

**APPELLATE TRIBUNAL FOR PROHIBITION OF BENAMI PROPERTY  
TRANSACTIONS ACT, AT NEW DELHI**

Decision dated: 3<sup>rd</sup> September, 2019

**FPA-PBPT-820/MUM/2019**

M/s. Kavita Infrastructure Pvt. Ltd. ... Appellant

Versus

The Initiating Officer,  
Circle, Mumbai ... Respondent

**Advocates/Authorized Representatives who appeared**

For the Appellant : Mr. Ashwani Taneja, Advocate

For the Respondent : Mr. Manmeet Singh Arora, SPP

**CORAM**

**JUSTICE MANMOHAN SINGH : CHAIRMAN**

**JUDGMENT**

**FPA-PBPT-820/MUM/2019**

1. The above mentioned appeal has been filed by the Appellant impugning the order of the Adjudicating Authority dated 28.03.2019 passed in Reference No. 749/2018. Reply has been filed by the respondent. It is stated on behalf of respondent that the other concerned was not aware about the selling of impugned property to third party prior to initiate the proceedings.

2. The Appellant is pressing for relief of quashing of impugned order passed by the Adjudicating Authority as well as Provisional Attachment Order passed u/s 24(4) of the PBPT Act, 1988 by the Respondent in respect of the property purchased and owned by the Appellant i.e. **Gat. No.1051 and 1052** at village Wake Budruk, Pune, described as Property-I in the impugned order.

3. It is submission of Mr. Taneja, Learned counsel appearing on behalf of the appellant that the Respondent failed in its basic duty to investigate and find out as to who has the actual possession and title (the ownership) of the subject property before issuance of the SCN and passing of the Provisional Attachment Order.

4. The Section 24(3) of the PBPT Act is reproduced as hereunder:

**“24(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 issuance of notice under sub section (1).”**

5. It is evident that as per reading of the plain provisions, the mandatory prerequisites to be fulfilled before making attachment of a property u/s 24(3) are that:

1) The IO must know that who is the person currently holding the property in possession

2) The said person is holding the property as *benami* is if no, further steps are meaningless.

3) The said person is likely to alienate the subject property in due course by disposing of.

4) The alienation is likely to happen within the period specified in the notice issued u/s 24(1)

6. In case all these conditions are satisfied, then IO is required to obtain prior approval from the Approving Authority before making attachment and passing order u/s 24(3) after recording his opinion.

7. Therefore, for the purpose of arriving satisfaction of compliance of aforesaid 4 conditions and to meet the principles of natural justice, the IO is obliged under the law to issue a notice to the said person (who is currently holding the property in possession) i.e. the Appellant herein.

The notice must show cause that in the opinion of the IO, the person who is in **possession** of the property holding the property as ***benami***.

8. In the present case, it appears that the Respondent had passed the Provisional Attachment Order dated 23.03.2018, without conducting enquiry and ascertain the facts of the person in actual possession and holder of present title of the subject property, which is a fundamental and mandatory requirement as prescribed u/s 24(3) of the PBPT Act, 1988 and a prerequisite for passing an attachment order u/s 24(3). It is special act. All the provisions have to be applied very strictly. Different meaning cannot be given if the language of the section is plain simple and understandable.

9. The provision of the PBPT Act, 1988 provide ample powers to the Initiating Officer (Respondent herein) to enquire and investigate about the

property. The officer is duty bound to comply the provision with due diligence. No discretion is left if the provision is read in meaningful manner.

10. The Provisional Attachment Order u/s 24(3) is passed in the matter even without informing the appellant i.e. legal title holder and person in possession and infringing on the constitutional right of the Appellant.

11. Therefore, inaction of the Respondent in not serving the Appellant with the notice of attachment for the said property acquired in injustice to the appellant and is in gross violation of the principles of natural justice.

12. The Respondent has himself admitted in its Rejoinder filed before the Adjudicating Authority at Pg. 1 of the reply to this appeal, that it had in its possession the sale deed in favour of the Appellant, but despite of the same no notice was served u/s 24(3) or make it a party to the reference filed before the Adjudicating Authority.

13. The lapse of investigation on part of the Respondent is evident from the fact as disclosed in the RTI response that the sole communication made to the Sub-Registrar office at Khed, pertaining to the subject property, by the Respondent is the delivering of the Provisional Attachment Order passed u/s 24(4) (and even missing out on sending the original PAO passed u/s 24(3) as is obligated upon him in the discharge of his function) , other than that no investigation or communication has been made by the Respondent even with the Sub-Registrar who is supposed to safeguard the interest of the state. Admittedly, the title documents are registered as per law.

14. The communication sent by the Respondent to Joint Sub Registrar, Pune, which is titled as "Provisional Attachment Order passed u/s 24(4)(a)(i) of the PBPT Act, 1988", even the name of the owner or alleged benamidar as per the Respondent has not been mentioned.

15. The issue of serving notice u/s 24(1) to the interested party has been well settled in the order of this Tribunal as passed in the matter of “**M/s. Virgo Buildestate Pvt. Ltd. vs. Initiating Officer**” **FPA PBPT285/JP/2019**”, wherein it was stated that:

*“It would have been fair and legal on part of the respondent to have noticed the appellant under Section 24(1) before taking a decision under Section 24(4)(a) because at the stage of 24(1) the appellant had already acquired certain legal rights by stepping into the shoe of alleged benamidar.”*

16. The Appellant had purchased the subject properties from its erstwhile owner i.e. M/s. Veena Industries Ltd., for adequate consideration i.e. **Rs.12,46,87,500/- (Rupees Twelve Crore Forty Six Lakhs Eighty Seven Thousand Five Hundred) (Refer Pg. No. 151, 159-161)** and only after due diligence and being assured of clean title of the property, had agreed to purchase the subject property. The Adjudicating Authority and the Respondent did not controvert that the fact that the Appellant had paid the full consideration of the subject properties as agreed and subsequently had registered the title documents for the subject property in its name in the year 2017. The bona-fide of the Appellant and also the evidence of possession of subject property is evident from the 7/12 (popularly known as *saat baara*) document of registration and mutation issued by the Land Registration Authorities in Maharashtra confirming the registration of sale deed dated 14.06.2017.

17. The Adjudicating Authority and the Respondent also failed to appreciate that the bona-fide of the Appellant is further proved from the fact that the Appellant had paid the full applicable **stamp duty of Rs.**

**44,30,000/- (Rupees Forty Four Lakhs Thirty Thousand)** for registration of  
FPA-PBPT-820/MUM/2019

the sale deed. There is no contrary evidence is available on record that the said money is not owned by the appellant but it was benami transaction.

18. The Adjudicating Authority and the Respondent did not consider that the possession, title and all the beneficial interest in the subject property was with the Appellant long before the issuance of the Show Cause Notice **(dated 28.12.2017)** and Attachment Order **(dated 28.12.2017)** issued by Respondent. They have failed to recognize and protect the rights of the Appellant as provided in the section 27(2) of the PBPT Act, 1988 which is meant to provide shelter and protection to the bona-fide purchasers of the property prior to issuance of SCN.

19. The present case is covered under the judgment given by this Tribunal in the matter of **“M/s. Virgo Buildestate Pvt. Ltd. vs. Initiating Officer” FPA PBPT285/JP/2019**”, in which this Tribunal has recognised the rights of a bona-fide purchaser as given in the section 27(2) of the PBPT Act, 1988. Further it was held that the burden of proof of proving that the transaction was not bona-fide falls squarely on the shoulders of the person who alleges that it is not so. In the present case the Appellant has put ample evidence on record to prove its bona-fide, however, the Respondent has not been able to controvert or disprove any of the cogent evidences placed here.

20. The Respondent has incorrectly stated in its reply that the onus lies on the Appellant to prove that the property was acquired bona-fide after due diligence. This Tribunal in its order **M/s Virgo BuildestatePvt. Ltd. vs. Initiating Officer” FPA PBPT285/JP/2019**”, has clearly stated that:

*“The general rule of law is that the burden of proof lies on the person who alleges. In the present case, it is also the allegation made by the respondent*

*that the appellant is not a bonafide purchaser and that it had no knowledge of the property in question are benami properties, so the initial burden lies on the IO”*

21. Therefore, it is well-established that the burden of proof is on the I.O. at the initial stage to establish with cogent evidence that the purchase by the Appellant of the subject property is not bona-fide.

22. The Respondent in its rejoinder dated 27.12.2018 at has itself admitted that it was in the possession of the information and documents that the subject property had been sold / transferred to the Appellant by M/s Veena Industries Ltd. However even after coming into possession of such documents the Respondent had chosen not to give any opportunity to the Appellant to explain its case in the proceedings before the Respondent.

23. The Appellant had moved an application for intervention and as such the Adjudicating Authority has powers u/s 26(6) to add name of the party whose presence before the Adjudicating Authority may be necessary to enable it to adjudicate upon and settle all questions involved in the reference. However, the Adjudicating Authority did not exercise its powers and did not implead the Appellant as a party to the proceedings even after application was made before it by the Appellant, and the Respondent had also admitted in its rejoinder to the impleadment application that there is no legal impediment in arraying the Appellant as a party to the proceedings before the Adjudicating Authority.

24. The Appellant is an incorporated entity which has a separate and distinct legal identity to that of M/s Veena Industries Limited. The Appellant had acquired the rights and interest in the subject property in its own name after payment of adequate consideration from its own funds, stamp duty

and all the applicable fees, taxes and duties. At the time of execution of the Agreement to Sale on 18.03.2013, there was no common director in the two entities i.e. M/s. Veena Industries Ltd. and Kavita Infrastructure Pvt. Ltd. Thus, the allegation made by the respondent of common management/shareholding factually has no substance.

25. In the light of above, the impugned order is set-aside by allowing the appeal.

26. No Costs.

**(Justice Manmohan Singh)**  
**Chairman**

**New Delhi,**  
**3<sup>rd</sup> September, 2019**  
'K'