GAHC010073142020

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 2184/2020

1:DIPIKA CHAMUA
W/O DR. DURLAV CHAMUA, PERMANENT R/O FLAT NO. 6C, 6TH FLOOR, PROTECH VIEW APARTMENT HENGRABARI, GUWAHATI-6

VERSUS

1:THE UNION OF INDIA AND 2 ORS.
REP. BY THE SECRETARY DEPTT. OF REVENUE MINISTRY OF FINANCE, GOVT. OF INDIA, NEW DELHI-110001

2:THE JOINT COMMISSIONEFR OF INCOME TAX (OSD) (BP)
ROOM NO. 316
3RD FLOOR
AYAKAR BHAVAN
G.S. ROAD
CHRISTAN BASTI
GUWAHATI-781005

3:THE DEPUTY COMMISSIONER
NAGAON
ASSAM 78200

Advocate for the Petitioner : MR. K N CHOUDHURY
Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
ORDER

Date : 20-05-2020

Heard Mr. K. N. Choudhury, learned Senior counsel, assisted by Mr. R. Das, learned counsel for the petitioner. Also heard Mr. Sanjay Sarma, learned Standing Counsel, Income Tax for the respondent Nos. 1 & 2 and Mr. G. Pegu, learned Government Advocate, Assam for the respondent No. 3.

Matter relates to attachment of the property of the petitioner under the provisions of the Prohibition of Benami Property Transactions Act, 1988.

It is alleged that the petitioner got the property involved in this proceeding through benami transactions managed by her husband Dr. Durlav Chamua.

Mr. Choudhury, learned Senior counsel, submitted that all the transactions involved in this case are of the year 2011 and placed the unamended provisions of Section 3 pertaining to said Prohibition of Benami Transactions of said 1988 Act, wherein it was specified that -

> "*(1) No person shall enter into any benami transaction,*
>
> *(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."*

Mr. Choudhury, learned Senior counsel, has also brought to the notice of the Court that Section 3 of the said 1988 Act was amended w.e.f. 01.11.2016.

Mr. Choudhury, learned Senior counsel, further placed that in the present case, the respondent Nos. 1 & 2 issued notice of attachment under Section 24(3), which is under Chapter IV of the said 1988 Act and that said Chapter IV of 1988 Act was also brought into force by the amendment of said 1988 Act w.e.f. 01.11.2016.

Since the amended provisions of Section 3 and the Chapter IV of said 1988 Act, including Section 24 therein are prospective in nature, i.e., w.e.f. 01.11.2016, Mr. Choudhury, learned Senior counsel, submits that the property of the petitioner, being the wife of said Durlav Chamua, transacted in the year 2011, cannot be attached by the impugned orders.

Hence, this writ petition, challenging the impugned show cause notice dated 06.03.2020 issued under Section 24(1) of said 1988 Act (as amended in 2016) (Annexure-3) and the orders dated 06.03.2020 issued under Section 24(3) of said 1988 Act (Anneuxre-4 series) all issued by the Joint Commissioner, Income Tax (OSD) & Initiating Officer under the Prohibition of Benami Property Transactions Act, 1988, Guwahati.

Submission of Mr. Choudhury, learned Senior counsel, has force.

Mr. Sarma, learned Standing Counsel, Income Tax, also admits that the amendments of said 1988 Act, brought into force on 01.11.2016, are prospective in nature.

Issue notice, returnable by **19.06.2020**.

As Mr. Sanjay Sarma, learned Standing Counsel, Income Tax and Mr. G. Pegu, learned Government Advocate, Assam, have accepted notice on behalf of the respondent Nos. 1 & 2 and 3 respectively, no formal notices need be issued to those respondents. However, the petitioner shall serve requisite extra copies of this petition including the Annexures appended thereto to Mr. Sarma and Mr. Pegu on or before 22.05.2020.

In the interim, the proceedings initiated by the impugned show cause notice under No. F.NO.Dr. Durlav Chamua/DCIT/BP/GHY/2019-20/335 issued under Section 24(1) of said 1988 Act (as amended in 2016) (Annexure-3) and the impugned orders issued under Section 24(3) of said 1988 Act under Memo Nos. Dr. Durlav Chamua/DCIT/BP/GHY/2019-20/338-41, No. Dr. Durlav Chamua/DCIT/BP/GHY/2019-20/342-45 and No. Dr. Durlav Chamua/DCIT/BP/GHY/2019-20/346-49 all dated 06.03.2020 (Annexure-4 series) as well as the reminder under No. F.NO.Dr. Durlav Chamua/DCIT/BP/GHY/2019-20/390 dated 04.05.2020 (Annexure-7), all issued by the JCIT (OSD) & Initiating Officer under the pbpt Act, 1988, Guwahati shall remain suspended till the returnable date, i.e. 19.06.2020.

List this matter along with WP(C) No. 2183/2020.

JUDGE

Comparing Assistant