

2

Chairman

P. B. GAJENDRAGADKAR

LAW COMMISSION
NEW DELHI—110001

Dated : the August 7, 1973.

My dear Minister,

I have great pleasure in forwarding herewith the 57th Report of the Law Commission on 'Benami Transactions'.

The circumstances in which the subject was taken up by the Law Commission are stated in the opening paragraph of the Report.

When the subject was taken up, a Questionnaire giving a brief resume of the present position, setting out the problem and putting forth the possible alternatives for reform of the law was prepared. After approval by the Commission, it was circulated to State Governments, High Courts, Bar Associations, Chambers of Commerce and other interested persons and bodies. The views expressed on the Questionnaire were studied, and a draft Report prepared on the subject. This was considered by the Commission, and the Report was revised in the light of the discussions.

With kind regards,

Yours sincerely,

P. B. GAJENDRAGADKAR

Shri H. R. Gokhale,
Minister of Law, Justice & Company Affairs,
Government of India,
NEW DELHI

(i)

(1)



1. The first part of the report is a summary of the work done during the year. It is a brief statement of the results of the work, and is intended to give a general impression of the progress made.

2. The second part of the report is a detailed account of the work done during the year. It is a full and complete statement of the results of the work, and is intended to give a detailed impression of the progress made.

3. The third part of the report is a statement of the conclusions reached during the year. It is a brief statement of the results of the work, and is intended to give a general impression of the progress made.

4. The fourth part of the report is a statement of the recommendations made during the year. It is a brief statement of the results of the work, and is intended to give a general impression of the progress made.

5. The fifth part of the report is a statement of the conclusions reached during the year.

6. The sixth part of the report is a statement of the conclusions reached during the year.

7. The seventh part of the report is a statement of the conclusions reached during the year.

CHAPTER I

INTRODUCTION

1.1 **Genesis and scope of the Report.**—The question of prohibiting *benami* transactions has been taken up by the Law Commission on a reference made on the subject by the Union Government.¹

1.2 In the letter of reference sent to the Law Commission, it is stated :—

“The problem of property held *benami* has been causing concern to the taxing authorities for some time. The Select Committee on the Taxation Laws (Amendment) Bill, 1969 had also suggested that Government should examine the existing law relating to *benami* transactions with a view to determining whether such transactions should be prohibited. This suggestion was re-iterated in Parliament during the debate on the Taxation Laws (Amendment) Bill, 1971.”

Accordingly, the Law Commission has been asked to examine the matter and let Government have the benefit of its advice on the question of prohibiting the practice of holding property *benami*.

1.3 The letter addressed by the Government refers to the views expressed by the Select Committee on the Taxation Laws (Amendment) Bill, 1969. It appears that the Committee made the following comment² :—

“45. *Clause 43 (New Clause 34)*—As explained in paragraph 13, the Committee have decided to drop the new procedure for ‘recognition’ of partnership firms and to continue the existing procedure for registration of such firms with a few modifications.

During the course of the discussion of the modifications given effect to in this clause, it was suggested that Government should examine the existing law relating to *benami* transactions with a view to determine whether such transactions should be prohibited, and the Committee had agreed to this suggestion.”

1.4. During the debate³ on the ‘Taxation Laws’ Amendment Bill 1971, one of the Members⁴ commenting that the proposed amendment of the Income-tax Act was inadequate, observed as follows :—

“Even now, *benami* transactions are not debarred by law. A very drastic remedy is needed. That is the point that I am

1. Letter No. 2462/72/Adv. F, dated 20th December, 1972, of the Minister of Law to the Chairman, Law Commission.

2. Taxation Laws (Amendment) Bill, 1969—Report of the Select Committee (3rd August, 1970), page XVII.

3. Rajya Sabha Debates.

4. Shri T. N. Singh.

making. Merely saying that he will suffer in a certain way and that it will be discouraging the *benami* transactions is not enough. All *benami* transactions should be debarred under the law. And I want to know why it has not been done. Why do you want to encourage *benami* transactions indirectly by a supposed penalty or harm or by saying that the party may suffer because he has done that? Why not debar it completely?"

1.5 Meaning of 'benami transaction'.—Purchase or holding of properties in the name of another is known, in India, as a *benami* transaction. This custom has been recognised by Indian Courts for a long time. Literally, the word "*benami*" means 'without name'. The essential legal characteristic of these transactions is that there is no intention to benefit the person in whose name the transaction is made. The name of that person, popularly known as the 'benamidar', as the Privy Council pointed out.¹⁻² is simply an *alias* for that of the person beneficially interested. The *benamidar* has the ostensible title to the property standing in his name; but the beneficial ownership of the property does not vest in him but in the real owner.

1.6 Risk offset by greater advantage.—There is always a risk in giving or holding property in names different from those of the real owners. But still, *benami* transactions are resorted to in order to avoid the greater risks referred to below.^{2a}

1.7 Factors accounting for the origin of benami.—The practice of *benami* might have come into existence by reason of a number of factors :—

- (a) The Joint Hindu Family system and a desire to make secret provisions is one factor³ which might have led to the practice of *benami*.
- (b) Fraud on creditors might be another such factor. As Bhat-tacharya⁴ has observed :—

"Since its first establishment, the British Government, in the exercise of its legislative functions, have from time to time made attempts to check the inveterate practice obtaining in India of holding property by one person in the name of another. This practice, having its origin in the dishonest motive of defrauding creditors of their just and lawful dues, has had so large and widespread prevalence here that the legislature cannot altogether put an end to it by a drastic enactment declaring the practice absolutely illegal in all cases."

1. *Pether Perumal v. Muniandy*, (1908) I.L.R. 35 Cal. 551, 558 (Privy Council).

2. *Gurnarain v. Sheolal*, A.I.R. 1918 P.C. 140.

2a. See para 1.7(d), below.

3. West and Buhler, "Hindu Law", (Fourth Edition), pages 157, 563.

4. K. K. Bhattacharya, Joint Hindu Family, (Tagore Law Lectures) (1884-85), pages 469, 470.

Cable: Banwasi/ Ashram TURRA
BANWASI SEVA ASHRAM
Govind Pur (Via Turfa)
Mirzapur (U .P.)

No. 4809/88-89

Date 13th July, 1988

My dear Justice Desai,

I am enclosing the copy of a letter written by Shri S. Jagannathan (Sarvoda leader) to the President of India regarding the Benami transactions of land in Tamil Nadu by creating a large number of Fake Trusts. Shri Jagannathan is a conscienceus social worker long connected with the Sarvodaya and Bhoodan movement was President of the All India Serva Seva Sangh for two terms, has lead a series of Satyagrahas to successfully distribute temple and trust lands to the landless in Tamilnadu. He had also made experiments with the help of NABARD and local banks to transfer land of the defunct trusts to the landless by way of bank purchase.

I am forwarding his letter to you to seek your valuable, advice in planning an effective administrative/ legal action for the peaceful transfer of Benami land to the actual tillers.

I shall be grateful for an early response in the matter.

With deep personal regards I remain,

Yours sincerely,

Sd/-

(Prembhai)

Justice Shri D.A. Desai,

A

His Excellency,
The President of India,
New Delhi,

Respected and Dear President,

Sarvodaya Movement, as well known to your Excellency, is engaged in the peaceful solution of the land problem for the past 30 years ever since Acharya Vinobaji started the Bhoodan Movement in 1951 and LAFTI is a registered organisation of Sarvodaya for a special experiment of distributing land to the landless poor through bank operations and Government participation, as a non-violent alternative to the conflicting situation in East Thanjavur due to the concentration of lands in a few hands and the highest percentage of landless labour in that area.

But during our search for the peaceful solution of the land problem we were very much worried and perturbed by the benami transactions in such a large scale throughout the country, corroding the society to a moral degradation and economic chaos denying justice to the poor. Corruption and Benami transaction are twin evils that have gripped the country to strangulation of all moral values. The recent ordinance promulgated about benami transaction (prohibition of Right to recover Property) uplifts and regenerates the Nation to great moral heights.

We submit our gratitude to the President for the ordinance promulgated at the most opportune time. We welcome whole heartedly the speedy pronouncement of the ordinance in order to instal the moral dignity and promote the economic welfare of the country by controlling and abolishing the benami transaction. Your bold step inspite of the Parliament not in session, to take

.....70

B

immediate action in exercise of the power conferred by Clause (1) of 123 of the Constitution will be welcomed by all section as a wise and timely measure to raise the economic standard of the people, particularly the weaker section who will be benefited as benamidhars. The posterity will hail the ordinance as one of historic importance for the promotion of the welfare of the poor, if the ordinance is seriously taken up and implemented in the true spirit.

However it is our endeavour to point out that there may arise some discrepancies in the implementation of the ordinance as several doubts and lacunae will arise which also should be attended to in the interest of the public.

a) The benamidhars who are close relations and friends will never conforward to exercise their rights, vested on them by the ordinance, neither this servants will have the courage to claim their rights. The ordinance will be null and void by nobody exercising their rights.

a) The persons, who are benefitted by the ordinance as benamidhars may not belong to the category of the poor, as most of them engaged in professions such as doctors, engineers, business and industrial concerns etc. There should be a clause to the effect that the benamidhars benefitted by the ordinance should be below the poverty line or otherwise the lands of such benamidhars above the poverty line should be taken over by the Government for distribution to landless poor.

Therefore the Government should have a machinery to identify and list out the benamidhars in every state in order:-

- a) To clarify among the benamidhars those who are below the poverty line .
- b) To confirm ownership for those who are below the poverty line.
- c) And to take away the other lands and distribute to the landless.

.....71

3. Besides the benami transactions in individual names of close relations, friends and servants, the other glaring benami transaction by the land owners to escape from the Land Ceiling Act is transfer of lands in the name of religious and public trusts. The land owners assume the pseudo posture of religious mind and public spirit, just to hoodwink the public and the Government. Such spurious trusts created in the name of schools, hospitals dharmashalas etc. should be taken over by Government for distribution to the landless.

A sample survey taken in 10 blocks of East Thanjavur where LAFTI is operating gathered by public information in the villages, some of them verified by the records from the concerned village officers, is enclosed herewith for your kind notice. All the trusts are only in name and the trust lands are misused for their own selfish ends. The endowment of landed property as trusts during these days of huge population and when the tillers are land hungry, is anti people and anti social. Therefore the lands under all trusts created ever since 1947, should be taken over and distributed to the poor.

We feel the ordinance will be a boon to the people for controlling and abolishing the benami transaction in the name of individuals and trusts. We hope the ordinance will have effective clauses to control and ultimately eliminate the benami transactions through notification or necessary rules there-on ahead of the Parliamentary Legislative procedures, for the projected points referred to in our appeal.

Thanking you

Yours sincerely,

Sd/- S. Jagannathan.

D

A SAMPLE SURVEY OF THE NATURE OF BENAMI TRANSACTION
IN THE NAME OF TRUST IN EAST THANJAVUR DIST. T. NADU.

Sl. No.	Block	Village	Name of the trust	Extent acres	Remarks
				4	5
1.	2	Thirumarugal	Penangudi Ettivazhkal	200	The lands are cultivated by the family members as a single farm. Nothing is spent for the so called education trust.
2.	do		Gopurasapurem Kattumavadi	220	Farm cultivation by the Family members. The lands are lying waste for the past two years.
3.	Nannilam	Thandalam Cheyathamangai Thenbidakal	Madheenjyanachiyar Education Trust	305	The lands are cultivated through an agent and 200 acres are lying waste for the past two years.
4.	do	Porayar	Thavasimuthu Nadaar Education Trust	300	All the lands are cultivated by the family members. Nothing spent for the Trust.
5.	Kilvelur	Kariamangalam	Kangasabhai Prllai Education Trust.	125	The Trustee Kanagasabhai Pillai passed away last year. Till his death the lands were lying waste. Only last year they were leased for cultivation. Before his death Kanagasabhai Pillai has Registered a will that Lands and other property are to be managed by Sri Mahalingam of Pollachi an industrialist. Not a single pie is spent for education purpose.

6.	Kilvelur	Killukudi Manalur	Thirunavularasu Education Trust	50 acres 18 acres	The clutivation of the lands are managed by one land lord by name Natarajan Pillai of Killukudi. Nothing is spent for any education purpose.
7.	Kilvelur	Vallivalum	Namely 18 trusts such as Dasiga High School Trust, Nagapattinam Policy Technic. Trust Vallivalam Kanaga Hospital Trust and Vallivalam Choultry Trust, Vedapada Shala Trust Family Planning Trust. Nadhaswaram Trust etc.	800 acres	For the high school and poly technic school regular grants and other concessions are received from the Govt. as any other school. The Trusts are only in name sake the account are not open for the public. The hospital only name sake. There is only one compounde No Doctor and no medicine. The Choultry Ved adasal Family Planning Trust are also only in name. Goshala is maintained for the family. Not for any public utility. All the 18 trusts for public services are only in name.
8.	Nagapattinam	Ettukudi Thirukuvalai	Vedaparayanam Trust	60 acres	These land are under lease of big land owner There is no Vedaparayanam.
9.	do	Keezhayur	Choultry Trust	40 "	These lands are under the lease of big land owners. No Choultry is running. The Trust is only in name.
10.	do	Periyathumbur	A.M.B. Dharma Choultry Trust	80 "	Cultivated as a single farm no Choultry is maintained.

Department of Health and Human Services
Office of the Assistant Secretary for Health Policy and Statistics
Washington, D.C. 20492

Executive Order 12812

Section 552 of the Freedom of Information Act (5 U.S.C. 552)

FOIA b 7 - Exemption from disclosure of information that is withheld from the public in order to protect the privacy of individuals, the confidentiality of sources, or the integrity of ongoing investigations, proceedings, or litigation.

FOIA b 5 - Exemption from disclosure of information that is withheld from the public in order to protect the confidentiality of sources or the integrity of ongoing investigations, proceedings, or litigation.

FOIA b 4 - Exemption from disclosure of information that is withheld from the public in order to protect the confidentiality of sources or the integrity of ongoing investigations, proceedings, or litigation.

FOIA b 3 - Exemption from disclosure of information that is withheld from the public in order to protect the confidentiality of sources or the integrity of ongoing investigations, proceedings, or litigation.

Section 552 of the Freedom of Information Act (5 U.S.C. 552)

FOIA b 7 - Exemption from disclosure of information that is withheld from the public in order to protect the privacy of individuals, the confidentiality of sources, or the integrity of ongoing investigations, proceedings, or litigation.

FOIA b 5 - Exemption from disclosure of information that is withheld from the public in order to protect the confidentiality of sources or the integrity of ongoing investigations, proceedings, or litigation.

FOIA b 4 - Exemption from disclosure of information that is withheld from the public in order to protect the confidentiality of sources or the integrity of ongoing investigations, proceedings, or litigation.

FOIA b 3 - Exemption from disclosure of information that is withheld from the public in order to protect the confidentiality of sources or the integrity of ongoing investigations, proceedings, or litigation.

1	2	3	4	5	6
11.	Nagapattinam	Chinnathumbur Animazhai Vazhakerai	A.M.B. Dharma Choultry Trust.	170 acres	All the lands are cultivated as a one farm. No Choultry is functioning.
12.	do	Chodayanko- ttam.	Kamatchyaman Choultry Trust.	70 "	These lands are cultivated by family members and not utilized for any choultry purpose.
13.	-do-	Alamalai	Nilathuyatchiyaman Somavarathird Anna- Dhana Trust.	168 "	All the lands are cultivated on lease by big land owners. No Annadhanam at any time.
14.	-do-	Velanganni Alamalai Gramathumedu	Kailasathevar Choultry Trust	300 "	No Choultry is maintained. The lands are cultivated by family members.
15.	Koradacherry Block	Meppalam	Yazhapanam Visvalingam Vaideshwara Trust in Jaffna.	86 acres	The land is in Mepalam near Thiru- varur, Thangavour Dist. but the temple is in Jaffna. Not a pie is spent for the temple. Two brothers, one living at Vallivalam the other at Jaffna made the trust. The brother Vallivalam was managing the lands. Dispute arose between the brothers regarding the income from the land. The brother at Jaffna wanted his management of the lands. The brothers went to court. Now the case is pending in the Supreme Court for the past 21 years. A receiver is appointed by the Court and he is cultivating and enjoining lands.

10

100

1000

10000

100000

1000000

10000000

100000000

100

1000

10000

100000

1000000

10000000

100000000

1000000000

100

1000

10000

100000

1000000

10000000

100000000

1000000000

100

1000

10000

100000

1000000

10000000

100000000

1000000000

100

1000

10000

100000

1000000

10000000

100000000

1000000000

100

1000

10000

100000

1000000

10000000

100000000

1000000000

100

1000

10000

100000

1000000

10000000

100000000

1000000000

16.	Thiruthurai- pcondi.	Manali	Annadhana Trust	30 acres	The Turst land is managed by a big land lord Sundararam Pillai. The Turst is not used for the purpose.
17.	-do-	Kordicavinay- ger Nallur	Kodiavinayar Turst	30 "	Cultivated by a big land lord Ramalingamudhali- var. Nothing is used for the said purpose.
18.	-do-	Alivalam	K.T.K. Estate Educa- tion Trust.	150 "	Cultivated as a single farm. Not used for any trust.
19.	-do-	Alivalam	Primary Health Centre	150 "	-do-
20.	-do-	Karumbiyar	Abishege Kattalai & Rajanga Kattalai	120 "	Cultivated by land owners. Not used for any trust purposes.
21.	-do-		Thirupathi Anna dhana Turst.	2300 "	Shri Karupprih Mooponar family has lands in 4 Taluks as follows.

Papanasam Taluk

1. Sathyamangalam
2. Utharani
3. Verrancheri
4. Sarukkai
5. Thirumbur
6. Vezhkkai
7. Poonanchari
8. Umbalambadi
9. Salabokam
10. Manakkodu
11. Pattavarthi
12. Paruppur

Vilangaiman Taluk

1. Renganathapuram
2. Nallur
3. Killiyur
4. Thenpathi
5. Thirivenam
6. Poondi
7. Saliamanagalam
8. Arukithupattu
9. Korukaipattu
10. Manapathyyur

Papanasam Taluk

13. Anumanallur
14. Pappanadu
15. Vengayakkalachari
16. Killimanagalam
17. Sozhangahatham
18. Bharathimadu.

Thiruvaiyaru Taluk

1. Sembangudi
2. Villianallur
3. Villiangudi

Kumbakkonam Taluk.

1. Sundaraperumal Koll
2. Kabisthalam
3. Thiruvanchuzhi
4. Pandapuram
5. Neelatha Nallur
6. Thiruvazhathurai
7. Chozhapuram
8. Veppathur.

There is a board at Kabisthalam in the name of Thirupathi Venkateshwara Annadhana Trust. Moopnar family members are hereditary life long trustees. No Annadanam is given such a large scale to possess 2300 acres. Beside this trust there are nearly 500 acres of coconut and Plantain cultivation, to escape the land Ceiling Act by the clause providing exemption for "Thope" (Garden). Also there are several benami transaction in the names of relatives and servants. Ari Karupaiah Moopnar family has in all 4100 acres. (Figures will have to be investigated in all the villages through the village officers.)

1. The first part of the report is a general introduction to the subject of the study. It discusses the importance of the study and the objectives of the research.

2. The second part of the report is a detailed description of the methodology used in the study. It includes information about the sample, the data collection methods, and the statistical analysis.

3. The third part of the report is a presentation of the results of the study. It includes tables, figures, and text describing the findings.

4. The fourth part of the report is a discussion of the results and their implications. It discusses the strengths and limitations of the study and suggests areas for future research.

5. The fifth part of the report is a conclusion. It summarizes the main findings of the study and provides a final statement on the research.

1. The first part of the report is a general introduction to the subject of the study. It discusses the importance of the study and the objectives of the research.

2. The second part of the report is a detailed description of the methodology used in the study. It includes information about the sample, the data collection methods, and the statistical analysis.

3. The third part of the report is a presentation of the results of the study. It includes tables, figures, and text describing the findings.

4. The fourth part of the report is a discussion of the results and their implications. It discusses the strengths and limitations of the study and suggests areas for future research.

5. The fifth part of the report is a conclusion. It summarizes the main findings of the study and provides a final statement on the research.

1. The first part of the report is a general introduction to the subject of the study. It discusses the importance of the study and the objectives of the research.

2. The second part of the report is a detailed description of the methodology used in the study. It includes information about the sample, the data collection methods, and the statistical analysis.

3. The third part of the report is a presentation of the results of the study. It includes tables, figures, and text describing the findings.

4. The fourth part of the report is a discussion of the results and their implications. It discusses the strengths and limitations of the study and suggests areas for future research.

5. The fifth part of the report is a conclusion. It summarizes the main findings of the study and provides a final statement on the research.

1. The first part of the report is a general introduction to the subject of the study. It discusses the importance of the study and the objectives of the research.

2. The second part of the report is a detailed description of the methodology used in the study. It includes information about the sample, the data collection methods, and the statistical analysis.

3. The third part of the report is a presentation of the results of the study. It includes tables, figures, and text describing the findings.

4. The fourth part of the report is a discussion of the results and their implications. It discusses the strengths and limitations of the study and suggests areas for future research.

5. The fifth part of the report is a conclusion. It summarizes the main findings of the study and provides a final statement on the research.

SAMPLES OF BENAMI TRANSACTION IN INDIVIDUAL NAME OF FAMILY MEMBERS, FRIENDS, SERVANTS ETC.

*1. Vedapathimangalam V.S.Thiyagraja
Kothur, Kulamankkam Mudhaliyar

V.S.Thiyagaraja Mudhaliyar established a Sugar mill and transferred the 4000 acres for sugar cane cultivation and a sugar can corporation was formed. All the lands are under the lease of the sugar can corporation. The sugar cane corporation failed to function successfully. At present the land are under the control of revenue department, and the lands are laid in waste for the past six years. The people in the concerned villages suffer without employment.

The Kunniyur family has three brothers and their lands are under benami in the name of family members, friends and servants. Kunniyur family has not plots in four blocks of East Thanjavur.

2.	Kottur Block	Kunniyur Veerakki Alathur Ammanur Pambanthur Puzhuthikudi Idumbhaven Cultivable land in coconut grove cultivable land in Ca- surina grow Idumbavanam Melathangai Vergudi Pappandur	52 acres 112 330 35 80 55 250 250 66 250 124 250 1854	V.K.K. Abdul Gaffar V.T.K. Raju Farm V.T.K. Vijay Laxmi.	80 acres 50 acres 30 acres	Benami in family members and cultivated one farm. Benami in family members and lying waste in 3 years -do-
3.	Nagapattanam	Vazaokkur				
4.	Thitruvarur	Vaippur				
		-do-				

THE STATE OF TEXAS, COUNTY OF DALLAS, ss. I, the undersigned, Clerk of the County, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the records of the County.

Witness my hand and seal of office at Dallas, Texas, this 10th day of May, 1906.

Attest my hand and seal of office at Dallas, Texas, this 10th day of May, 1906.

County Clerk

10

10

10

10

10

10

10

10

10

10

10

10

5.	Thirumurangal	Kettumavadi	Raja Gopal Iyer	360 acres	All the 360 acres are in Benami names of relatives, friends and servants. 50 acres are lying waste.
6.	Nagapattinee	Panangudimuttam	Farook Marakkayar	40 acres	In Benami all the 40 acres lying waste.
7.	-do-	Alathur	Abdul Ahmed Khadav	240 acres	Benami in the name of relatives and friends. At present lands are lying waste.
8.	-do-	Akrappakkam	Nazeer Ahmed	30 Acres	Lands lying waste
9.	Thiruvarur	Vaippur	Captain Ahmed Routhar	300 acres	The lands are under Benami & cultivated as one farm
10.	Thiruthuriaipoondi	Pambathur	Swamynatha Mudaliyar	50 acres	Under benami and cultivated as one farm
11.	-do-	Munniyur Alathampadi	A.K.M. Pannai	120 acres	Under Benami but cultivated as one farm
12.	-do-	Palavanakudi	Shaik Abdul Khadar	50 acres	Under Benami
13.	-do-	Ammanur	Sethurathina Aiyer	400 acres	Under benami but cultivates as one farm
14.	Nagapattinam	Vazhakkai	A.M.B. Chandra-		
15.	-do-	Keezhayur	sekara Chettiyar	75 acres	-do-
16.	-do-	Kameshwaram	Madaputam Rauthur	60 acres	-do-
17.	Thiruthurajpoondi	Manali	Parvathi Anni	80 acres	-do-
18.	-do-	Sathangudi	Kungithapatham Thiruvarur	156 acres	-do-
			V.S.Thiyagaraja Mudaliyar	400 acres	This land was given to sugar cane corporation. But now remain uncultivated.

-3-

- | | | | | | |
|-----|-------------------|-------------------------------|-----------------------|-----------|--------------------------------------|
| 19. | Thiruthuraipoondi | Manali | S.Sundarassampallai | 75 acres | Under Benami cultivated as one farm. |
| 20. | -do- | Kodiaya
vinayaga
Nallur | Thyagaraja Mudaliyar | 150acres | -do- |
| 21. | -do- | ilathampadi | A.K.M.K.
Ilangovan | 290 acres | Under benami managed as one farm. |

"LAND BELONGS TO GOD ie. TO SOCIETY" - GANDHIJI

PATTALIGAL PANNAI ASHIM
(Community Training Centre for Agri. Labour)
Valivalam P.O. 610 207, Thanjavur District,
Tamil Nadu, INDIA.

28th July, 1988

Dear Shri P.N. Bhagavatiji,

I am glad Shri Prembhai of Banwasi Seva Ashram wrote to you in connection with our representation to the President regarding the benami ordinance. This benami ordinance is just a bolt from the blue promulgated by the Central Government. Where was the demand for such an ordinance, which will not have any impact in the society. The Law Commission had strongly recommended for the Abolition of the benami transfers and Tamilnadu Government passed by an over whelming majority Benami Abolition Bill in 1982 which was vetoed by the center when it was sent for President's assent. The present ordinance is not for Abolition of the benami transfer but confirming the illegal transfers of the land owners, by bestowing ownership to the benamidhars. If the benamidhars is a landless poor below the poverty line, he should be given the ownership but benamidhars of non-cultivation class should not be given the ownership. After all neither the servant nor the close relation as the benamidhars will never claim for ownership. The ordinance will be nullified. This ordinance will be of significance if the Government takes the responsibility of publishing the benamidhars with the extent of land, survey number etc. and ownership bestowed only to those who are below the poverty line.

I had the opportunity to meet our President Shri R.Venkataramanji, Shri Bhardwaji, the Union Law Minister, and also Mrs. Sheila Dixit the Minister for Parliamentary Affairs. They were definite that the Government will not take such responsibility of publishing the names of benamidhars. They are of the view that only Voluntary agencies like Sarvodaya can take up the cause of educating and organising the Benamidhars. But unless the untill we know who are the benamidhars, it is not possible to educate or organise them.

The most glaring benami transactions in large extent of land are in the name of false trust, for religion, public services etc. Both the President and the Law Minister said that the benami trusts cannot come under the purview of the ordinance. It will have to be dealt with by a separate Act.

The Supreme Court a few months before declared 25 benami trusts created by Bodh Gaya Mahant as bogus and ordered 25000 acres to be taken over and distributed to the landless. We have hundreds of such false trusts throughout the country and a sample survey of few cases in East Thanjavur is enclosed herewith for your information. I hope some of you who are interested in the public cause will take up the matter and file a suit against such benami trust in Supreme Court. We shall gather more informations of bogus trusts and send you in course of time. A press Conference was held at Madras on 26th July, 1988. Herewith enclosing my press statement and also what appeared in Indian Express on 26th July. We expect your early reply.

With kind regards,

Sd/--

S. JAGANNATHAN

Encls: aa.

Copies to:

Justice Shri D.A. Desai,
Justice Shri R.N. Mishra,
Prof. Upendra Baxi,
Shri Jose Werghese.

ITAT Bar Association, New Delhi
Study Circle Meeting- *Benami* Law- 24th April, 2026, CSOI, K G Marg, New Delhi

The Prohibition of *Benami* Property (Transactions) Act, 1988- Broad Statutory Scheme

The Journey so for.....

Date	Event
20-12-72	Hon'ble Union Law Minister sends Letter of Reference (2462/72/Adv., F) to the Law Commission of India seeking a detailed Report for prohibiting <i>benami</i> transactions in India Subsequent to the categorical demand made during the course of debate in the <i>Rajya Sabha</i> on the Taxation Laws Amendment Bill, 1971 to prohibit <i>benami</i> transactions (SOURCE- Para 1.2, 57 th Report of the Law Commission, page---- of the compilation)
-	A detailed questionnaire is sent by the Law Commission to all the stake holders including State Governments, High Courts, Bar Associations, Chambers of Commerce, and other interested persons and bodies seeking their views for enacting a dedicated Act to prohibit <i>benami</i> transactions in India (SOURCE- paras.6.4 & 6.5, page 29 of the 57 th Report of the Law Commission of India)
7-8-73	The Law Commission, headed by Justice P B Gajendragadkar, Former Chief Justice of India and the then Chairman, Law Commission submit its 57 th Report to the Union Government titled FIFTY-SEVENTH REPORT BENAMI TRANSACTIONS (SOURCE- Letter dated 7-8-73 of the Chairman, Law Commission, page ----of the compilation) The Law Commission attributes following reasons for entering into <i>benami</i> transactions- ✓ Desire to make secret provisions in the prevalent joint Hindu Family System ✓ Fraud on creditors ✓ Specific political and social risks, & ✓ Tax evasion, victim being the State (SOURCE- Para 1.7, 57 th Report) The Law Commission identifies broad tests for determining whether a transaction is <i>benami</i> whose effect, either severally or cumulatively, has to be considered ✓ Custody of the title deed ✓ Motive ✓ Possession of the property and its enjoyment, & ✓ Source of Consideration (SOURCE- Para. 6.22, page 33) These broad tests were duly endorsed by the subsequent Law Commission's Report being 130 th , dated 14-8-1988 in para. 3.1 thereof in the following categorical terms- <i>"As the question of benami transactions has been examined way back in 1973 by the Law Commission, the present effort is not to re-examine and re-write everything concerning benami. In fact this report may be treated as a further continuation of the recommendations made in the earlier report."</i>
14-8-88	The Law Commission of India submits its 130 th Report titled ONE HUNDRED THIRTIETH REPORT ON BENAMI TRANSACTIONS- A CONTINUUM This Report fairly enlarges the scope of the term PROPERTY for the enforcement of <i>Benami Act</i> in the following unequivocal terms in paras. 2.10 & 2.11 thereof-

	<i>"The assumption that benami transactions only relate to immovable property does not bear scrutiny. Benami holders of shares of joint stock companies, benami or fictitious bank account holders, benami holders of fixed deposits in companies, name lenders for bearer bonds issuance of which was legitimated by a decision of the Supreme Court and encouragement to benami in no uncertain measures, all these have contributed today to defeating of tax laws, violation of social morality and concentration of property standing in the way of development programmes of the nation. The approach of the Law Commission accordingly is that benami transactions in respect of any property, including intangible property like the patents and the copyright, should be covered in the proposed legislation. The legislation must have extensive application as not to permit a single loophole for providing an escape route to any kind of property which can be held benami. And the entire gamut of umbrella of protection to benami must be completely, fully and effectively folded up. This is our approach and the various aspects are dealt with in the light of this approach. This approach ensures that a withdrawal of the protection on fundamental right to property, coupled with total denial of any protection of any legal formulation to benami property, when put in juxtaposition, would at least go a long way in eliminating power of wealth as represented by property to the common detriment."</i> Considering the above recommendations of the Law Commission, the term Property for the purposes of the PBPT Act is defined in its section 2(26) as under- <i>"property" means asset of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property;</i>
19-5-88	The President promulgates the Ordinance Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988 (All the provisions were deemed to be effective from 19-5-88, except as contained in Ss. 3, 5, & 8 which were made effective from 5-9-1988- S 1(3))
5-9-88	The Prohibition of <i>Benami</i> Property (Transactions) Act, 1988 is enacted w.e.f. 5th September, 1988
23-8-22	The Hon'ble Supreme Court delivers judgment in the case of UOI v M/s Ganpati Dealcom P Ltd in CA no 5783/2022, holding <i>inter alia</i> in para 18.1 as under- a) <i>Section 3(2) of the unamended 1988 Act is declared as unconstitutional for being manifestly arbitrary. Accordingly, Section 3(2) of the 2016 Act is also unconstitutional as it is violative of Article 20(1) of the Constitution."</i> Article 20(1) reads as under- Protection in respect of conviction for offences. —(1) NO PERSON shall be convicted of any offence except for violation of a 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.
18-10-24	The Review Petition (Civil) no. 359/2023 filed by UOI results into the recall of this Judgment wherein following specific directions are also issued in para 7 thereof-

ITAT Bar Association, New Delhi
Study Circle Meeting- *Benami Law*- 24th April, 2026, CSOI, K G Marg, New Delhi

	<i>"Where any other PROCEEDINGS have been DISPOSED OF by relying on the judgment of this Court in Ganpati Dealcom Private Ltd (supra), liberty is granted to the aggrieved party to seek a review in view of the present judgment."</i>
12-2-25, & 4-11-25	The Hon'ble Supreme Court delivers judgments disagreeing with the <i>Ganpati Dealcom Judgment</i> dismissing the Review Petitions in the cases of <i>DDIT(BPU UNIT) v Kokilaben Chhaganbhai Patel</i> , followed by <i>UOI v Virendra Amrutbhai Patel</i>
<i>The Journey Continues.....</i>	

NOTES TO PONDER

Attacker
 0 locker cases - perception
 by someone else
 0 retraction -

Reason
 Lam 2 Appellate -
 22.1.1987

RB1 V UOI

1987 (SCC) 1
 424

ITAT Bar Association, New Delhi
 Study Circle Meeting- Benami Law- 24th April, 2026, CSOI, K G Marg, New Delhi

Legal analysis of the directions of Hon'ble Supreme Court in Ganpati Dealcom's case dt 18-10-24 followed by subsequent Judgments

List of provisions

u/s 24(1)

Para 7 of Ganpati Dealcom Judgment dated 18-10-24 reads as under-

"Where any other **PROCEEDINGS** have been **DISPOSED OF** by relying on the judgment of this Court in **Ganpati Dealcom Private Ltd (supra)**, liberty is granted to the aggrieved party to seek a review in view of the present judgment."



A large number of **PROCEEDINGS** under the PBPT Act were dropped (*disposed of*) at the levels of **IO**, **AA**, and the **Appellate Tribunal** respectfully following the judgment of the Hon'ble Supreme Court in the case of **UOI v Ganpati Dealcom P Ltd**, dated 23-8-22. None of these Authorities are statutorily empowered to issue **JUDGMENTS**, illustrated below extracting the relevant statutory provisions of the PBPT Act

STAGE-I- Inquiry and Provisional Attachments under the PBPT Act

Statutory Authority- Initiating Officer (IO)

Statutory powers	Section	Nomenclature
Provisional attachment during pendency of Notice period u/s 24(1) "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"	24(3)	ORDER
Continuation of provisional attachment already made u/s 24(3) during pendency of Notice period u/s 24(1) "(4) The Initiating Officer, after making such inquiries and calling for such reports or evidence as he (a) where the provisional attachment has been made under sub-section (3),- (i) pass an ORDER continuing the"	24(4)(a)	ORDER
Where provisional attachment is not made earlier "(b) where provisional attachment has not been made under sub-section (3), - (i) pass an ORDER provisionally attaching the"	24(4)(b)	ORDER

STAGE-II- Adjudication of benami property

Statutory Authority-Adjudicating Authority (AA)

"The Adjudicating Authority shall, after- (a).... (b).... (c).... 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 ..."	26(3)	ORDER
---	-------	--------------

(a)....
(b)....
(c)....

not traceable, fictitious.

STAGE-III- 1st Appeals to Appellate Tribunal

1st Appeal "On receipt of an appeal under sub-section (1), or sub-section (1A), the Appellate Tribunal May, after giving the parties to the appeal an opportunity of being heard, pass such ORDERS therefrom as it thinks fit."	46 (3)	ORDER
Rectification of mistakes by Appellate Tribunal "The Appellate Tribunal or any authority may, in order to rectify any mistake apparent on the face of record, amend any ORDER passed by it...."	47	ORDER

ITAT Bar Association, New Delhi
Study Circle Meeting- Benami Law- 24th April, 2026, CSOI, K G Marg, New Delhi

Both the subsequent Review petitions of the UOI are dismissed by the Hon'ble Supreme Court in **DDIT(BPU UNIT) v Kokilaben Chhaganbhai Patel**, and in **UOI v Virendra Amrutbhai Patel** following the Judgment in MA no 414/2023 dated 17-5-24 in the case of **Govt of NCT of Delhi v M/s K L Rathi Steels Ltd and Others** on the basis of the *Explanation* to Rule 1 of Order XLVII of Code of Civil Procedure, 1908. The Cited *Explanation* is extracted below-

"The fact that the decision on a question of law on which the JUDGEMENT of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment."

Analysis of the relied upon *Explanation* to Rule 1 of Order XLVII of Code of Civil Procedure, 1908

Explanation	Analysis
<i>"The fact that the decision on a question of law"</i>	Only the jurisdictional High Court may entertain the Appeal subject to the involvement of QUESTION(S) OF LAW under the scheme of the PBPT Act as under- <i>"49. Appeal to High Court.- (1) Any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order.</i> ↓ <i>(6) The High Court shall decide the questions of law so formulated and deliver the JUDGMENT"</i> Example- The Hon'ble High Court of Delhi delivers Judgment on 23-8-2022 u/s 49 of the PBPT Act in the case of IO, BPU-I, Delhi v ABC Ltd on the substantial questions of law formulated by it u/s 49(3) thereof
<i>"on which the JUDGEMENT of the Court is based has been reversed or modified"</i>	- Only the JUDGEMENTS delivered by High Courts on the <i>questions of law</i> fall under this category. - The ORDERS issued by IO, AA as well as by the Appellate Tribunal, illustrated in pre-page are not covered Example- The ratio so laid down in the case of IO, BPU-I, Delhi v ABC Ltd is reversed on 24-10-24
<i>"by the subsequent decision of a superior Court in any other case"</i>	Means that the judicial ratio laid down in a subsequent Judgment by the superior Court ie Hon'ble Supreme Court in any other case... Example- by the Hon'ble Supreme Court in the case of XYZ Ltd v the IO BPU-II, Delhi
<i>"shall not be a ground for the review of such judgment"</i>	The ratio laid down by the Superior Court ie the Hon'ble Supreme Court in the subsequent case does not constitute a ground for seeking review of the earlier Judgment in another case Example- The ratio laid by the Hon'ble Supreme Court in the case of XYZ Ltd v the IO BPU-II, Delhi in the Judgment dated 24-10-24, reversing the earlier ratio laid down by the Hon'ble High Court of Delhi in the case of IO, BPU-I, Delhi v ABC Ltd is not a ground for seeking review
EXAMPLIFIED	

ITAT Bar Association, New Delhi
Study Circle Meeting- *Benami* Law- 24th April, 2026, CSOI, K G Marg, New Delhi

- The Hon'ble High Court of Delhi delivers Judgment on 23-8-2022 in the case of **M/s ABC Ltd v IO, BPU-I, Delhi** laying down the **ratio** on the questions of law formulated therein u/s 49(3) of the PBPT Act. SLP filed by **M/s ABC Ltd** is rejected by the Hon'ble Supreme Court on 22-09-24
- The **ratio** so laid down is **subsequently reversed** by the Hon'ble Supreme Court on 24-10-24 in another case of **XYZ Ltd v IO BPU-II, Delhi**
- **M/s ABC Ltd** is precluded from seeking Review of rejection of its SLP

NOTES TO PONDER

The Broad Statutory Mechanism of the Prohibition of *Benami* Property Transactions Act, 1988

PREMBLE				
"An Act to prohibit <i>benami</i> transactions and the right to recover the property held <i>benami</i> and for matters therewith or incidental thereto. BE it enacted by the Parliament in the Thirty-ninth year of the Republic of India as follows:- "				
Chapter	Title	Sections		Provide for/ Deals with
		From	To	
I	"PRELIMINARY"	1	2	A- Short title, extent of application, commencement date, B- Defines key terms for its enforcement
II	"PROHIBITION OF BENAMI TRANSACTIONS"	3	6	C- Prohibits <i>benami</i> transactions as well as the right to recover the property held <i>benami</i> D- Prohibits re-transfer of property by <i>benamidar</i>
III	"AUTHORITIES"	7	23	E- Provides for various Authorities for effective enforcement of the PBPT Act, including the Adjudicating Authority, Approving Authority, Initiation Officer, their powers, and jurisdiction <i>etc.</i>
IV	"ATTACHMENT, ADJUDICATION AND CONFISCATION"	24	29	F- Issue of notices, provisional attachment by the Initiating Officer, its Adjudication by the Adjudicating Authority G- Confiscation, its vesting in Central Government, management and possession of the property adjudicated <i>benami</i>
V	"APPELLATE TRIBUNAL"	30	49	H- Establishment, composition <i>etc.</i> of the <i>Appellate Tribunal</i> ie the First Appellate Authority under the PBPT Act I- First Appeals under the PBPT Act to lie before the <i>Appellate Tribunal</i> (S46), its procedure and powers J- Second appeal under the PBPT Act against order of the <i>Appellate Tribunal</i> to lie before the Hon'ble High Court (S49) only on any question of law arising from such order
VI	"SPECIAL COURTS"	50	52	K- Central Government's powers to designate one, or more Special Courts in consultation with the Hon'ble Chief Justice of the High Court for trial of the offences committed under the PBPT Act L- Appeals and revisions of the Orders of the Special Courts
VII	"OFFENCES AND PROSECUTIONS"	53	55A	M- Imprisonment, and penalties <i>etc.</i> for committing the offence of <i>Benami</i> transactions,

ITAT Bar Association, New Delhi
Study Circle Meeting- *Benami* Law- 24th April, 2026, CSOI, K G Marg, New Delhi

				N- Initiating Officer's powers to tender immunity for obtaining evidence(s) to the <i>benamidar</i> , or any other person except the Beneficial Owner with the prior approval of Sanctioning Authority
VIII	"MISCELLANEOUS"	56	72	Includes the following important provisions- • Application of other laws not barred • Offences by companies • Proceedings under the PBPT Act against legal representative(s) • Overriding effect of the PBPT Act

THANKS