

**HIGH COURT OF MADHYA PRADESH JABALPUR**  
**WRIT PETITION NO. 10280 of 2017**

*Kailash Assudani.*

*Vs.*

*Commissioner or Income Tax, Aayakr Bhawan & others*

For Petitioner : Mr. Pratyush Tripathi, Advocate  
For Respondent : Mr. Sanjay Lal, Advocate.

Order posted for: **03.08.2017.**

**(SUJOY PAUL)**  
**JUDGE**

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR**

|                                       |                                                                                                                                                                                                                                                                                                                                                          |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Case No.</b>                       | <b>W.P. No.10280/2017</b>                                                                                                                                                                                                                                                                                                                                |
| <b>Parties Name</b>                   | Kailash Assudani.<br>Vs.<br>Commissioner or Income Tax, Aayakr<br>Bhawan & others                                                                                                                                                                                                                                                                        |
| <b>Date of Judgment</b>               | <b>03/08/17</b>                                                                                                                                                                                                                                                                                                                                          |
| <b>Bench Constituted</b>              | Single Bench                                                                                                                                                                                                                                                                                                                                             |
| <b>Judgment delivered by</b>          | <b>Justice Sujoy Paul</b>                                                                                                                                                                                                                                                                                                                                |
| <b>Whether approved for reporting</b> | YES                                                                                                                                                                                                                                                                                                                                                      |
| <b>Name of counsels for parties</b>   | <b>Petitioner:</b> Mr. Pratyush Tripathi, Advocate<br><b>Respondent:</b> Mr. Sanjay Lal, Advocate                                                                                                                                                                                                                                                        |
| <b>Law laid down</b>                  | No interference is warranted by writ court against a provisional attachment order passed under S.24 of the act.The provisional order is subject to judicial review under s.26 of the act.The amended provisions of the act are complete code in itself.<br>The principles of natural justice are reduced in writing in the shape of amended provision. - |
| <b>Significant paragraph numbers</b>  | <b>Paras 6 and 7</b> -                                                                                                                                                                                                                                                                                                                                   |

**(Order)**  
**03.08.2017**

This petition filed under Article 226 of the Constitution of India is directed against the order dated 29.06.2017 (Annexure-P/1), whereby the Initiating Officer/Assistant Commissioner of Income Tax (Benami Prohibition), Bhopal prohibited and restrained the M/s. Kailesh Associates from transferring or changing the instant property in any manner till passing of necessary order by adjudicating authority under the Prohibition of Benami Property Transaction Act, 1988 (hereinafter called as “the PBPT Act”).

2. Mr. Pratyush Tripathi, learned counsel for the petitioner submits that the Initiating Officer under the PBPT Act issued show cause notice to the petitioner under Section 24(1) of the said Act. In reply to this notice dated 31.03.2017 (Annexure-P/5), the petitioner filed his reply on 07.04.2016

(Annexure-P/6). The petitioner also received summons issued under Section 19 (1) of the said Act (Page No.17). The petitioner appeared before the authority and desired certain documents. The petitioner also filed an affidavit before the Initiating Officer. The Initiating Officer passed the impugned order dated 29.06.2017 and prohibited and restrained M/s. Kailesh Associates (proprietor Mr. Kailesh Assudani) from transferring or changing the above mentioned property till passing of necessary order by the adjudicating authority under Section 26 (3) of the PBPT Act. Criticizing this order, learned counsel for the petitioner submits that the principles of natural justice were not followed by the Initiating Officer. He placed reliance on **1993 (1) SCC 78, [C.B. Gautam vs. Union of India & others]**.

3. *Per-contra*, Mr. Sanjay Lal, learned counsel for the respondents submits that the PBPT Act is recently amended by Gazette Notification (Extraordinary) dated 11.08.2016. The Initiating Officer has taken action strictly in accordance with the enabling provision i.e. Section 19 & 24 of the Act. The order impugned issued by him is subject to passing of necessary order by the adjudicating authority. Mr. Lal, apprised this Court that under Section 24(5) of the Act, the Initiating Officer has already referred the matter to the adjudicating authority. In turn, the adjudicating authority has fixed the hearing of the reference on 23.08.2017. In near future, the petitioner will receive the notice for the said hearing by the adjudicating authority. Petitioner can raise all possible grounds before the said authority. The order of adjudicating authority is also appealable before the appellate tribunal and before this Court as per the provisions of the said act.

4. No other point has been pressed by the learned counsel for the parties.

5. I have heard the learned counsel for the parties at length and perused the record.

6. The show cause notice shows that it is passed on the basis of certain information received by the Initiating Officer. The Initiating Officer has not placed reliance on any documentary evidence. The petitioner demanded

certain documents. Since, no document is relied upon in the show cause notice, the documents were not supplied to the petitioner. The order dated 29.06.2017 is a provisional attachment order under Section 24(4) of the PBPT Act, 1988. The order itself shows that it is issued with the prior approval of approving authority, but will remain subject to passing of necessary order by the adjudicating authority. Section 24(3) of the PBPT Act makes it clear that the order of attachment would be a provisional order. As per Sub-section (5) of Section 24 of the Act, the Initiating Officer after passing the provisional attachment of property is obliged to draw up the statement of the case and refer it to the adjudicating authority. On receipt of reference under Sub-section (5) of Section 24, the adjudicating authority shall issue notice to the stake holders as provided under Sub-section (1) of Section 26 of the Act. Section 26 (3) makes it clear that the adjudicating authority will examine the entire issue and relevant material. Sub-section (3) of Section 26 reads as under:

*“(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. ”*

A plain reading of Sub-section (3) makes it clear that the adjudicating authority is obliged to examine the stand of alleged Benamindar in reply to the show cause notice. He is further obliged to make further inquiry or take into account further report or evidence which he deems fit for deciding the question. He can take into account all relevant documents. After providing due opportunity of hearing to alleged Benamindar, he may pass the order to declare the property as Benami Property and confirm the attachment order or

he may hold that the property cannot be treated as Benami Property . In that case, he may revoke the attachment order. Pertinently, as per Sub-section (6) of Section 26, the adjudicating authority may *at any stage of proceeding, either on the application of any party or suo-moto strike out the name of any property 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.*

In my view, the principles of natural justice are codified in terms of Sub-section (6) of Section 26 of the Act. The impugned order is subject to judicial review before the adjudicating authority. The order passed by the adjudicating authority can be assailed before the appellate tribunal constituted under Section 31 of the Act. The order of appellate tribunal can also be called in question by preferring appeal to the High Court within a period of 60 days. A microscopic reading of provisions make it clear that principles of natural justice are reduced in writing in the shape of amendment in the said act. The amended provisions contains a complete code in itself.

7. In this back drop, it is to be seen whether at this stage any interference is warranted by this Court. In *C.B. Gautam (Supra)* the order of compulsory purchase under Section 269-UD(1) of Income Tax Act was served on the petitioner without issuing any show cause notice and without giving any opportunity to him. The Apex Court in the aforesaid factual back drop interfered in the matter. In the said case ,neither show cause notice was given nor reasons were assigned in the impugned compulsory purchase order. In the present case show cause notice has been issued, opportunity has been given to the petitioner. The order impugned is provisional/tentative in nature. It is subject to judicial review by adjudicating authority. If order of adjudicating authority goes against the petitioner, the further forums of judicial review of said order is available to the petitioner before the appellate tribunal and then before this Court. Hence, against the tentative/provisional order, no interference is warranted by this court at this stage. As per the scheme of the Act, the petitioner can raise all possible grounds before the adjudicating authority. The adjudicating authority is best suited and statutorily obliged to

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consider all relevant aspects. Thus, at this stage no case is made out for interference. Moreso, when adjudicating authority has already fixed the hearing on 23.08.2017. Resultantly, the petition is dismissed.

8. No cost.

*s@if*

**(Sujoy Paul)**  
**Judge**