23(1)(a) as being violative of Article 14 of the Constitution. Regarding the point, namely, whether Section 23(1)(a) having been substituted by Amendment Act XXXIX of 1957 would have retrospective operation in respect of the alleged offence which took place in 1954, the High Court came to the (111 of 160) [CW-2915/2019] conclusion that the petitioner had a vested right to be tried by an ordinary court of the land with such rights of appeal as were open to all and although Section 23(1)(a) was procedural, where a vested right was affected, prima facie, it was not a question of procedure. Therefore, the High Court came to the conclusion that the provision as to adjudication by the Director of Enforcement could not have any retrospective operation. It was held that 'the impairment of a right by putting a new restriction thereupon is not a matter of procedure only'. It impairs a substantive right and an enactment that does so is not retrospective unless it says so expressly or by necessary intendment. The Court reversed the High Court decision and held that effect of these provisions was that after the amendment of 1957, adjudication or criminal proceedings could be taken up in respect of a contravention mentioned in section 23(1) while before the amendment only criminal proceedings before a Court could be instituted to punish the offender. In repelling the contention advanced by Shri N.C.

Chatterjee that the new amendments did not apply to contravention which took place before the Act came into force, the Court observed:

> In our opinion, there is force in the contention of the learned Solicitor-General. As observed by this Court in Rao Shiv Bahadur Singh vs. The State of Vindhya Pradesh (1953) SCR 1188, a person accused of the commission of an offence has no vested right to be tried by a particular court or a particular procedure except in so far as there is any constitutional objection by way of discrimination or the violation of any other fundamental right is involved. It is well recognised that "no person has a vested right in any course of procedure" (vide Maxwell 11th Edition, p. 216), and we see no reason why this ordinary rule should not prevail in the present case. There is no

principle underlying Art. 20 of the Constitution which makes a right to any course of procedure a vested right.

(112 of 160) [CW-2915/2019]

58. In the case of Nar Bahadur Bhandari and Ors. vs. State of Sikkim and Ors. (supra) , the Supreme Court held thus:

"10.....The said Sub-section while on the one hand ensures that the application of Section 6 of the General Clauses Act is not prejudiced, on the other it expresses a different intention as contemplated by the said Section 6. The last part of the above Sub-section introduces a legal fiction whereby anything done or action taken under or in pursuance of the Act of 1947 shall be deemed to have been done or taken under or in pursuance of corresponding provisions of the Act of 1988. That is, the fiction is to the effect that the Act of 1988 had come into force when such thing was done or action was taken.

11. This aspect of the matter was clearly elucidated by the Constitution Bench in B. N. Kohli's case (supra). In that case Ordinance 27/49 repealed Ordinance 12/49. The relevant provision in the repealing Ordinance was sub-sec.(3) of Section 58. That read as follows:

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"The    repeal   by    this   Act   of   the
Administration    of    Evacuee     Property
Ordinance, 1949 or the Hyderabad
Administration    of    Evacuee     Property
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Regulation or of any corresponding law shall not affect the previous operation of that Ordinance, Regulation or corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under that Ordinance, Regulation or corresponding law, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken."

12. While construing the said Sub-section, the Court observed as follows:

"...By the first part of Section 58(3) repeal of the statutes mentioned therein did not operate to vacate things done or action taken under those statutes. This provision appears to have been enacted with a view to (113 of 160) [CW-2915/2019] avoid the possible application of the rule of interpretation that where statute expires or is repealed, in the absence of a provision to the contrary, it is regarded as having never existed except as to matters and transactions past and closed: (see Surtees v.

Ellison, 1829) 9 B & C 752. This rule was altered by an omnibus provision in General Clauses Act, 1897, relating to the effect of repeal of statutes by any Central Act or Regulation. By Section 6 of the

General Clauses Act, it is provided, in so far as it is material, that any Central Act or Regulation made after the commencement of the General Clauses Act or repeals any enactment, the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, occurred or incurred under any enactment so repealed or affect any investigation legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, any such penalty, forfeiture or punishment may be imposed, as if the Repealing Act or Regulation had not been passed. But the rule contained in Section 6 applies only if a different intention does not appear, and by enacting Section 58(3) the Parliament has expressed a different intention, for whereas the General Clauses Act keeps alive the previous operation of the enactment 13. repealed, and things done and duly suffered, the rights, privileges, obligations or liabilities acquired or incurred, and authorities the investigation, legal proceeding and remedies in respect of rights, privileges, obligations, liabilities, penalties, forfeitures and punishment and if the repealing Act or Regulation had not been passed, Section 58(3) of Act 31 of 1950 directs that things done or actions taken in exercise of power conferred by the repealed statutes shall be deemed to be done or taken under the repealing Act as if that latter Act were in force on the day on which such thing was done or action was taken. The rule so enunciated makes a clear departure from the rules enunciated in Section 6 of the General Clauses Act, 1897. By the first part of Section 58(3) which is in terms negative, the previous operation of the repealed statutes survives the repeal. Thereby matters and transactions past and closed remain operative; so does the previous operation of the repealed statute. But as pointed out by this Court in (114 of 160) [CW-2915/2019] Indira Sohanlal's case, [1955]2SCR1117 , the saving of the previous operation of the repealed law is not to be read, as saving the future operation of the previous law. The previous law stands repealed, and it has not for the future the partial operation as it is prescribed by Section 6 of General Clauses Act. All things done and actions taken under the repealed statute are deemed to be done or taken in exercise of powers conferred by or under the repealing Act, as if that Act were in force on the day on which that thing was done or action was taken. It was clearly the intention of the parliament that matters and transactions past and closed were not to be deemed vacated by the repeal of the statute under which they were done. The previous operation of the statute repealed was also affirmed expressly but things done or actions taken Under the repealed statute are to be deemed by fiction to have been done or taken under the repealing Act."

59. In the case of State of Punjab vs. Mohar Singh: (supra) , the Supreme Court observed thus:

> "8..... These observations could not undoubtedly rank higher than mere obiter dictum for they were not at all necessary for purposes of the case, though undoubtedly they are entitled to great respect. In agreement with this dictum of Sulaiman C.J. the High Court of Punjab, in its judgment in the present case, has observed that where there is a simple repeal and the Legislature has either not given its thought to the matter of prosecuting old offenders, or a provision dealing with that question has been inadvertently omitted, section 6 of the General Clauses Act will undoubtedly be attracted. But no such inadvertence can be presumed where there has been a fresh legislation on the subject and if the new Act does not deal with the

matter, it may be presumed that the Legislature did not deem it fit to keep alive the liability incurred under the old Act. In our opinion the approach of the High Court to the question is not quite correct. Whenever there is a repeal of an enactment, the consequences laid down in section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by (115 of 160) [CW-2915/2019] fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section.

Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. It is in the light of these principles that we now proceed to examine the facts of the present case.

60. In the case of Zile Singh vs. State of Haryana and Ors.:

(supra), the Supreme Court held thus:

"13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only. 'nova Constitution futuris formam imponere debet non praeteritis' - a new law ought to regulate what is to follow, not the past. (See : Principles of Statutory Interpretation by Justice G.P. Singh, Ninth Edition, 2004 at p.438). It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole.

(ibid, p.440)

14. The presumption against retrospective operation is not applicable to declaratory statutes.....

> (116 of 160) [CW-2915/2019] In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form.

If a new Act is "to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. ……..

An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect. (ibid, pp.468-469).

15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, Seventh Edition), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the Courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the Statute retrospectivity.

Four factors are suggested as relevant: (i) general scope and purview of , the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated (p.388). The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right (p.392).

16. Where a Statute is passed for the purpose of supplying an obvious omission in a former statute or to 'explain' a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. The classic illustration is the case of Att. Gen. v. Pougett [1816] 2 Pri 381. By a Customs Act of 1873 (117 of 160) [CW-2915/2019] 53 Geo. 3 a duty was imposed upon hides of 9s. 4d., but the Act omitted to state that it was to be 9s. 4d. per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s. 4d. per cwt., but Thomson C.B., in giving judgment for the Attorney- General, said:

> "The duty in this instance was in fact imposed by the first Act, but the gross mistake of the omission of the weight for which the sum expressed was to have been payable occasioned the amendment made by the subsequent Act, but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act."
>
> (p.395).

17. Maxwell states in his work on Interpretation of Statutes, (Twelfth Edition) that the rule against retrospective operation is a presumption only, and as such it "may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it." (p.225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the "inhibition of the rule" is a matter of degree which would "vary secundum materiam" (p.226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court will be prepared to substitute another word or phrase for that which actually appears in the text of the Act (p.231).

18. In a recent decision of this Court in National Agricultural Cooperative Marketing Federation of India Ltd. And Anr. v. Union of India and Ors., (2003)181CTR(SC)1 , it has been held that there is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the (118 of 160) [CW-2915/2019] question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as : (i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent.

19. The Constitution Bench in Shyam Sunder and Ors. v. Ram Kumar and Anr., AIR2001SC2472 , has held -- "

> Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or explain previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed invariably it has been held to be retrospective. Mere absence of use of word 'declaration' in an Act explaining what was the law before may not appear to be a declaratory Act but if the Court finds an Act as declaratory or explanatory it has to be construed as retrospective.
>
> " (p. 2487).
>
> (119 of 160) [CW-2915/2019]
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> 20. In The Bengal Immunity Company Ltd. v. The State of Bihar and Ors.,[1955]2SCR603 , Heydon's case 3 C.

R.7a; 76 E.R.637 was cited with approval. Their Lordships have said --

> "It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case was decided that --".....for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:-
>
> 1st. What was the common law before the making of the Act.
>
> 2nd. What was the mischief and defect for which the common law did not provide., 3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth., and 4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro private commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico"."

22. The State Legislature of Haryana intended to impose a disqualification with effect from 5.4.1994 and that was done. Any person having more than two living children was disqualified on and from that day for being a member of municipality. However, while enacting a proviso by way of an exception carving out a fact- situation from the operation of the newly introduced disqualification the draftsman's folly caused the creation of trouble. A simplistic reading of the text of the proviso spelled out a consequence which the Legislature had never intended and could not have intended. It is true that the Second Amendment does not expressly give the amendment a retrospective (120 of 160) [CW-2915/2019] operation. The absence of a provision expressly giving a retrospective operation to the legislation is not determinative of its prospectivity or retrospectivity. Intrinsic evidence may be available to show that the amendment was necessarily intended to have the retrospective effect and if the Court can unhesitatingly conclude in favour of retrospectivity, the Court would not hesitate in giving the Act that operation unless prevented from doing so by any mandate contained in law or an established principle of interpretation of statutes.

23. The text of Section 2 of the Second Amendment Act provides for the word "upto" being substituted for the word "after". What is the meaning and effect of the expression employed therein - "shall be substituted".

24. The substitution of one text for the other pre- existing text is one of the known and well-recognised practices employed in legislative drafting. 'Substitution' has to be distinguished from 'supersession' or a mere repeal of an existing provision.

25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (See Principles of Statutory Interpretation, ibid, p.565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn. and Ors. v. State of U.P. and Ors. - : [2002]1SCR897 , State of Rajasthan v. Mangilal Pindwal - : (1997)IILLJ756SC , Koteswar Vittal Kamath v. K. Rangappa Baliga and Co. - [1969]3SCR40 and A.L.V.R.S.T. Veerappa

Chettiar v. S. Michael and Ors. - AIR1963SC933 . In West U.P. Sugar Mills Association and Ors.'s case (supra) a three-Judges Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centering around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal's case (supra) this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar's case (supra) a three-Judges Bench of this Court emphasized (121 of 160) [CW-2915/2019] the distinction between 'supersession' of a rule arid 'substitution' of a rule and held that the process of substitution consists of two steps : first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place.

61. In the case of Yogendra Kumar Jaiswal and Ors. vs. State of Bihar and Ors. : (supra), the Supreme Court observed thus:

> "8. Section 14 provides for issuance of show cause notice by the Authorised Officer to the person concerned to explain his source of income and other assets and why such money or property or both should not be declared to have been acquired by means of the offence and be confiscated to the State Government.

Sub-section (2) provides that where a notice Under Sub-section (1) to any person specifies any money or property or both has been held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person. Sub-section (3) lays down that the evidence, information or particulars brought on record before the authorised officer shall not be used against the accused in the trial before the special court. Section 15 deals with the confiscation of property in certain cases. It provides a detailed procedure and obliges the authorised officer to follow the principles of natural justice. It prescribes a time limit for disposal of the proceeding and gives immense stress on identification of property or money or both which have been acquired by means of the offence and further it makes the confiscation subject to the order passed in appeal Under Section 17 of the Orissa Act. It may be noted here that the proviso to Section 15(3) stipulates that the market price of the property confiscated, if deposited with the Authorised Officer, the property shall not be confiscated. Section 16 lays down that after the issue of notice Under Section 14, any money or property or both referred to in the said notice are transferred by any mode whatsoever, such transfer shall for the purposes of the proceedings under the Orissa Act, be void and if such money or property or both are subsequently confiscated to the State Government Under Section 15, then the transfer of such money or property or both shall be deemed to be null and void. Section 17(1) enables the aggrieved (122 of 160) [CW-2915/2019] person by the order passed by an authorised officer to prefer an appeal within thirty days from the date on which the order appealed against was passed. Sub- section (2) provides that upon appeal being preferred under the said provision, the High Court may, after giving such parties, as it thinks proper, an opportunity of being heard, pass such order as it thinks fit; Sub- section (3) requires the High Court to dispose of the appeal within three months from the date it is preferred and stay order, if any, passed in appeal shall not remain in force beyond the period prescribed for disposal of appeal. Sub-section (1) of Section 18 of the Orissa

Act empowers the State Government to take possession. It stipulates that where any money or property has been confiscated to the State Government under the Act, the concerned authorised officer shall order the person affected as well as any other person who may be in possession of the money or property or both, to surrender or deliver possession thereof to the concerned authorised officer or to any person duly authorised by in this behalf, within thirty days of the service of the order. The proviso to the said Sub-section stipulates that the authorised officer, on an application being made in that behalf and being satisfied that the person affected is residing in the property in question, may instead of dispossessing him immediately from the same, permit such person to occupy it for a limited period to be specified on payment of market rent to the State Government and thereafter, such person shall deliver the vacant possession of the property. Sub- section (2) provides that if any person refuses or fails to comply with an order made Under Sub-section (1), the authorised officer may take possession of the property and may, for that purpose, use such force as may be necessary. Sub-section (3) confers powers on the authorised officer to requisition service of any police officer to assist and mandates the concerned police officer to comply with such requisition.

Section 15. Confiscation of property in certain cases - (1)..... (2).....

(3) Where the authorised officer records a finding under this section to the effect that any money or property or both have been acquired by means of the offence, he shall declare that such money or property or both shall, subject to the provisions of this Act, (123 of 160) [CW-2915/2019] stand confiscated to the State Government free from all encumbrances.

Provided that if the market price of the property confiscated is deposited with the authorised officer, the property shall not be confiscated.

(4)..... (5)..... (6).....

147. The next facet of the said submission pertains to retrospective applicability. The submission has been put forth on the ground that by transfer of cases to the Special Courts under the Orissa Act in respect of the accused persons who are arrayed as accused under the 1988 Act, have been compelled to face harsher punishment which is constitutionally not permissible. It is contended that there was no interim confiscation under the 1988 Act but under the Orissa Act they have to face confiscation. We have already opined that confiscation is not a punishment and, therefore, Article 20(1) is not attracted. Thus, the real grievance pertains to going through the process of confiscation and suffering the same after the ultimate adjudication of the said proceeding which is subject to appeal.....

151. We are absolutely conscious that the said judgment was delivered in a different context. What is prohibited Under Article 20(1) is imposition of greater punishment that might have been imposed and prohibition of a conviction of any person for violation of law at the time of commission of the act. We repeat at the cost of repetition that confiscation being not a punishment does not come in either of the categories. Thus viewed, the property of an accused facing trial under the 1988 Act

could be attached and there can be administration by third party of the said property and eventual forfeiture after conviction. The term "attachment" has been understood by this Court in Kerala State Financial Enterprises Ltd. v. Official Liquidator, High Court of Kerala (2006) 10 SCC 709 in the following manner:

> 11. The word "attachment" would only mean "taking into the custody of the law the person or property of one already before the court, or of one whom it is sought to bring before it". It is used for (124 of 160) [CW-2915/2019] two purposes: (i) to compel the appearance of a Defendant; and (ii) to seize and hold his property for the payment of the debt. It may also mean prohibition of transfer, conversion, disposition or movement of property by an order issued by the court.
>
> 152. The legislature has thought it proper to change the nature and character of the interim measure. The property obtained by ill-gotten gains, ii prima facie found to be such by the authorised officer, is to be confiscated. An accused has no vested right as regards the interim measure. He is not protected by any constitutional right to advance the plea that he cannot be made liable to face confiscation proceedings of the property which has been accumulated, by illegal means. That being the litmus test, the filament of reasoning has to rest in favour of confiscation and not against it. Therefore, we are of the considered view that the provision does not violate any constitutional assurance.

62. In the case of Titaghur Paper Mills Co. Ltd. and Ors. vs. State of Orissa and Ors.: (supra), Supreme Court, observed thus:

> "6. We are constrained to dismiss these petitions on the short ground that the petitioners have an equally efficacious alternative remedy by way of an appeal to the prescribed authority under Sub-section (1) of Section 23 of the Act, then a second appeal to the Tribunal under Sub-section (3)(a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court under Section 23 of the Act. In Raleigh Investment Co. Limited v.

Governor General in Council, 74 I.A. 50 Lord Uthwart, J. in delivering the judgment of the Board observed that in the provenance of tax where the Act provided for a complete machinery which enabled an assessee to effectively to raise in the courts the question of the validity of an assessment denied an alternative jurisdiction to the High Court to interfere. It is true that the decision of the Privy Council in Raleigh Investment Company's case, supra, was in relation to a suit brought for a declaration that an assessment made by (125 of 160) [CW-2915/2019] the Income Tax Officer was a nullity, and it was held by the Privy Council that an assessment made under the machinery provided by the Act, even if based on a provision subsequently held to be ultra vires, was not a nullity like an order of a court lacking jurisdiction and that Section 67 of the Income Tax Act, 1922 operated as a bar to the maintainability of such a suit. In dealing with the question whether Section 67 operated as a bar to a suit to set aside or modify an assessment made under a provision of the Act which is ultra vires, the Privy Council observed:

In construing the section it is pertinent, in their Lordships opinion to ascertain whether the Act contains machinery which enables an assessee effectively to raise in the courts the question whether a particular provision of the Income Tax Act bearing on the assessment made is or is not ultra vires. The presence of such machinery, though by no means conclusive, marches with a construction of the section which denies an alternative jurisdiction to inquire into the same subject-matter.

7. We are not oblivious of the fact that this Court in K.S. Venkataraman and Co. v. State of Madras, [1966]60ITR112(SC) , in a five-Judge Bench by a majority of 3 : 2 has dissented with the view expressed by the Privy Council in Raleigh Investment Company's case, supra, and held that an assessment made on the basis of a provision which is ultra vires is not an assessment made under the Act. It was observed that the entire reasoning of the Judicial Committee was based upon the assumption that the question of ultra vires can be canvassed and finally decided through the machinery provided under the Income Tax Act. The majority observed that the hierarchy of authorities set up under the Act being creatures of statute were not concerned as to whether the provisions of the Act were intra vires or not. If an assessee raises such a question, according to the decision of the majority in Venkataraman's case, supra, the Appellate Tribunal can only reject it on the ground that it has no jurisdiction to entertain such objection or render any decision on it. As no such question can be raised or can even arise out of the order of the Appellate Tribunal, the High Court cannot possibly give any decision on the question of ultra vires because its jurisdiction under Section 66 is a special advisory jurisdiction and its scope is strictly (126 of 160) [CW-2915/2019] limited. It can only decide questions of law that arise out of the order of the Appellate Tribunal and that are referred to it. Further, an appeal to this Court under Section 66A(2) does not enlarge the scope of the jurisdiction of this Court as this Court can only do what the High Court can under Section 66. It would therefore appear that the majority decision in Venkataraman's case, supra, rests on the principle that (i) An ultra vires provision cannot be regarded as a part of the Act at all, and an assessment under such a provision is not "made under the Act" but is wholly without the jurisdiction and is not directed by Section 67 of the Act. And (ii) The question whether a provision is ultra vires or not cannot be decided by any of the authorities created by the Act and therefore cannot be the subject matter of a reference to the High Court or a subsequent appeal to this Court.

8. No such question arises in a case like the present where the impugned orders of assessment are not challenged on the ground that they are based on a provision which is ultra vires. We are dealing with a case in which the entrustment of power to assess is not in dispute, and the authority within the limits of his power is a Tribunal of exclusive jurisdiction. The challenge is only to the regularity of the proceeding before the learned Sales Tax Officer as also his authority to treat the gross turnover returned by the petitioners to be the taxable turnover. Investment of authority to tax involves authority to tax transactions which in exercise of his authority the Taxing Officer regards as taxable, and not merely authority to tax only those transactions which are, on a true view of the facts and the law, taxable.

63. In the case of Thansingh Nathmal and Ors. vs. A.

Mazid : (supra), the Supreme Court held thus:

> 7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed. The appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and (127 of 160) [CW-2915/2019] invoked the extraordinary jurisdiction of the High Court under Art. 226 and sought to reopen the decision of the taxing authorities on questions of fact.
>
> The jurisdiction of the High Court under Art. 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Article. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort so that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Art. 226, where the petitioner has an alternative remedy which, without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed.
>
> The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Art. 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Art. 226 of the Constitution, the machinery created under the stature to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up.

64. In the case of State of H.P. and Ors. vs. Gujarat Ambuja Cement Ltd. and Ors.: (supra), the Supreme Court observed thus:

> "17. We shall first deal with the plea regarding alternative remedy as raised by the appellant-State.

Except for a period when Article 226 was amended by the Constitution (42 Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a (128 of 160) [CW-2915/2019] rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate

efficacio4us alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extra-ordinary jurisdiction.

18. Constitution Benches of this Court in K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors. [1954]25ITR167(SC) ; Sangram Singh v. Election Tribunal, Kotah and Ors. [1955]2SCR1 ; Union of India v. T.R. Varma (1958)IILLJ259SC ; State of U.P. and Ors. v. Mohammad Nooh AIR 1958 SC 86; and K.S. Venkataraman and Co. (P) Ltd. v. State of Madras [1966]60ITR112(SC) , held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

19. Another Constitution Bench of this Court in State of Madhya Pradesh and Anr. v. Bhailal Bhai etc. , [1964]6SCR261 , held, that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been re-iterated in N.T. Veluswami Thevar v. G. Raja Nainar and Ors. AIR1959SC422 ; Municipal Council, Khurai and Anr. v. Kamal Kumar and Anr. [1965]2SCR653 ; Siliguri Municipality and Ors. v. Amalendu Das and Ors. [1984]146ITR624(SC) ; S.T.

(129 of 160) [CW-2915/2019] Muthusami v. K. Natarajan and Ors. [1988]2SCR759 ; R.S.R.T.C. and Anr. v. Krishna Kant and Ors. : (1995)IILLJ728SC ; Kerala State Electricity Board and Anr. v. Kurjen E. Kalathil and Ors. AIR2000SC2573 ; A. Venkatasubbiah Naidu v. S. Chekkappan and Ors. : AIR2000SC3032 ; and L.L. Sudhakar Reddy and Ors. v. State of Andhra Pradesh and Ors. AIR2001SC3205 ; Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. v. State of Maharashtra and Ors. : AIR2001SC3982 ; Pratap Singh and Anr. v. State of Haryana AIR2002SC3385 and G.K.N. Driveshafts (India) Ltd. v. Income Tax Officer and Ors. (2003)179CTR(SC)11 .

20. In Harbans Lal Sahnia v. Indian Oil Corporation Ltd : AIR2003SC2120 , this Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

22. In G. Veerappa Pillai v. Raman & Raman Ltd. [1952]1SCR583 ; Assistant Collector of Central Excise v. Dunlop India Ltd. 1985ECR4(SC); Ramendra Kishore Biswas v. State of Tripura (1999)IILLJ192SC ; Shivgonda Anna Patil and Ors. v. State of Maharashtra and Ors. AIR1999SC2281; C.A. Abraham v. I.T.O. Kottayam and Ors. [1961]41ITR425(SC); Titaghur Paper

Mills Co. Ltd. v. State of Orissa and Anr. [1983]142ITR663(SC); H.B. Gandhi v. Gopinath and Sons; Whirlpool Corporation v. Registrar of Trade Marks and Ors. AIR1999SC22; Tin Plate Co. of India Ltd. v. State of Bihar and Ors. AIR1999SC74; Sheela Devi v. Jaspal Singh AIR1999SC2859 and Punjab National Bank v. O.C. Krishnan and Ors. AIR2001SC3208 , this Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

23. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess (130 of 160) [CW-2915/2019] can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in L. Hirday Narain v. Income Tax Officer, Bareilly [1970]78ITR26(SC) that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non exhaustion of statutory remedies; unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition.

65. In the case of Commissioner of Income Tax and Ors. vs. Chhabil Dass Agarwal: (supra), the Supreme Court observed thus:

> 13. In Nivedita Sharma v. Cellular Operators Assn. of India (2011) 14 SCC 337, this Court has held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows:
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> "12. In Thansingh Nathmal v. Supdt. of Taxes AIR 1964 SC 1419 this Court adverted to the rule of self- imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7).

7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved Petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not (131 of 160) [CW-2915/2019] permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

13. In Titaghur Paper Mills Co. Ltd. v. State of Orissa (1983) 2 SCC 433 this Court observed: (SCC pp. 440-41, para 11)

11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v.

Hawkesford 141 ER 486 in the following passage: (ER p. 495) ... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.

...The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd. 1919 AC 368 and has been reaffirmed by the Privy Council in Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd. 1935 AC 532 (PC) and Secy. of State v. Mask and Co. AIR 1940 PC 105 It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.

14. In Mafatlal Industries Ltd. v. Union of India(1997) 5 SCC 536 B.P. Jeevan Reddy, J.

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(speaking for the majority of the larger Bench)
observed: (SCC p. 607, para 77)

77. ... So far as the jurisdiction of the High Court under Article 226--or for that matter, the jurisdiction of this Court under Article 32--is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.

16. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the Assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. v. State of Haryana (1985) 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility.

66. In the case of Harbanslal Sahnia and Ors. vs. Indian Oil Corpn. Ltd. and Ors. (supra), the Supreme Court held thus:

> "7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks (133 of 160) [CW-2915/2019] enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or,
>
> (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged [See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors., AIR1999SC22 . The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.

67. In the case of Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors.: (supra) , the Supreme Court held thus:

> "51. It is in the background of the above provisions that the question relating to the jurisdiction of the "Registrar" and the "High Court", which individually and separately constitute "TRIBUNAL" within the meaning of Section 2(1)(x), has to be considered.
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> 52. The functions and extent of jurisdiction of the registrar and that of the High Court which, incidentally, has also been constituted as the appellate authority of the Registrar, have been distinctly set out in different provisions of the Act. There are, however, certain matters for which jurisdiction has been given to the "TRIBUNAL" which, by its definition, includes the "High Court" and the "Registrar" and therefore, the question is "can both be said to have "concurrent" jurisdiction over matters as are set out for example, in Sections 9, 10, 26, 45, 46, 47 and 56".

53. If the proceeding is cognisable both by the Registrar and the High Court, which of the two will have jurisdiction to entertain such proceeding to the exclusion of the other or the jurisdiction being concurrent, can the proceeding go on simultaneously before the High Court and the Registrar, resulting, may be, in conflicting decisions at the end, is a question which seems to be answered by the words "before which the proceeding concerned is pending" occurring (134 of 160) [CW-2915/2019] in the definition of "TRIBUNAL" in Section 2(1)(x) of the Act. Let us test whether

the answer is correct.

54. Section 56 contemplates proceedings of varying nature. The proceedings contemplated by Sub-section (1) relate to the cancellation of Trade Mark or varying the registration of Trade Mark, on the ground that the condition on which the registration was granted, was either violated or there was failure in observing the condition of registration. These proceedings may be entertained either by the High Court or the Registrar on the application, and, at the instance, of the "person aggrieved".

55. The proceedings contemplated by Sub-section (2) of Section 56 relate to the absence or omission of an entry in the Register or an entry having been made without sufficient cause or an entry wrongly remaining on the Register or there being any error or defect in an entry in the Register. Such proceedings may also be entertained either by the Registrar or the High Court on an application made in the prescribed manner by a "person aggrieved". The High Court or the registrar may, in these proceedings, pass an order either for making an entry, or expunging or varying the entry. In these proceedings which may be pending either before the High court or the Registrar, it would be open to either of them to decide any further question which may be necessary or expedient to decide in connection with the rectification of the Register. Obviously, this gives very wide jurisdiction to the High Court or the Registrar working as a Tribunal as the jurisdiction is not limited to the proceedings pending under Sub-section (1) or Sub-section (2) but extends also to decide, in the same proceedings, any other question which may legitimately arise in connection with the rectification proceedings.

56. The jurisdiction conferred on the High Court or the Registrar under Sub-section (1) or Sub-section (2) can also be exercised suo motu subject to the condition that a notice is issued to the parties concerned and an opportunity of hearing is given to them before passing any order contemplated by Subsection (1) or Sub- section (2).

57. The Registrar and the High Court have also been given the jurisdiction under this Section to order that a (135 of 160) [CW-2915/2019] Trade Mark registered in Part A shall be shifted to Part B of the Register.

58. An order of rectification, if passed by the High Court, is implemented by the Registrar by rectifying the Register in conformity with the order passed by the High Court.

59. The extent of jurisdiction conferred by Section 56 on the Registrar to rectify the Register, is, however curtailed by Section 107 which provides that an application for rectification shall, in certain situations, be made only to the High Court. These situations are mentioned in Sub-section (1) of Section 107, namely, where in a suit for infringement of the registered Trade Mark, the validity of the registration is questioned by the defendant or the defendant, in that suit, raises the defence contemplated by Section 30(1)(d) in which the acts which do not constitute an infringement, have been specified, and the plaintiff in reply to this defence questions the validity of the defendant's Trade Mark. In these situations, the validity of the registration of the Trade Mark can be determined only by the High Court and not by the Registrar.

60. Section 107 thus impels the proceedings to be instituted only in the High Court. The jurisdiction of the Registrar in those cases which are covered by Section 107 is totally excluded. Significantly, Section 107(2) provides that if an application for rectification is made to the registrar Under Section 46 or Section 47(4) or Section 56, the Registrar may, if he thinks fit, refer that application, at any stage of the proceeding, to the High Court.

61. Similarly, Under Section 111 of the Act, in a pending suit relating to infringement of a Trade Mark, if it is brought to the notice of the Court that any rectification proceedings relating to plaintiffs or defendant's trade Mark are pending either before the Registrar or the High Court, the proceedings in the suit shall be stayed pending final decision of the High Court or the Registrar. Even if such proceedings are not pending either before the Registrar or the High Court, the trial court, if pritna facie satisfied that the plea regarding invalidity of plaintiff s or defendant's Trade Mark is tenable, may frame an issue and adjourn the case for three months to enable the party concerned to (136 of 160) [CW-2915/2019] apply to the High Court for rectification of the Register. If within three months, the party concerned does not approach the High Court, the plea regarding invalidity of Trade Mark would be treated as abandoned but if such an application has been given hearing,, the suit would be stayed awaiting final decision of the High Court. The finding of the High Court would bind the parties and the issue relating to the invalidity of Trade Mark would be decided in terms of those findings.

62. In this background, the phrase "before which the proceeding concerned is pending" stands out prominently to convey the idea that if the proceeding is pending before the "Registrar", it becomes the "TRIBUNAL" Similarly, if the proceeding is pending before the "High Court", then the High Court has to be treated as "TRIBUNAL". Thus, the jurisdiction of the Registrar and the High Court, though apparently concurrent in certain matters, is mutually exclusive. That is to say, if a particular proceeding is pending before the registrar, any other proceeding, which may, in any way, relate to the pending proceeding, will have to be initiated before and taken up by the Registrar and the High Court will act as the Appellate Authority of the Registrar Under Section 109: It is obvious that if the proceedings are pending before the High Court, the registrar will keep his hands off and not touch those or any other proceedings which may, in any way, relate to those proceedings, as the High Court, which has to be the High Court having jurisdiction as set out in Section 3, besides being the Appellate Authority of the Registrar has primacy over the Registrar in all matters under the Act. Any other interpretation of the definition of "TRIBUNAL" would not be in consonance with the scheme of the Act or the contextual background set out therein and may lead to conflicting decision on the same question by the Registrar and the High Court besides generating multiplicity of proceedings.

63. Learned counsel for the respondent - Chinar Trust, at this stage, invoked the Rule of Punctuation in English Grammar and contended that the definition of "TRIBUNAL" is amply clear and requires no interpretative exercise as there is a distinction between the "Registrar" and the "High Court" inasmuch as the Registrar will have jurisdiction irrespective of the pendency of any proceeding, the High Court will have jurisdiction only when "proceeding concerned is (137 of 160) [CW-2915/2019] pending before it. This he tried to show by pointing out that the words "as the case may be" are placed between two commas, one at the beginning immediately after the word "Registrar" and the other at the end, with the result that the words "Tribunal means the Registrar"

stand out distinctly, while the words "High Court before which the proceeding concerned is pending" stand out separately as an independent phrase. It is contended that the words "before which the proceeding concerned is pending" will not be applicable to the Registrar and, therefore, the Registrar can exercise the jurisdiction Under Section 56 irrespective of pendency of any "proceeding".

68. In the case of Vodafone International Holdings B.V. vs. Union of India (UOI) and Ors.: (supra) , the Supreme Court held thus:

> 3. In the facts and circumstances of this case, thus, we are of the opinion that the question in regard to the jurisdictional issue, may be determined, by the authority concerned as a preliminary issue, in terms of the decision of this Court in Management of Express Newspapers (Private) Ltd., Madras v. The Workers and Ors. (1962)IILLJ227SC , Wherein this Court has held as under:
>
> (15) The High Court undoubtedly has jurisdiction to ask the Industrial Tribunal to stay its hands and to embark upon the preliminary enquiry itself. The jurisdiction of the High Court to adopt this course cannot be, and is indeed not disputed. But would it be proper for the High Court to adopt such a course unless the ends of justice seen to makes is necessary to do so? Normally, the questions of fact, though they may be jurisdictional facts the decision of which depends upon the appreciation of evidence, should, be left to be tried by the Special Tribunals constituted for that purpose. If and after the Special Tribunals try the preliminary issue in respect of such jurisdictional facts, it would be open to the aggrieved party to take that matter before the High Court by a writ petition and ask for an appropriate writ. Speaking generally, it would not be proper or appropriate that the initial jurisdiction of the Special Tribunal to deal with these jurisdictional facts should be circumvented and the decision of such a preliminary issue brought before a High Court in its writ (138 of 160) [CW-2915/2019] jurisdiction. We wish to point out that in making these observations, we do not propose to lay down any fixed or inflexible rule; whether or not even the preliminary facts should be tried by a High Court in a writ petition, must naturally depend upon the circumstances of each case and upon the nature of the preliminary issue raised between the parties. Having regard to the circumstances of the present dispute, we think the Court of Appeal was right in taking the view that the preliminary issue should more appropriately be dealt with by the Tribunal. The Appeal Court has made it clear that any party who feels aggrieved by the finding of the Tribunal on this preliminary issue may move the High Court in accordance with law. Therefore, we are not prepared to accept Mr. Shastri's argument that the appeal Court was wrong in reversing the conclusion of the Trial Judge in so far as the Trial Judge proceeded to deal with the question as to whether the action of the appellant was a closure or a lockout.

69. In the case of The Management of Express Newspapers Ltd. vs. Workers and Staff Employed under it and Ors.: , the (supra) Supreme Court held thus:

> "6.....In regard to the main point of controversy between the parties as to the validity of the reference itself, the Appeal Court took the view that the questions which had to be decided in dealing with the appellant's contention that the reference was invalid, were complex questions of fact and that it would be appropriate that the said questions should be fully investigated and tried in the first instance by the Industrial Tribunal itself. In other words, the Appeal Court held that though the High Court had jurisdiction to entertain an application for a writ of Prohibition even at the initial stage of the proceedings commenced before a Special Tribunal, it would not be proper that a writ of prohibition should be issued unless the disputed questions of fact were tried by the said Special Tribunal in the first instance. On this view, the order passed by the trial Judge has been modified and the disputes referred to the Industrial Tribunal for its adjudication have been remitted to the said Tribunal for its disposed in accordance with law. In making this Order, the Appeal Court has indicated the nature of the dispute and the questions of fact which the Industrial Tribunal may have to try and the limits of its jurisdiction. In the (139 of 160) [CW-2915/2019] result, the writ apple No. 73/1959 succeeded whereas writ appeal No. 85/1959 failed. It is this decision of the Court of Appeal that is challenged before us by Mr. Viswanatha Sastri on behalf of the appellant.

15. The High Court undoubtedly has jurisdiction to ask the Industrial Tribunal to stay its hands and to embark upon the preliminary enquiry itself. The jurisdiction of the High Court to adopt this course cannot be, and is indeed not, disputed. But would it be proper for the High Court to adopt such a course unless the ends of justice seem to make it necessary to do so ? Normally, the questions of fact, though they may be jurisdictional facts the decision of which depends upon the appreciation of evidence, should be left to be tried by the Special Tribunals constituted for that purpose. If and after the Special Tribunals try the preliminary issue in respect of such jurisdictional facts, it would be open to the aggrieved party to take that matter before the High Court by a writ petition and ask for an appropriate writ. Speaking generally, it would not be proper or appropriate that the initial jurisdiction of the Special Tribunal to deal with these jurisdictional facts should be circumvented and the decision of such a preliminary issue be brought before a High Court in its writ jurisdiction. We wish to point out that in making these observations, we do not propose to lay down any fixed or inflexible rule; whether or not even the preliminary fact should be tried by a High Court in a write petition, must naturally depend upon the circumstances of each case and upon the nature of the preliminary issue raised between the parties. Having regard to the circumstances of the present dispute, we think the Court of Appeal was right in taking the view that the preliminary issue should more appropriately dealt with by the Tribunal. The Appeal Court has made it clear that any party who feels aggrieved by the finding of the Tribunal on this preliminary issue may move the High Court in accordance with law. Therefore, we are not prepared to accept Mr. Sastri's argument that the Appeal Court was wrong in reversing the conclusion of the trial Judge in so for as the Trial Judge proceeded to deal with the question as to whether the action of the appellant was a closure or a lockout.

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70. In Raghuvinder Singh Vs Dy. Commissioner Of Income Tax, (Benami Transaction) And Initiating Officer (supra) Under The Prevention Of Benami Transaction Act 2016, this Court observed thus:

> Grounds have been raised regarding non-compliance of principles of natural justice as well as non-compliance of the provisions contained under the Benami Transaction (Prohibition) Act, 1988, specially Section 24 with regard to service of notice and also with regard to application of mind relating to the order of approval.
>
> Having noted the aforesaid, this Court finds that it would not be appropriate for this Court at this stage to examine the veracity and legality of the notice of attachment issued way back as on 22/12/2017 as of now as the matter is already pending before the adjudicating authority. However, all the objections, which the petitioner has raised before this Court, can be taken up by him before the adjudicating authority and it would be for the adjudicating authority to decide and examine all the objections and pass a reasoned order. It is expected from the adjudicating authority to give reasonable time to the petitioner to put up his objections in writing and examine the entire issue thread-bear after giving fair opportunity to all the parties.

71. In Great Pacific General Trading Company (Limited Liability Partnership), Vs. Union of India, Through the Secretary, Ministry of Finance, Department of Revenue, (supra), it has been observed thus:

> "It is contended that the transaction questioned by the respondent No.3 in the order dated 18.11.2017 does not fall in the category of benami transaction.
>
> After hearing learned counsel for the petitioner and after perusing the material available on record and the order dated 18.11.2017 passed by the Initiating Officer under Section 24(4) of the PBPT Act, it cannot be said that the respondent No.3 has passed the order dated (141 of 160) [CW-2915/2019] 18.11.2017 without there being any material on record. This Court at this stage cannot record a finding to the effect that Shri Aditya Lodha cannot be termed as benamidar or the property in question is not a benami property. It is for the adjudicating authority to adjudicate upon the matter, referred to it by the Initiating Officer, after providing opportunity of hearing to Shri Aditya Lodha as per the provisions of Section 26 of the PBPT Act.

72. The above judgement was challenged in D.B. Spl. Appl. Writ No. 1315/2018, decided on 22/10/2018: Great Pacific General Trading Company (Limited Liability Partnership) Vs. Union of India, through the Secretary, Ministry of Finance, Department of Revenue holding thus:

> "We are constraint to note that the averments made in para 5 of the Special Appeal are factual. As per the said reply to para 5, Shri Aditya Lodha and his son Shri Manan Lodha retired on 01.06.2015 and only Shri Tarachand Parakh and his son Shri Aditya Parakh remained the partners in the LLP till 10.07.2017. During this period, the

transactions were carried out by Shri Aditya Lodha alone and Shri Tara Chand Parakh and his son Shri Aditya Parakh were not even aware of the said transactions, which has given rise to bonafide suspicion that the property is benami property. Hence, we agree with the learned Single Judge that in case, we go into the same at this stage, it would effect the finding with respect to the property as to whether the same was benami or not. Accordingly, no ground is made out to interfere in the order impugned."

73. In the case , Dheeru Gond Vs. Union of India(supra), High Court of Madhya Pradesh held thus:

"It is apparent that the learned Single Judge of this Court in WP No.10280/2017 filed by one Kailash Assudani challenging the show cause notice of similar nature has dismissed the petition holding that the provision of Section 26 of the Act, 1988 is a complete code in itself providing ample opportunities to the assessee concerned, and apart from that there is remedy of appeal available to the petitioner. The order passed by the learned Single a Judge of this Court in WP No.10280/2017 has been confirmed by the Division Bench of this Court in WA No.704/2017 with the ad following observations:-

(142 of 160) [CW-2915/2019] We do not find any merit in the present M appeal. It is the Adjudicating Authority who is to decide the question of Benami nature of the property. The proceedings under Section 24 of the Act contemplates the issuance of show cause notice as to why the property specified in the notice should not be treated as Benami property.

However, the substantive order of treating the property as Benami is required to be passed by Adjudicating Authority under Section 26 C of the Act only. Therefore, the appellant is at liberty to take all such plea of law and facts as may be available to the appellant before the Adjudicating Authority. The Adjudicating Authority shall decide the Benami nature of the property in accordance with law.

74. In the case of WA-704-2017, Kailash Assudani vs Commissioner Of Income Tax: decided on 16 August, 2017, it has been observed thus:

"We do not find any merit in the present appeal. It is the Adjudicating Authority who is to decide the question of Benami nature of the property. The proceedings under Section 24 of the Act contemplates the issuance of show cause notice as to why the property specified in the notice should not be treated as Benami property. However, the substantive order of treating the property as Benami is required to be passed by Adjudicating Authority under Section 26 of the Act only. Therefore, the appellant is at liberty to take all such plea of law and facts as may be available to the appellant before the Adjudicating Authority. The Adjudicating Authority shall decide the Benami nature of the property in accordance with law."

75. In the case of R. Rajagopal Reddy (Dead) by L.Rs. and Ors. (supra), it has been held thus:

> "11. Before we deal with these six considerations which weighed with the Division Bench for taking the view that Section 4 will apply retrospectively in the sense that it will get telescoped into all pending proceedings, howsoever earlier they might have been filed, if they (143 of 160) [CW-2915/2019] were pending at different stages in the hierarchy of the proceedings even upto this Court, when Section 4 came into operation, it would be apposite to recapitulate the salient feature of the Act. As seen earlier, the preamble of the Act itself states that it is an act to prohibit benami transactions and the right to recover property held benami, for matters connected therewith or incidental thereto. Thus it was enacted to efface the then existing rights of the real owners of properties held by others benami. Such an act was not given any retrospective effect by the legislature. Even when we come to Section 4, it is easy to visualise that Sub-

section (1). of Section 4 states that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other shall lie by or on behalf of a person claiming to be the real owner of such property. As per Section 4(1) no such suit shall thenceforth lie to recover the possession of the property held benami by the defendant. Plaintiffs right to that effect is sought to be taken away and any suit to enforce such a right after coming into operation of Section 4(1) that is 19th May, 1988, shall not lie. The legislature in its wisdom has nowhere provided in Section 4(1) that no such suit, claim or action pending on the date when Section 4 came into force shall not be proceeded with and shall stand abated. On the contrary, clear legislative intention is seen from the words "no such claim, suit or action shall lie", meaning thereby no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any Court for seeking such a relief after coming into force of Section 4(1). In Collins English Dictionary, 1979 Edition as reprinted subsequently, the word 'lie' has been defined in connection with suits and proceedings. At page 848 of the Dictionary while dealing with topic No. 9 under the definition of term 'lie' it is stated as under :-

For an action, claim appeal ect. to subsist; be maintainable or admissible.

The word 'lie' in connection with the suit, claim or action is not defined by the Act. If we go by the aforesaid dictionary meaning it would mean that such suit, claim or action to get any property declared (144 of 160) [CW-2915/2019] benami will not be admitted on behalf of such plaintiff or applicant against the concerned defendant in whose name the property is held on and from the date on which this prohibition against entertaining of such suits comes into force. With respect, the view taken by that Section 4(1) would apply even to such pending suits which were already filed and entertained prior to the date when the Section came into force and which has the effect of destroying the then existing right of plaintiff in connection with the suit property cannot be sustained in the face of the clear language of Section 4(1). It has to be visualised that the legislature in its wisdom has not expressly made Section 4 retrospective. Then to imply by necessary implication that Section 4 would have retrospective effect and would cover pending litigations filed prior to coming into force of the Section would amount to taking a view which would run counter to the legislative scheme and

intent projected by various provisions of the Act to which we have referred earlier. It is, however, true as held by the Division Bench that on the express language of Section 4(1) any right inhering in the real owner in respect of any property held benami would get effaced once Section 4(1) operated, even if such transaction had been entered into prior to the coming into operation of Section 4(1), and hence-after Section 4(1) applied no suit can lie in respect to such a past benami transaction. To that extent the Section may be retroactive. To highlight this aspect we may take an illustration. If a benami transaction has taken place in 1980 and suit is filed in June 1988 by the plaintiff claiming that he is the real owner of the property and defendant is merely a benamidar and the consideration has flown from him then such a suit would not lie on account of the provisions of Section 4(1). Bar against filing, entertaining and admission of such suits would have become operative by June, 1988 and to that extent Section 4(1) would take in its sweep even past benami transactions which are sought to be litigated upon after coming into force of the prohibitory provision of Section 4(1); but that is the only effect of the retroactivity of Section 4(1) and nothing more than that. From the conclusion that Section 4(1) shall apply even to past benami transactions to the aforesaid extent, the next step taken by the Division Bench that therefore, the then existing rights got destroyed and (145 of 160) [CW-2915/2019] even though suits by real owners were filed prior to coming into operation of Section 4(1) they would not survive, does not logically follow.

12. So far as Section 4(2) is concerned, all that is provided is that if a suit is filed by a plaintiff who claims in his favour and holds the property in his name, once Section 4(2) applies, no defence will be permitted or allowed in any such suit, claim or action by or on behalf of a person claiming to be the real owner of such property held benami. The disallowing of such a defence which earlier was available, itself, suggests that a new liability or restriction is imposed by Section 4(2) on a pre-existing right of the defendant. Such a provision also cannot be said to be retrospective or retroactive by necessary implication. It is also pertinent to note that Section 4(2) does not expressly seek to apply retrospectively. So far as such a suit which is covered by the sweep of Section 4(2) is concerned, the prohibition of Section 4(1) cannot apply to it as it is not a claim or action filed by the plaintiff to enforce right in respect of any property held benami. On the contrary, it is a suit, claim or action flowing from the sale deed or title deed in the name of the plaintiff. Even though such a suit have been filed prior to 19.5.1988, if before the stage of filing of defence by the real owner is reached, Section 4(2) becomes operative from 19th May, 1988, then such a defence, as laid down by Section 4(2) will not be allowed to such a defendant. However, that would not mean that Section 4(1) and 4(2) only on that score can be treated to be impliedly retrospective so as to cover all the pending litigations in connection with enforcement of such rights of real owners who are parties to benami transactions entered into prior to the coming into operation of the Act and specially Section 4 thereof. It is also pertinent to note that Section 4(2) enjoins that no such defence 'shall be allowed' in any claim, suit or action by or on behalf of a person claiming to be the real owner of such property. That is to say no such defence shall be allowed for the first time after coming into operation of Section 4(2). If such a defence is already allowed in a pending suit prior to the coming into operation of Section 4(2), enabling an issue to be raised on such a defence, then the Court is bound to decide the issue arising from such an already allowed defence as at the relevant time (146 of 160) [CW-2915/2019] when such defence was allowed Section 4(2) was out of picture. Section 4(2) nowhere uses the words "No defence based on any right in respect of any property held benami whether against the person in whose name the property is held or against any other person, shall be

allowed to be raised or continued to be raised in any suit." With respect, it was wrongly assumed by the Division Bench that such an already allowed defence in a pending suit would also get destroyed after coming into operation of Section 4(2). We may at this stage refer to one difficulty projected by learned advocate for the respondents in his written submissions, on the applicability of Section 4(2). These submissions read as under:-

> Section 4(1) places a bar on a plaintiff pleading 'benami', while Section 4(2) places a bar on a defendant pleading 'benami', after the coming into force of the Act. In this context, it would be anomalous if the bar in Section 4 is not applicable if a suit pleading 'benami' is already filed prior to the prescribed date, and it is treated as applicable only to suit which he filed thereafter. It would have the effect of classifying the so-called 'real' owners into two classes - those who stand in the position of plaintiffs and those who stand in the position of defendants. This may be clarified by means of an illustration. A and B are 'real' owners who have both purchased properties in say 1970, in the names of C and D respectively who are ostensible owners viz. benamidars. A files a suit in February 1988 i.e. before the coming into force of the Act against C, for a declaration of his title saying that C is actually holding it as his benamidar.
>
> According to the petitioner's argument, such a plea would be open to A even after coming into force of the Act, since the suit has already been laid. On the other hand, if D files a suit against B at the same for declaration and injunction, claiming himself to be the owner but B's opportunity to file a written statement comes in say (147 of 160) [CW-2915/2019] November 1988 when the Act has already come into force, he in his written statement cannot plead that D is a benamidar and that he, B is the real owner. Thus A and B, both 'real' owners, would stand on a different footing, depending upon whether they would stand in the position of plaintiff or defendant. It is respectfully submitted that such a differential treatment would not be rational or logical.

13. According to us this difficulty is inbuilt in Section 4(2) and does not provide the rationale to hold that this Section applies retrospectively. The legislature itself thought it fit to do so and there is no challenge to the vires on the ground of violation of Article 14 of the Constitution. It is not open to us to re-write the section also. Even otherwise, in the operation of Section 4(1) and (2), no discrimination can be said to have been made amongst different real owners of property, as tried to be pointed out in the written objections. In fact, those cases in which suits are filed by real owners or defences are allowed prior to corning into operation of Section 4(2), would form a separate class as compared to those cases where a stage for filing such suits or defences has still not reached by the time Section 4(1) and (2) starts operating. Consequently, latter type of cases would form a distinct category of cases. There is no question of discrimination being meted out while dealing with these two classes of cases differently. A real owner who has already been allowed defence on that ground prior to coming into operation of Section 4(2) cannot be said to have been given a better treatment as compared to the real owner who has still to take up such a defence and in the meantime he is hit by the prohibition of Section 4(2). Equally there cannot be any comparison between a real owner

who has filed such suit earlier and one who does not file such suit till Section 4(1) comes into operation. All real owners who stake their claims regarding benami transactions after Section 4(1) and (2) came into operation are given uniform treatment by these provisions, whether they come as plaintiffs or as defendants. Consequently, the grievances raised in this connection cannot be sustained."

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76. In the case of State Bank of Travancore and another Vs. Mathew K.C. (supra) it has been held thus:

> "13. In Ikbal (supra), it was observed that the action of the Bank Under Section 13(4) of the 'SARFAESI Act' available to challenge by the aggrieved Under Section 17 was an efficacious remedy and the institution directly Under Article 226 was not sustainable, relying upon Satyawati Tandon (Supra), observing:
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> 27. No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction Under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition Under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented.
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> ***
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> 28.....In our view, there was no justification whatsoever for the learned Single Judge to allow the borrower to bypass the efficacious remedy provided to him Under Section 17 and invoke the extraordinary jurisdiction in his favour when he had disentitled himself for such relief by his conduct. The Single Judge was clearly in error in invoking his extraordinary jurisdiction Under Article 226 in light of the peculiar facts indicated above. The Division Bench also erred in affirming the erroneous order of the Single Judge.

77. In the case of CIT, New Delhi Vs. Ram Kishan Dass (supra), the Apex Court of the land held thus:

> "24. We find no substance in the submission urged on behalf of the Assessees that to adopt an interpretation which we have placed on the provisions of Section (149 of 160) [CW-2915/2019] 142(2C) would enable the assessing officer to extend the period of limitation for making an assessment Under Section 153B. Explanation (iii) to Section 153B(1), as it stood at the material time, provided for the exclusion of the period commencing from the date on which the assessing officer had directed the Assessee to get his accounts audited Under Sub-section (2A) of Section 142 and ending on the day on which the assesee is required to furnish a report under that Sub-section. The day on which the Assessee is required to furnish a report of the

> audit Under Sub-section (2A) marks the culmination of the period of exclusion for the purpose of limitation. Where the assessing officer had extended the time, the period, commencing from the date on which the audit was ordered and ending with the date on which the Assessee is required to furnish a report, would be excluded in computing the period of limitation for framing the assessment Under Section 153B. The principle governing the exclusion of time remains the same. The act on which the exclusion culminates is the date which the assessing officer fixes originally, or on extension for submission of the report.
>
> 25. The issue as to whether the amendment which has been brought about by the legislature is intended to be clarificatory or to remove an ambiguity in the law must depend upon the context. The Court would have due regard to (i) the general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what power that the legislature contemplated (See Zile Singh v. State of Haryana (2004) 8 SCC 1). The decision in Sedco Forex International Drill Inc. v. Commissioner of Income Tax [2005] 279 ITR 310 (SC); (2005) 12 SCC 717 on which learned Counsel for the assesses relied involved a substitution of the Explanation to Section 9(1)(ii) of the IT Act, 1961 with effect from 1 April 2000. A two Judge Bench of this Court held that given the legislative history of Section 9(1)(ii), it can only be assumed that it was deliberately introduced with effect from 1 April 2000 and was therefore intended to be prospective.

This was also so construed by the CBDT, and in the explanatory notes to the provisions of the Finance Act, 1999. As we have indicated, interpretation is a matter of determining the path on the basis of statutory context and legislative history. In taking the view that (150 of 160) [CW-2915/2019] we have, we have also taken note of the fact that the same view was adopted by several High Courts. Among them are (i) the Punjab and Haryana High Court in Jagatjit Sugar Mills Co. Ltd. v. Commissioner of Income Tax (1994) 74 Taxman 8 (Pun. & Har.); [1994] 210 ITR 468; (ii) the Kerala High Court in Commissioner of Income Tax, Cochin v. Popular Automobiles (2011) 333 ITR 308; and (iii) the Allahabad High Court in Ghaziabad Development Authority v. Commissioner of Income Tax, Ghaziabad (UP) (2011) 12 Taxman.com 334 (Allahabad). The decision of the Kerala High Court in Popular Automobiles (supra) is the subject matter of Civil Appeal No. 2951 of 2012 in these proceedings.

78. In the case of Canbank Financial Services Ltd. vs. The Custodian and Ors. (supra), the Supreme Court observed thus:

> "67. The evil of benami transaction was sought to be curbed by reason of the provisions of the Urban Land (Ceiling and Regulation) Act 1976, the State Ceiling Laws, Income Tax Act 1961 as amended by the Taxation Laws (Amendment) Act 1975 (See Sections 281 and 281A of the Income Tax Act), Section 5 of the Gift Tax Act 1958, Section 34B of the Wealth Tax Act and Section 5(1) of the Estate Duty Act (since repealed). It is only with that view the Benami Transactions (Prohibition) Act, 1988 prohibiting the right to recover benami transaction was enacted. Section 5(1)

> provided that all properties held benami shall be subject to acquisition as different from forfeiture provided for in the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976. But even Section 5 had not been made workable as no rules under Section 8 of the Act for acquisition of property held benami were framed."

79. Applying the principles deducible from the opinions of the Apex Court of the land as referred to and relied upon by the learned counsel for the parties; it is evident that High Court could interfere in exercise of writ jurisdiction, if, the conditions precedent to the exercise of jurisdiction under the statutory (151 of 160) [CW-2915/2019] provisions did not exist even at the stage of notice issued. Thus, the High Courts have power in appropriate cases to prohibit executive authority from acting without jurisdiction. Moreover, if executive authority exercised the power without jurisdiction that would subject an individual to lengthy proceedings and unnecessary harassment. Hence, to prevent such lengthy proceedings and unnecessary harassment, recourse to jurisdiction under Article 226 and/or227 of the Constitution is not prohibited.

Further, the legislative drafting is more than an ordinary prose which differs in provenance, features and its import as to the meaning attached thereto and presumptions as to intendment of the legislation.

80. By now, it is well settled law that unless a contrary intention is reflected, a legislation is presumed and intended to be prospective. For in the normal course of human behavior, one is entitled to arrange his affairs keeping in view the laws for the time being in force and such arrangement of affairs should not be dislodged by retrospective application of law. The principle of law known as lex prospicit non prospicit (law looks forward not backward), is a well known and accepted principle. The retrospective legislation is contrary to general principle for legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried out in the faith of the then existing law (vide Phillips Vs. Eyre (1870)LR 6 QB

1). Thus, the principle against retrospectivity is the principle of 'fairplay' and unless there is a clear and unambiguous intendment for retrospective effect to the legislation which affects accrued (152 of 160) [CW-2915/2019] rights or imposes obligations or castes new duties or attaches a new disability is to be treated as prospective.

81. It is trite law that an explanatory or declaratory Act is intended to supply an obvious omission or is enacted to clear doubts as to the meaning of the previous Act. While retrospective operation is generally intended as to declaratory or curative provisions, which is supplied with the 'language' "shall be deemed always to have meant". Therefore, in absence of clarity amendment being declaratory or curative in the face of unambiguous or confusion in the pre-amended provisions; the same is not required to be treated as curative or declaratory amendment. Viewed in the light of the settled legal proposition, as aforesaid, Benami Amendment Act, 2016, neither appears to be clarificatory nor curative. Moreover, by way of amendment penal consequences have been introduced providing for confiscation of the benami property and enhanced punishment.

82. In the case of Prakash and Ors. (supra), the Apex Court of the land while dealing with the very Benami Amendment Act, 2016, held thus:

> "17. The text of the amendment itself clearly provides that the right conferred on a 'daughter of a coparcener' is 'on and from the commencement of Hindu Succession (Amendment) Act, 2005'. Section 6(3) talks of death after the amendment for its applicability. In view of plain language of the statute, there is no scope for a different interpretation than the one suggested by the text of the amendment. An amendment of a substantive provision is always prospective unless either expressly or by necessary intendment it is retrospective Shyam Sunder v. Ram Kumar (2001) 8 SCC 24, Paras 22 to 27. In the present case, there is neither any express provision for giving retrospective effect to the amended provision nor necessary (153 of 160) [CW-2915/2019] intendment to that effect. Requirement of partition being registered can have no application to statutory notional partition on opening of succession as per unamended provision, having regard to nature of such partition which is by operation of law. The intent and effect of the Amendment will be considered a little later. On this finding, the view of the High Court cannot be sustained.
>
> 18. Contention of the Respondents that the Amendment should be read as retrospective being a piece of social legislation cannot be accepted. Even a social legislation cannot be given retrospective effect unless so provided for or so intended by the legislature. In the present case, the legislature has expressly made the Amendment applicable on and from its commencement and only if death of the coparcener in question is after the Amendment. Thus, no other interpretation is possible in view of express language of the statute. The proviso keeping dispositions or alienations or partitions prior to 20th December, 2004 unaffected can also not lead to the inference that the daughter could be a coparcener prior to the commencement of the Act. The proviso only means that the transactions not covered thereby will not affect the extent of coparcenary property which may be available when the main provision is applicable. Similarly, Explanation has to be read harmoniously with the substantive provision of Section 6(5) by being limited to a transaction of partition effected after 20th December, 2004. Notional partition, by its very nature, is not covered either under proviso or under Sub- section 5 or under the Explanation."

83. By now, it is well settled law that a substantive provision unless specifically made retrospective or otherwise intended by the Parliament should always be held to be prospective. The power to confiscate and consequent forfeiture of rights or interests are drastic being penal in nature, and therefore, such statutes are to be read very strictly. However, there can be no exercise of powers under such statutes by way of extension or implication (vide O.Konavalov (supra).

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84. In the case of D.L.F. Qutab Enclave Complex Educational Charitable Trust (supra), the Apex Court of the land in no uncertain terms observed that extraordinary legislation must be strictly construed and a penal statute must receive strict construction. The Supreme Court further observed that the mischief of rule, if applied, in view of amendment made would be in infraction to the provisions of Article 20 of the Constitution of India, cannot be given retrospective effect. Similar is the position operating in the instant batch of cases at hand. The rights accrued in favour of any person owing to a transaction in the nature of contract protected under a statute, in that event transgration/violation of those rights could only be by a legislation with retrospective effect.

85. In view of the settled legal proposition that no authority, much less, a quasi judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly; is a question that is always open for scrutiny by the High Court in an application under Article 226/227 of the Constitution of India. The very question of correctness and legality of the issuance of notice can be examined in exercise of writ jurisdiction.

86. In the case of Mangathai Ammal (died) through L.Rs. & ors.

(supra), the Apex Court of the land while dealing with issue of retrospective effect of the Benami Amendment Act, 2016, in unambiguous terms held that Benami Transaction Act would not be applicable retrospectively. At this juncture, it would be relevant to take note of the text of para 12 of the said judgment which reads thus:

(155 of 160) [CW-2915/2019] "12. It is required to be noted that the benami transaction came to be amended in the year 2016. As per Section 3 of the Benami Transaction (Prohibition) Act 1988, there was a presumption that the transaction made in the name of the wife and children is for their benefit. By Benami Amendment Act, 2016, Section 3(2) of the Benami Transaction Act, 1988 the statutory presumption, which was rebuttable, has been omitted. It is the case on behalf of the Respondents that therefore in view of omission of Section 3(2) of the Benami Transaction Act, the plea of statutory transaction that the purchase made in the name of wife or children is for their benefit would not be available in the present case. Aforesaid cannot be accepted. As held by this Court in the case of Binapani Paul (Supra) the Benami Transaction (Prohibition) Act would not be applicable retrospectively. Even otherwise and as observed hereinabove, the Plaintiff has miserably failed to discharge his onus to prove that the Sale Deeds executed in favour of Defendant No. 1 were benami transactions and the same properties were purchased in the name of Defendant No. 1 by Narayanasamy Mudaliar from the amount received by him from the sale of other ancestral properties."

87. Article 20 of the Constitution of India is fundamental right guaranteed under Part-III of the Constitution and the penal consequences emanating from the Benami Amendment Act, 2016, in infraction to the mandate of fundamental rights guaranteed under Article 20 of the Constitution; cannot be given retrospective effect in absence of a clear stipulation by the Parliament on retrospectivity.

88. In the case of Joseph Isharat (supra), relying upon the opinion of the Apex Court of the land in the case of R. Rajagopal Reddy (Dead) by L.Rs. and Ors. (supra) while examining the provisions of amendment introduced by the Legislature through (156 of 160) [CW-2915/2019] Benami Amendment Act, 2016, made effective from 1st November, 2016, the Bombay High Court observed thus:

> 4. Under the Benami Act, as it stood on the date of the suit as well as on the date of filing of written statement and passing of the decree by the courts below, provided for the definition of a "benami transaction" under clause (a) of Section 2. Under that provision, any transaction in which property is transferred to one person for consideration paid or provided by another came within the definition of "benami transaction". Section 3 of the Benami Act, in sub-section (1), provided that no person shall enter into any benami transaction. Sub-section (2) contained two exceptions to the prohibition contained in sub-section (1). The first exception, contained in clause (a) of sub-section (2), was in respect of purchase of property by any person in the name of his wife or unmarried daughter. In the case of such purchase, it was to be presumed, unless the contrary was proved, that the property was purchased for the benefit of the wife or unmarried daughter, as the case may be. Simultaneously, Section 4 of the Benami Act contained a prohibition in respect of right to recover property held benami. Sub-section (1) provided that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held, or against any other person, shall lie by or on behalf of a person claiming to be the real owner of such property. Sub-section (2) made provisions likewise in respect of a defence based on a plea of benami transaction. Sub-section (2) provided that no defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. There was a twofold exception to this restriction. First was in respect of the person in whose name the property is held being a coparcener in a Hindu undivided family and the property being held for the benefit of the coparceners of the family. The second exception was in respect of the person, in whose name the property was held, being a trustee or other person standing in a fiduciary capacity and the property being held for the benefit of another person for whom he was such (157 of 160) [CW-2915/2019] trustee or towards whom he stood in such capacity.

The present suit was filed when these provisions were in operation. These provisions continued to apply even when the written statement was filed by the Defendant and the suit was heard and decreed by both the courts below. The legal provisions continued to apply even when the second appeal was filed before this court. It is only now during the pendency of the second appeal, when it has come up for final hearing, that there is a change in law. The Benami Act has been amended by the Parliament in 2016 with the passing of the Benami Transactions (Prohibition) Amendment Act, 2016. This amendment has come into effect from 01 November 2016. In the Amended Act the definition of "benami transaction" has undergone a change. Under the Amended Act "benami

transaction" means (under Section 2(9) of the Act) a transaction or an arrangement where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration. There are four exceptions to this rule. The first is in respect of a karta or a member of a Hindu undivided family holding the property for the benefit of the family. The second exception is in respect of a person standing in a fiduciary capacity holding the property for the benefit of another person towards whom he stands in such capacity. The third exception is in the case of an individual who purchases the property in the name of his spouse or child, the consideration being provided or paid out of the known sources of the individual. The fourth exception is in the case of purchase of property in the name of brother or sister or lineal ascendant or descendant where the names of such brother or sister or lineal ascendant or descendant, as the case may be, and the individual appear as joint owners in any document. Sub-section (1) of Section 3 contains the very same prohibition as under the unamended Act, in that it prohibits all benami transactions. Section 4 likewise prohibits suits, claims or actions or defences based on the plea of benami as in the case of the unamended Act. The submission is that under this scheme of law, step-daughter not having been defined under the Benami Act, but having been defined under the Income Tax Act, 1961, by virtue of sub-section (31) of Section 2 of the amended (158 of 160) [CW-2915/2019] Benami Act, the meaning of the expression will be the one assigned to it under the Income Tax Act. The definition of daughter under the Income Tax Act admits of a step-child within it. It is submitted that under the amended definition of "benami transaction", thus, there is a clear exception in respect of a purchase made in the name of a step-daughter by an individual provided, of course, the consideration has been provided or paid out of known sources of the individual.

7. What is crucial here is, in the first place, whether the change effected by the legislature in the Benami Act is a matter of procedure or is it a matter of substantial rights between the parties. If it is merely a procedural law, then, of course, procedure applicable as on the date of hearing may be relevant. If, on the other hand, it is a matter of substantive rights, then prima facie it will only have a prospective application unless the amended law speaks in a language "which expressly or by clear intention, takes in even pending matters.". Short of such intendment, the law shall be applied prospectively and not retrospectively.

8. As held by the Supreme Court in the case of R. Rajagopal Reddy v. Padmini Chandrasekharan (1995) 2 SCC 630, Section 4 of the Benami Act, or for that matter, the Benami Act as a whole, creates substantive rights in favour of benamidars and destroys substantive rights of real owners who are parties to such transaction and for whom new liabilities are created under the Act. Merely because it uses the word "it is declared", the Act is not a piece of declaratory or curative legislation. If one has regard to the substance of the law rather than to its form, it is quite clear, as noted by the Supreme Court in R. Rajagopal Reddy, that the Benami Act affects substantive rights and cannot be regarded as having a retrospective operation. The Supreme Court in R. Rajagopal Reddy also held that since the law nullifies the defences available to the real owners in recovering the properties held benami, the law must apply irrespective of the time of the benami transaction and that the expression "shall lie" in Section 4(1) or "shall be allowed" in Section 4(2) are prospective and apply to the present (future stages) as well as future suits, claims and actions only. These observations

clearly hold the field even as regards the present amendment to the Benami Act. The (159 of 160) [CW-2915/2019] amendments introduced by the Legislature affect substantive rights of the parties and must be applied prospectively."

89. It is also a fact that an SLP instituted against the opinion (supra), has also been declined by the Supreme Court on 28 th April, 2017 in Special Leave to Appeal (C) No. 12328/2017.

90. In the case of Mohar Singh (supra), the Apex Court of the land dealt with the consequences of repeal of the Act. The question in the case of Zile Singh (supra), was related to disqualification from being a member of Municipal Council (if children were more than two). Thus, there was no violation of any fundamental right or penal consequence contemplated. Hence, the principles cannot be applied to the controversy raised in the instant batch of writ applications. Similarly, in the case of Yogendra Kumar Jaiswal (supra), the observations made by the Apex Court of the land while dealing with the issue of confiscation or attachment of money/property that was acquired illegally and that too at an interim stage of prosecution.

91. In the case of Titaghur Paper Mills Co. Ltd. and Ors.

(supra), the matter that fell for consideration of the Supreme Court, was with regard to ultra vires/jurisdiction of Sales Tax Officer and no question of law was involved therein.

92. In the case of Gujarat Ambuja Cement Ltd. and Ors.

(supra), while dealing with scope and ambit of writ application under Article 226 of the Constitution of India, the Supreme Court observed that what is to be ensured before entertaining such an application is that a strong case is made out and there exists no ground to interfere in extra-ordinary jurisdiction. It was further (160 of 160) [CW-2915/2019] observed that where under a statute there is an allegation of infringement of fundamental right or when on the undisputed facts the Taxing Authorities are shown to have assumed jurisdiction which they do not possess, can be the grounds for entertaining writ application. To the same effect is opinion of the Supreme Court in the case of Harbanslal Sahnia and ors.(supra).

93. For the reason aforesaid and in the backdrop of the settled legal proposition so also in view of singular factual matrix of the matters herein; this Court has no hesitation to hold that the Benami Amendment Act, 2016, amending the Principal Benami Act, 1988, enacted w.e.f. 1st November, 2016, i.e. the date determined by the Central Government in its wisdom for its enforcement; cannot have retrospective effect.

94. It is made clear that this Court has neither examined nor commented upon merits of the writ applications but has considered only the larger question of retrospective applicability of the Benami Amendment Act, 2016 amending the original Benami Act of 1988. Thus, the authority concerned would examine each case on its own merits keeping in view the fact that amended provisions introduced and the amendments enacted and made enforceable w.e.f. 1st November, 2016; would be prospective and not retrospective.

95. The batch of writ applications stands disposed off, as indicated above.

96. A copy of this order be placed in each of the file.

(VEERENDR SINGH SIRADHANA) J.

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