

BENAMI TRANSACTION ACT IN REAL ESTATE ON BLACK MONEY

¹A.SUBHASINI, ²M.YOKESH

¹Student, I st year, B.A.,LLB., Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences,
Saveetha University,Chennai-77, Tamil Nadu, India

²Assistant Professor of Law, Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences,
Saveetha University,Chennai-77, Tamil Nadu, India

¹subhadorami1431@gmail.com, ²yokeshm.sse@saveetha.com

INTRODUCTION:

Benami transactions is commonly accepted in India is that 'where a person buys property with his own money but in the name of another person or buys property in his own name but subsequently transfers it into the name of another person, without any intention in either case to benefit such other person. The transaction is called 'benami' and the person in whose name the transaction is effected is called 'benamidar'. While generally prevalent in the case of immovable properties-land and buildings-where registration of the property in the name of the owner can only secure his/her legal title, benami holding is equally common in respect of various kinds of movable properties. For example, Shares of companies are often purchased or applied for and allotted in the names of persons other than the real owner who furnishes the consideration. Businesses are also often carried on through benamis¹. Most benamidars are relations generally husband, wife and children. The objective is to have the benefits of bifurcation of income and wealth without properties going away from the control or area of close relations. The adverse impact of benami transactions on the country's economy is large. It bifurcates income earning activities into fragments leading to loss of tax revenue for the government which could have been used for the welfare and development of nation. Benami deals are one of the main reason for proliferation of black money in big way and poverty and inequity could not be eliminated unless generation of black money is controlled. In India, where people prefer to invest their unaccounted wealth in real estate, benami

transactions especially in realty sector have become major avenues for holding and generation of black money. These transactions have inflated realty prices, narrowed options for home buyers and kept own house a dream beyond reach for many. The Benami Transactions (Prohibition) Act, 1988.

OBJECTIVES

- To study about the benami transaction act in real estate on black money
- To analyse the impacts based on transaction act on black money
- To study about the uplifted prohibition act on benami transaction
- To analyse the billing process on benami transaction act

HYPOTHESIS

NULL HYPOTHESIS

Is benami transaction peculiarly different from all other transaction act

POSITIVE HYPOTHESIS

Is benami transaction act in real estate on black money is more preferable to our Government in India

CONTENT OF THE PAPER

Impact of Benami Transactions

It is a small piece of legislation, consisting of 9 sections with only three substantive sections — sections 3, 4 and 5. Section 2 deals with definitions, where a 'benami transaction' has been defined as "any transaction in which property is transferred to one person for a consideration paid or provided by another person". This definition is defective in the sense that it does not consider the situation where a property may not be transferred but acquired initially. Section 3 prohibits benami transactions by enacting that no person shall enter into any benami transaction. This does not prohibit purchase of properties in the names of wives or unmarried daughters. However, benami nature of such acquisitions shall be presumed. Sub-section (3) of

this section provides that whoever enters into any benami transaction shall be punishable with imprisonment upto three years or with fine or with both. Section 4 bars right of recovery of property held benami from the side of the real owner. However, exceptions have been provided in cases of Hindu Undivided Family properties. Section 5 stipulates that properties held benami shall be liable to acquisition by such authority after following the prescribed procedure without payment of any amount for acquisition. One handicap in administering the Act relates to burden of proof. It is to be discharged by the person who alleges benami and this needs a well-organised machinery to carry out proper groundwork and initiate action for acquisition. The substantive provisions of the Benami Act can be invoked only when the benami nature of deal gets established. Because of this, the impact of the legislation gets diluted.

To remove these infirmities, a new law was proposed by the UPA Government in 2011 to replace the existing Act³.

Benami Transactions (Prohibition) Bill, 2011

The Bill was introduced in Lok Sabha on 18 August, 2011 which proposed replacing the Benami Transaction (prohibition) Act, 1988.

The Benami Transactions (Prohibition) Bill, 2011, inter-alia, provides for the following, namely:—it prohibits benami transactions by any person, except in the case of benami transactions entered into in the name of spouse, brother or sister or any lineal ascendant or descendant;

it provides that Benami property arising out of prohibited Benami transaction is liable to confiscation by the Central Government and such property shall vest absolutely in the Central Government without paying any compensation;

it prohibits right of the benamidar to recover property held benami;

it provides that the Initiating Officer, the Approving Authority and the Administrator shall be the authorities for the purposes of the Bill;

it provides that the Adjudicating Authority and the Appellate Tribunal established under the Prevention of Money-Laundering Act, 2002 shall respectively be the Adjudicating Authority and the Appellate Tribunal for the purposes of the Bill and any person aggrieved by an order of Adjudicating Authority may prefer an appeal to the Appellate Tribunal;

it provides that any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court on any question of law;

it enables the Central Government, in consultation with the Chief Justice of the High Court, to designate one or more Courts of Session as Special Court or Special Courts for the purpose of the Bill;

it provides penalty for entering into prohibited benami transactions and for furnishing any false documents in any proceeding under the Bill;

it provides for transfer of any suit or proceeding in respect of a benami transaction pending in any Court (other than High Court) or Tribunal or before any authority to the Appellate Tribunal as provided in the Bill;

it also proposes to make consequential amendments in the Prevention of Money-Laundering Act, 2002.

Benami Transactions (Prohibition) Bill, 2011 was referred to the standing committee on finance on 13 September 2011.

The Committee presented its report on 26 June 2012 containing the following key recommendations.

- Extension of provisions of Bill to the State of Jammu and Kashmir also in consultation with the State Government, keeping in view the economic gravity,
- Maximum punishment up to 3 years as prescribed under the existing Benami Transactions (Prohibition) Act, 1988
- No exemption other than purchasing property, by any person in the name of his/her spouse or unmarried daughter
- Reference to the mandate derived from United Nations Convention Against Corruption to be made.
- Government to look into the entire gamut of exempted as well as non-prohibitive list of transactions and make it minimal so that unscrupulous elements don't circumvent the provisions of the law.
- Income-tax authorities and authorities under the Prevention of Money Laundering Act, 2002 should act in a coordinated manner with registration authorities to track illegal transactions

- Maximum period of six months from the enactment of the law be prescribed to make rules so that fate of Benami Transactions (Prohibition) Act, 1988 is not repeated.

However, the Bill lapsed when the 15th Lok Sabha was dissolved.

After coming into power in May, 2014 the NDA Government have announced a host of measures to curb black money in domestic economy and abroad demonstrating its seriousness in curbing the generation of unaccounted wealth. The benami deals are widespread and is one of the main cause for proliferation of black money. Recognising the limitations under the existing legislation, the Benami Transactions (Prohibition) Amendment Bill, 2015 was introduced to strengthen the Benami Transactions (Prohibition) Act, 1988

The Benami Transactions (Prohibition) Amendment Bill, 2015

The Benami Transactions (Prohibition) Amendment Bill, 2015 which was introduced in Lok Sabha on May 13, 2015 is aimed at curbing the circulation of undisclosed income in the country which is hidden through benami properties. The Bill seeks to: (i) amend the definition of benami transactions, (ii) establish adjudicating authorities and an Appellate Tribunal to deal with benami transactions, and (iii) specify the penalty for entering into benami transactions. The Act, 1988 defines a benami transaction as a transaction where a property is held by or transferred to a person, but has been provided for or paid by another person. The Bill amends this definition to add other transactions which qualify as benami. Under the Act, an Authority to acquire benami properties was to be established by the Rules. The Bill seeks to establish four authorities to conduct inquiries or investigations regarding benami transactions: (i) Initiating Officer, (ii) Approving Authority, (iii) Administrator and (iv) Adjudicating Authority. Under the Act, the penalty for entering into benami transactions is imprisonment up to three years, or a fine, or both. The Bill seeks to change this penalty to rigorous imprisonment of not less than one year which may be extend to seven years, and a fine which may extend to 25% of the fair market value of the benami property.

Real estate has borne the brunt of many unlawful mishaps over the years. Considering the sector's unorganised constitution yet profitable yield, innovative ways were introduced for multiplying gains. While doing so, we ended up fiddling with the unique characteristics of land; volatility and fluctuations are not the inherent features of land, it is too precious to be so.

However, land and its value, as we know it today, is subject to high volatility and great fluctuations. As its very nature, land also could not be subject to any opaqueness – it is right in front of you unlike, say, stocks, and it is as transparent as it gets.

However, years of misuse has led to a change in land and its usage pattern. It has become difficult to differentiate between land and other asset classes. For instance, there are many who believe their investments in the stock market to be safer. No, the concept of property ownership has not lost its charm, it has only gone beyond the comprehension and, if we might add, the reach of a common man. They would rather not have the spell of land and all its charm cast on them. They would not venture into buying any more and that would bring the economy to a standstill.

Several reports of the PropTiger DataLabs show past couple of years have been really painful for the sector with home buyers unwilling to leave the fence. No amount of incentives or discount offers would make them do so. So much so that authorities are now desperate to bring back land's former glory by cleansing it in a phased manner.

Legislations were introduced to do so. The current government introduced two key laws – the Real Estate (Regulation & Development) Act, 2016, and the Benami Transactions (Prohibition) Amendment Bill, 2015 — to clean things up in real estate and allied sectors. To further tighten the noose around those who have been using land to make unlawful gains from real estate, Prime Minister Narendra Modi-led government on November 8 announced existing currency notes of Rs 500 and Rs 1,000 would no more be legal tenders, denominations which were frequently used in transacting high-value assets, with property being the first choice. Things are set to get tougher for those unscrupulous profit-makers in future with the government now planning to go after holders of benami properties hammer and tongs.

Media reports say authorities are chalking up the details of a multi-layer crackdown plan on benami properties that is likely to unfold early next year.

For beginners, benami is a Persian term which means something without a name. However, in the present context, it means proxy. So, a benami property is a property bought by the original owner using a proxy. This helps him park his unaccounted money safely while avoiding paying taxes to the government at the same time. Benami transactions are quite frequent in land purchases, where unaccounted money is used to make the purchase. In the long run, such

transactions jack up the overall cost of housing for the common man apart from the obvious impact of bringing a dark-shady tinge to real estate transactions.

“I believe the capital that is chasing land will come down. I don't see an immediate fall in land prices, but transactions will certainly freeze. The overall decline in land prices will have a cascading effect. I shudder to think of developers who have a huge pile of inventory, they will be in deep trouble. Eventually, they will have to reduce prices,” PropTiger Chief Executive Officer Dhruv Agrawala had told The Financial Express after the government's demonetisation announcement.

The through cleansing of the sector, though painful in the short term, will do much good to land and will reinstate its past glory once more. Sweet are the uses of adversity, indeed!

Will the Benami Transactions (Prohibition) Amendment Bill 2015, make property titles in the real estate sector more transparent by curtailing black money transactions? Here's the expert view

In 2016, the comprehensive Benami Transactions (Prohibition) Amendment Act was passed, with the intent of bringing unaccounted money into the system, as well as seizing benami property and prosecuting those indulging in such activities. The three-fold objective – amending the definition of benami transactions, establishing adjudicating authorities and setting up an appellate tribunal to deal with benami transactions, and specifying the penalty for entering into benami transactions, is laudable.

As with all other regulations, such as the Real Estate (Regulation and Development) Act and the Land Acquisition Rehabilitation and Resettlement (Amendment) Bill 2015, the Benami Transactions act is also aimed at increasing transparency and professionalism in the industry.

The practice of adding the correct name to the property transacted, will bring transparency in the residential markets. With increased transparency, title risks will reduce, thereby, boosting buyers' confidence. It will also increase professionalism and the tag of corruption and unaccounted wealth, which follows most developers, will hopefully, be limited to a few unethical players.

Lender confidence

Lender confidence (whether it is private equity or banks) will also receive a fillip. Multiple ownerships, false ownerships, as well as unknown ownerships plague the residential sector, especially in the mini-metros and non-metro markets. Today, when titles are not clear, the

lending institution often conducts its own title search on a property, before approving the loan. With increasing bad debts, it is no surprise that banks undertake careful scrutiny of the ownership prior to lending.

Land transactions

The number of benami transactions in land, is large and we expect the amendment to have a positive impact, here. It is a well-known fact that land transactions in India, take an average of 1-2 years for completion. With outright purchase of land no longer viable, most developers are opting for joint ventures. After multiple discussions on revenue sharing and interpretations of permissible FSI, it is often found that the land title itself is not clear. With the new amendments, hopefully, clarity on titles will improve. This will help developers, to conclude joint venture transactions in land quickly and open up land parcels for residential development. Exits, by funds participating in transactions, will be quicker.

Impact on supply of residential units

The amended bill seeks to establish four authorities, to conduct inquiries or investigations regarding benami transactions:

- i. Initiating officer
- ii. Approving authority
- iii. Administrator
- iv. Adjudicating authority.

It also states that if an initiating officer believes that a person is a benamidar, he may issue a notice to that person and he may hold the property for 90 days from the date of issue of the notice, subject to permission from the approving authority.

This means that a lot of responsibility lies on the initiating officer, for tracking a benamidar. Secondly, all these authorities have to work in tandem, to establish a property as benami. Lesser moving parts, would have made foul play easier to track. Moreover, once the property is confiscated, it will either be auctioned or used by the government. Hence, the impact on the overall supply in residential markets, will be minimal.

Rich investors, who wish to park unaccounted wealth, usually undertake benami transactions in real estate, to dodge tax authorities and to earn a decent return on investments.

Will such investors be pushed out of the market, thereby, leading to a more end-user driven market and a scaling down of prices? We do not believe that there will be any major impact on residential prices. End-user demand is already present in the market and there has already been a reduction, in the number of active investors in the sector. Prices have remained firm where buyers have met their price expectations. The sector has seen an increase in private equity funding, for well-established developers and this trend is likely to continue.

The ones who are likely to suffer, are the smaller players who receive money from a few large investors during construction, as there will be a fear among the cash-rich investors of being tracked down.

Stringent punitive measures

The new law seeks to change the earlier penalty of one to three years, to rigorous imprisonment of one year up to seven years, and a fine which may extend to 25% of the fair market value of the benami property. Hopefully, this will result in a much-needed cleansing in the real estate sector. The success of the amended act, will lie in its quick and strict implementation. Else, the mystery of true ownership will remain unsolved

CONCLUSION

Reduce the number of landless poor through immediate land regularization, and distribution including identification of surplus and ceiling land to ensure livelihood security. Guarantee the land rights to the marginalized poor i.e. scheduled caste and tribes, women and minorities respecting the principles of social equity, empowerment and inclusion. Reformulate development policies and programs in a manner wherein access, use and ownership of land is the central axis for poverty reduction and sustainable development. Janadesh (2007) 19. The Benami Transactions (Prohibition of the Right of Recover Property) Act, 1989 should be suitably amended so that evasion of provisions of the ceiling law through benami land transactions can be detected, checked and nullified. Introduce Card indexing system for prohibiting fictitious transfers in benami names. Recent development in IT should be properly used to have accurate card indices in a speedy manner. Set up a special squad of revenue functionaries and gram sabha members for identification of benami and fictitious transaction in a time bound manner. Set up Land Tribunals of Fast Courts under Articles 323-B of the constitution for expeditious disposal of appeal cases.

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