

(1989) 02 AP CK 0033
In the Andhra Pradesh High Court
Case No : C.C.C.A. No. 7 of 1981

S. Mohammad Anwaruddin APPELLANT
Vs
Sabina Sultana and Others RESPONDENT

Date of Decision : 17-02-1989

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 4
Income Tax Act, 1961 — Section 281A

Citation : (1989) 179 ITR 442

Hon'ble Judges : Y. Bhaskar Rao, J; B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : C. Poornaiah, K. Ramakrishna Reddy, for the Appellant; P.M. Gopala Rao, for the Respondent

Judgement

Jeevan Reddy, J.—A common question relating to the validity and effect of the "Benami Transactions (Prohibition) Act, 1988 (hereinafter referred to as "the Act")," arises in all these matters. Two questions touching the Act are urged before us, viz, (i) that Parliament was not competent to make the said Act applicable to agricultural lands, and (ii) that the Act has no application to transactions anterior to it.

2. On May 19, 1988, the President of India promulgated the "Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988". The Ordinance was promulgated to prohibit the right to recover property held benami and for matters connected therewith or incidental thereto. The Ordinance did not define the expression "benami". Sub-section (1) of section 2 of the Ordinance barred a suit, a claim, or an action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person by or on behalf of a person claiming to be the real owner of such property. Sub-section (2) of section 2 barred defences of a like nature. Sub-section (3) carved out two exceptions to the rule. The exceptions were (a) where the person in whose name the property is held is a coparcener in a Hindu

undivided family and the property is held for the benefit of the coparceners in the family; and (b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity and the property is held for the benefit of another person for whom he is a trustee, or for whom he stands in such capacity. Section 3 declared that the said Ordinance shall not affect the provisions of section 53 of the Transfer of Property Act, or any law relating to transfers for an illegal purpose. Section 4 repealed section 82 of the Indian Trusts Act, 1882, section 66 of the Civil Procedure Code, 1908, and section 281A of the Income Tax Act, 1961.

3. The Ordinance was replaced by the "Benami Transactions (Prohibition) Act, 1988". The Act covers a far broader field than the Ordinance. The statement of objects and reasons appended to the Bill explains the reasons for this change. It says, the Ordinance received a mixed response from the press and the public. It was criticised as a half-hearted measure which had failed to tackle the problem effectively and completely. It was, therefore, felt that a comprehensive law on benami transactions touching on all aspects ought to be brought out and, accordingly, the Law Commission was requested to examine the subject in all its ramifications. The Law Commission submitted its 130th Report, entitled "Benami Transactions-a Continuum", containing certain fresh recommendations. It recommended that (i) benami transactions should cover all kinds of property; (ii) entering into a benami transaction after the commencement of the Act should be declared an offence, exempting from it a transaction entered into by a husband or father for the transfer of property in the name of the wife or unmarried daughters, as the case may be, for their benefit. (The idea evidently was to incorporate the doctrine of advancement as in the English law, into the Indian statute book). (iii) since both the benamidar and the true owner are equal participants in a criminal transaction, the mere prohibition disabling the true owner from recovering the property would result in unjust enrichment of the benamidar. It would therefore, be appropriate to acquire such properties by resorting to a procedure analogous to Chapter XX-A of the Income Tax Act, 1961. (iv) sections 81 and 94 of the Indian Trusts Act to be deleted. These recommendations were accepted by the Government, though not some other recommendations made by the Law Commission, and a comprehensive Bill introduced in Parliament. The Act came into force on...

4. The preamble to the Act recites that it was enacted "to prohibit benami transactions and the right to recover property held benami and for matters connected therewith or incidental thereto". Sub-section (3) of section I declares that sections 3, 5 and 8 shall come into force at once, and that the remaining provisions of the Act shall be deemed to have come into force on May 19, 1988, i.e., the date on which the Ordinance was issued.

5. Section 2 defines certain expressions occurring in the Act. Clause (a) defines "benami transaction" to mean "any transaction in which property is transferred to one person for a consideration paid or provided by another person". The

expression "property" is defined in clause (c) to mean "property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property".

6. Section 3 prohibits benami transactions while section 4 prohibits the right to recover property held benami. Section 5 provides for acquisition of benami properties. These three sections read as follows :

"3. Prohibition of benami transactions. - (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 or the unmarried daughter.

(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be noncognizable and bailable.

4. Prohibition of the right to recover property held benami. - (1) No suit, claim, or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply, -

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.

5. Property held liable to acquisition. - (1) All properties held benami shall be subject to acquisition by such authority, in such manner and after following such procedure, as may prescribed.

(2) For the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under sub-section (1)."

7. Section 6 declares that nothing in this Act shall affect the provisions of section 53 of the Transfer of Property Act, or any law relating to transfers for an illegal purpose. Section 7 repeals sections 81, 82 and 94 of the Indian Trusts Act, section 66 of the CPC and section 281A of the Income Tax Act, 1961.

8. Section 8 confers the rule-making power upon the Central Government. Section 9 repeals the Ordinance, but saves anything done, or any action taken thereunder.

9. A reading of section 3 discloses the following features : No person shall enter into any benami transaction. It applies both to the person who lends his name and also to the real purchaser. However this bar does not apply where a person purchases property for the benefit of his wife or for the benefit of his unmarried daughters. In all such cases, it shall be presumed, until the contrary is proved, that such property was purchased for the benefit of the wife or unmarried daughters, as the case may be. Of course, in a case where it is proved otherwise, the bar operates. Entering into a benami transaction is declared to be an offence. It is made noncognizable and bailable. Coming to section 4, it disables the real owner from enforcing any right in respect of a property held benami against the real owner is also disabled from putting forward a like defence. This disability, however, does not apply where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the coparceners in the family. The disability also does not apply in the case of trusts or where the person in whose name the property is held stands in a fiduciary capacity to the beneficiary. Section 5 declares that all properties held benami shall be subject to acquisition, without any compensation, in the manner prescribed by the Rules. Sections 6, 7, 8 and 9 are self-evident and do not require any explanation. However, it is necessary to mention what the section repealed by section 7 of the impugned Act provided for.

10. Section 81, 82 and 94 of the Indian Trusts Act occurred in Chapter IX, carrying the title "Of certain obligations in the nature of trusts". Section 80 declared that "an obligation in the nature of a trust is created in the following cases". Section 81 said "where the owner of a property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representatives". Section 82 declared "where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration". The section, however, declared that nothing therein shall be deemed to affect section 66 of the Code of Civil Procedure, or section 36 of the Bengal Land Revenue Sales Act, 1859. It would be evident immediately that section 82 contemplated a benami transactions as defined in clause (a) of section 2 of the impugned Act.

11. Section 94 provided "in any case not coming within the scope of any of the preceding sections, where is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands".

12. Section 66 of the CPC barred a plea of benami in the case of court sales. It reads thus :

"66. Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff. - No suit shall be maintained against any person claiming title under a purchase by the court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of someone through whom the plaintiff claims and in any suit by a person claiming title under a purchase so certified, the defendant shall not be allowed to plead that the purchased was made on his behalf or on behalf of someone through whom the defendant claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner."

13. Section 281A of the Income Tax Act was inserted by the Taxation Laws (Amendment) Act, 1972. It contained a provision similar to the one contained in section 3(1) of the impugned Act. According to it, no suit to enforce any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be instituted in any court by or on behalf of a person, referred to in the section as the claimant, claiming to be the real owner of such property unless notice in the prescribed form and containing the prescribed particulars in respect of the property has been given by the claimant within a period of one year from the date of acquisition of the property. This, in main, was the substance of the section, apart from certain procedural aspects and minor particulars.

14. The practice of a person purchasing not in his own name but in the name of another has been prevalent in India since prior to the enactment of the Indian Trusts Act. The Privy Council referred to it in *Gur Narayan v. Sheo Lal Singh* AIR [1918] PC 140; *ILR Cal 566* and *Bilas Kunwar v. Dasraj Ranjit Singh* ILR [1915] (ALL) 557; AIR [1915] PC 96. This practice was referred to as a common practice in this country and was termed quite unobjectionable. Sections 81 and 82 of the Trusts Act incorporated two facets of benami. One is, where a person transfers property to another without intending to convey title, and the other is where a person purchases property not in his own name but in the name of another and

for his own benefit. This is done sometimes without a purpose, but often with a purpose. It may be to screen the property from creditors : It may be to screen the property from creditors; it may be to ward off claims of other members of the family. In the last few decades, however, this had become a device and very welcome device for corrupt elements in the society, for tax avatars, and other unscrupulous persons. It was with a view to check this practice that section 281A was introduced in the Income Tax Act in 1972. And in 1973, the Law Commission submitted its 57th Report, emphasising the negative features of this practice and the need to rectify it. Indeed, it appears from the Report that the Law Commission took up the said issue for examination on a reference made by the Union Government. In its letter, the Union Government had stated that "the problem of property held benami has causing concern to the taxing authorities for some time. The Select Committee on the Taxation Laws (Amendment) Bill, 1969, had also suggested that the Government should examine the existing law relating to benami transactions with a view to determining whether such transactions should be prohibited. This suggestion was reiterated in Parliament during the debate on the Taxation Laws (Amendment) Bill, 1971..." The Report examines the origin of benami transactions, their essence and characteristics, besides their propriety and legality. After examining various alternatives available for checking the evil, resulting from allowing such transactions, the Commission recommended that a law should be made barring the real owner from asserting his rights vis-a-vis the benamidar in a suit, and also debarring him from raising a like defence. The Report clearly points out that the existing provisions have failed to adequately meet the mischief and that a more drastic provision is required. It appended a Draft Bill towards the end of its Report. It was this Report which was made the basis for issuing the Ordinance. Then came the Act with a broader sweep the provisions of which have already been referred to above.

15. Sarvasri K. Ramakrishna Reddy and P.M. Gopal Rao assailed the validity of the Act and submitted that it has no retrospective operation. Their reasoning runs thus :

(i) the impugned Act is relatable to entry 6 in List III (Concurrent List) in the Seventh Schedule to the Constitution. In so far as the Act applies to land, it would fall within entry 18 of List II (State List). In either case, it cannot apply to agricultural lands. Indeed, Parliament has no power to make a law dealing with agricultural or their transfers; and

(ii) a reading of the Act shows that it is only prospective in operation. Section 4 does not apply to transactions entered into prior to May 19, 1988. Only transactions which are benami in nature, as defined in the Act, and have been entered into on or after May 19, 1988, are hit by section 4. The Act does not declare that all benami transactions entered into prior to the coming into force of the Act become invalid. Giving retrospective effect to section 4 would unsettle and disturb vested rights. The transactions which were legal when entered into would now become illegal. This could not have been the intention of Parliament

which is also evident from the recommendation of the Law Commission in its 57th Report.

16. On the other hand, it is contended by Sri K. Jagannatha Rao, learned standing counsel for the Central Government, that the Act is relatable to entries 10, 7 and 13 of the Concurrent List. At any rate, it can be related to the residuary entry, viz., entry 97 in List I. He also submitted that having regard to the object and purposes of the Act, it clearly to all transactions entered into prior to the coming into force of the Act and is not confined to transactions entered into on or after May 19, 1988. Placing such an interpretation, learned counsel contended, would rob the Act of its very object and defeat its intendment. Sri C. Poornaiah, learned counsel for some of the petitioners, supported the validity of the Act. According to him, section 4 is not really retrospective in operation. All that it does is to bar the remedy. The real owner is precluded from pleading, either as plaintiff or as defendant, that he is the true owner, and not the person in whose name the property stands. This disability is confined, says counsel, to a suit, claim or action. Indeed, the Act does not prohibit the benamidar from transferring back the property to the real owner. Though the Law Commission recommended that such a prohibition should also be provided, Parliament did not choose to incorporate such a prohibition. Counsel agreed with the petitioners' counsel that the Act does not declare illegal all the benami transactions entered into prior to the commencement of the Act. He, however, submitted that, properly construed in the light of the language of the enactment and its intended purpose and object, the bar applies to all earlier transactions as well.

17. Legislative Competence of Parliament :

19. To determine the legislative competence of Parliament to enact the provisions in question, we have first determine what in substance does the Act provide for. Having regard to the essence and theme of the enactment, we have to determine the legislative head to which it is relatable. According to the petitioner's counsel, it is relatable to entry 6 of List III any entry 18 of List II. They read as follows :

"6. Transfer of property other than agricultural land; registration of deeds and documents."

"18. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

20. On the other hand, the contention of learned standing counsel for the Central Government is that the Act is relatable to entry 10 in List III, as also to entry 7 and, at any rate, to entry 97 in List I. These entries read :

"10. Trust and Trustees."

"7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land."

"97. Any other matter not enumerated in List II or List III in including any tax not mentioned either of those Lists."

21. The contention of the petitioners is mainly based upon the decision of the Federal Court in AIR 1941 72 (Federal Court) . The Central Legislature passed the Hindu Women's Rights to Property Act, 1937, providing that the property of a Hindu male dying intestate shall devolve upon his widow. The expression "property" was used in a general sense. It took in agricultural property as well. The contention was that since "devolution of agricultural land" fell within the Provincial List (entry 21 in List II), and also because the Act was relatable to entry 7 in List III ("wills, intestacy and succession, save as regards agricultural land") which expressly excluded agricultural land, the Act was ultra vires the powers of the Central Legislature, in so far as it applied to agricultural land. The Federal Court accepted the substance of the contention, but instead of striking down the Act, chose to read it down as not intended to be applied to agricultural land. We do not think that this case is of any help to petitioners. This decision turned upon the particular language of the entries concerned. Entry 10 in List III of the Constitution does not contain any words of exclusion as did entry 7 in List III of the 1935 Act. Nor does List II of the Constitution contain any entry corresponding to entry 21 of List II of the 1935 Act. Entry 10 is general in nature and covers the entire field of "Trusts and Trustees", irrespective of the fact whether the subject-matter of trust is agricultural land, or other form of property. More of this later.

22. Having regard to the essence and substance of the provisions of the Act, we are of the opinion that it is relatable to entry 10 in List III which deals with Trusts and Trustees. The relationship between a benamidar and the real owner is similar to the one between a trustee and beneficiary. As explained by the Federal Court in Punjab Province v. Daulat Singh AIR 1942 FC 38, "it is true that the Indian law does not recognize an equitable ownership in the sense known to the English law, because we here do not, as in England, have two kinds of law or jurisdiction, viz common law and equity; but on an analysis of the legal incidents involved, it will be found that, for all practical purposes, there is little or no difference between a beneficiary under the English law land a beneficiary under the Indian Trusts Act, so far as the substance of their is concerned... so far as rights and privileges are concerned, there is little or no difference between a beneficiary under an express trust and a beneficiary under a resulting or constructive trust, if we leave alone questions arising under the Limitation Act. Section 82, Trusts Act, which deals with benami transfers, occurs in the Chapter beginning with section 82, which provides that an obligation in the nature of a trust is created in certain specified case; and section 82 enacts that the transferee must hold the property for the benefit of the person paying or providing the consideration... Section 95 reaffirms the provision implied in section 80... in benami transaction, the holder of the legal title is only a bare trustee." To the same effect are the observations of the Supreme Court in Controller of Estate Duty, Lucknow Vs. Aloke Mitra, . There, it is said (at p. 612) :

"It is but axiomatic that a benami transaction does not vest any title in the benamidar but vests it in the real owner. When the benamidar is in possession of the property standing in his name, he is in a sense the trustee for the real owner. In *Petheperumal Chetty v. Muniandy Servai* [1908] LR 35 IA 98; ILR 35 Cal 551, the Judicial Committee quoted with approval the following passage from Mayne's Hindu Law, 7th edition ILR 35 Cal 558 :

"Where a transactions is once made out to be a mere benami, it is evident that the benamidar absolutely disappears from the title. His name is simply an alias for that of the person beneficially interested."

23. The cardinal distinction between a trustee known to English law and a benamidar lies in the fact that a trustee is the legal owner of the property standing in his name and the cestui que trust is only a beneficial owner, whereas in the case of a benami transaction, the real owner has got the legal title though the property is in name of the benamidar. It is well settle that the real owner can deal with the property without reference to the latter. In *Gur Narayan v. Sheo Lal Singh* [1919] LR 46 IA 1; [1919] 49 IC 1, the Judicial Committee referred to the judgment of Sir George Farwell in *Mst. Bilas Kunwar v. Dasraj Ranjit Singh* [1915] LR 42 IA 202; 30 IC 299 (PC), where it was observed that a benami transaction had a curious resemblance to the doctrine of English law that the trust of the legal estate results to the man who pays the purchase-money, and went on to say (49 IC at p. 5, column 1) :

"... the benamidar has no beneficial interest in the property or business that stands in his name; he represents, in fact, the real owner, and so far as their relative legal position is concerned, he is a mere trustee for him."

24. In *Guran Ditta v. Ram Ditta* [1927] LR 55 IA 235; AIR [1928] PC 172, the Judicial Committee reiterated the principle laid down in *Gopeekrist Gosain*'s case [1854] 6 MIA 53 (PC), and observed that "in the case of a benami transaction, there is a resulting trust in favour of the person providing the purchase money."

25. The above passages and the language of section 82 of the Trusts Act make it clear that the relationship between the real owner and the benamidar is that between a beneficiary and trustee. Indeed, it was open to Parliament to have inserted sections 3 and 4 in the Trust Act itself. After repealing section 81 and 82, parliament could well have put in these provisions in the very same Act- either in the same Chapter or in a different Chapter. The fact that the concept of benami pre-dates the Indian Trusts Act is again of little consequence. So long as the benami law can be treated as a part of the law of Trusts, broadly speaking, the impugned Act would be a piece of legislation relating to trust and trustees.

26. The impugned Act cannot also be treated as an enactment relating to transfer of property. Approving the doctrine of pith and substance, it is a law relating to trusts and trustees. It can, in no sense, be related to the legislative head "Transfer of property" in entry 6 of List III.

27. It cannot also be said that the enactment is one relating to land. The Act does not deal with land. It is concerned with benami transactions. It prohibits them. It bars the remedies and defences which were available hitherto to the real owners vis-a-vis the benamidars. True it is that the Act also affects benami transactions relating to land, or agricultural land, as the case may be. But that is only incidentally. Applying the doctrine of pith and substance, the enactment is referable to entry 10. Any trenching upon entry 18 in List II is only incidental, and, it does not affect the validity of the Act or the competence of Parliament. The approach to be adopted in this behalf is stated clearly in *A.S. Krishna Vs. State of Madras*, . It was held there (at p. 301) : "if a statute is found in substance to relate to a topic within the competence of the Legislature, it should be held to be intra vires, even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its competence may be an element in determining whether the legislation is colourable, that is, whether in the guise of making a law on a matter within its competence, the Legislature is, in truth, making a law on a subject beyond its competence. But where that is not the position, then the fact of encroachment does not affect the vires of the law even as regards the area of encroachment..." It was further observed (at p. 303) : "when a law is impugned on the ground that it is ultra vires the powers of the Legislature which enacted it, what has to be ascertained is the true character of the legislation. To do that, one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions. If, on such examination, it is found that the legislation is in substance one on a matter assigned to the Legislature, then it must be held to be valid in its entirety even though it might incidentally trench upon matters which are beyond its competence. It would be quite an erroneous approach to the question to view such a statute not as an organic whole, but as a mere collection of sections, then disintegrate it into parts, examine under what heads of legislation those parts would severally fall, and by that process determine what portions thereof are intra vires, and what are not..." It is on this reasoning that the Supreme Court held in *Gift-tax Officer (Second) v. D. H. Nazareth* [1970] 79 ITR 713; AIR 1970 SC 999, that the Gift-tax Act enacted by Parliament is relatable to entry 97 in List I and cannot be held to be outside the competence of Parliament on the ground that it also affects land, or other subjects mentioned in the State List. We do not think it necessary to multiply the authorities on this score, since, in our view, this is well settled and has been dealt with by us exhaustively in *W. P. No. 7606 of 1988*, disposed of on August 31, 1988, reported in *P. Chengal Reddy v. State of Andhra Pradesh* [1988] 2 ALT 868. We are, therefore, of the view that the objection, on the ground of lack of competence of Parliament to enact the impugned Act, is unsustainable on any of grounds urged.

28. Learned standing counsel for the Central Government also sought to rely upon entry 97 in List I. Entry 97 is a residuary entry. It takes in any other matter not enumerated in List II or List III. In *Union of India v. Harbhajan Singh Dhillon*,

(1972) 83 ITR 582 (SC) , the constitutional validity of section 24 of the Finance Act, 1969, which amended certain provisions of the Wealth-tax Act, 1957, so as to include the capital value of agricultural lands for computing net wealth, was questioned as beyond the legislative competence of Parliament. It was argued that wealth-tax is a tax on the capital value of the assets and, therefore, relatable to entry 86 in List I which expressly excludes agricultural lands from its purview. (Entry 86 in List I reads : "Taxes on capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies"). It was also argued that the said enactment is, in truth, relatable to entry 49 in List II and, for that reason too, beyond the competence of Parliament. (Entry 49 of List II reads : "Taxes on lands and buildings"). While dealing with these submissions, the Supreme Court indicated the approach to be followed when an enactment is questioned as being beyond the legislative competence of Parliament. It said : "We have the three Lists and a residuary power and, therefore, it seems to us that in this context, if a Central Act is challenged as being beyond the legislative competence of Parliament, it is enough to enquire if it is a law with respect to matters or taxes enumerated in List II. If it is not, no further question arises." Adopting this approach, it was held that once the law cannot be said to be one relating to an entry in List II (it was held not to fall under entry 49 of List II), It must be held to be within the competence of Parliament, notwithstanding the language of entry 86 in List I. This approach is commended for our acceptance in this case too. We are of the opinion that this approach cannot be said to be irrelevant.

29. Counsel for the petitioners submitted that the approach aforesaid has been qualified by the Supreme Court in its later decision in *International Tourist Corporation and Others Vs. State of Haryana and Others*, , 777. Reliance is placed particularly upon the following observations therein :

"Before exclusive legislative competence can be claimed for Parliament by resort to the residuary power, the legislative incompetence of the State Legislature must be clearly established. Entry 97 itself is specific that a matter can be brought under that entry only if it is not enumerated in List II or List III and in the case of a tax if it is not mentioned in either of those lists. In a Federal Constitution like ours, where there is a division of legislative subjects but the residuary power is vested in Parliament, such residuary power cannot be so expansively as to whittle down the power of the state Legislature. That might affect and jeopardise the very federal principle. The federal nature of the Constitution demands that an interpretation which would allow the exercise of legislative power by Parliament pursuant to the residuary powers vested in it to trench upon State legislation and which would thereby destroy or belittle State autonomy must be rejected..."

30. We are unable to see any inconsistency between what is said in the two decisions. The observations relied upon in *International Tourist Corporation and Others Vs. State of Haryana and Others*, , are more in the nature of elucidation

of what is said in *Union of India v. Harbhajan Singh Dhillon*, (1972) 83 ITR 582 (SC) . In this case, we have held that the impugned enactment cannot be related to any of the entries in List II. If so, no further question arises respect to the competence of Parliament to enact the impugned provisions.

31. Section 4 - its operation and its effect :

32. Section 4 bars a suit, claim, or an action by the true owner to enforce his right against the benamidar. He is also precluded from raising a defence that he is the true owner, vis-a-vis the benamidar. Section 4 was indeed the only substantive section in the Ordinance which preceded the Act (section 2 of the Ordinance). The language of sub-section (1) of section 4 is significant. It says, no suit, claim, or action "shall lie" against the person "in whose name the property is held". Similar wording is employed in sub-section (2) also. It is true that there no express words in the Ordinance, or the Act, stating that the said bar applies to transactions entered into prior to the date of the Ordinance/Act. But, in our opinion, the said result follows from the language used in the section. The section has no meaning and no purpose if it has no application to transactions entered into prior to the date of the Ordinance/Act. Making it applicable only to transactions entered into subsequent to that date would make it practically lifeless and a surplusage. Section 3 of the Act declares that entering into benami transactions is a criminal offence punishable with imprisonment. All such transactions are prohibited which means that no such plea will be recognized. If section 4 were to apply only to post-Act transactions, it would be a mere repetition-a statement of an obvious fact-having no real content. We should remember that this was the only substantive provision of the Ordinance. If this is the meaning to be placed upon section 4 of the Act, the same meaning should be placed upon section 2 of the Ordinance and placing such a meaning would make the Ordinance meaningless and totally ineffective. We must also keep in mind that this is a remedial Act designed to eradicate an evil practice with pernicious consequences and must receive a beneficial construction. Public interest demanded that the said practice should be put an end to. It was to subserve public interest that the enactment was brought in, though belatedly. It is also in the interest of public revenue. While interpreting a statute, the court must, consistent with the language used, place a construction which furthers and advances the object of the enactment-a construction which effectuates the intended purpose. Having regard to the clear language employed in section 4, we think it not possible to agree that the bar contained therein is applicable only to transactions entered into after the commencement of the Act. In respect of all transactions, whether entered into prior to or after the commencement of the Act, the bar is applicable.

33. Counsel for the petitioners brought to notice that the 57th Report of the Law Commission on benami transactions-which constitutes the basis for the Ordinance as well as the Act-expressly provided that the pre-Act transactions be exempted from the operation of the Act. Reliance is placed upon paragraph 6.29,

which reads thus :

"6. 29 Exception for past transactions. - It is also necessary to make an exception for past transactions. The provision which we propose will be procedural form, but will be substantive in its true character. We do not consider it desirable that it should apply to past transactions, because those transactions would have been entered into after keeping in mind the legal position as understood at present, namely, that the real owner can always enforce his rights against the benamidar. This position is now proposed to be reversed, and the reversal should not work in a manner which will defeat the intention of the parties who acted under the old law. Of course, those benami transactions which have been entered into with the object of carrying out fraudulent or illegal motives, and which, therefore, fall within specific provisions enacted by the Legislature to prevent the abuse of the practice of benami, are governed by those specific provisions, and the bar against retrospective operation of the new provision will not affect the operation of those specific provisions."

34. It is also brought to our notice that in the Draft Bill set out in paragraph 6.33, section 3(b) provided for such exemption. Section 3(b) in the Draft Bill suggested by the Law Commission, read :

"3. Nothing in this Act shall, - ...

(b) apply in relation to any property held benami at the commencement of this Act."

35. In our opinion, however, the said aspect does not advance the case of the petitioners in any manner. It is true that the Law Commission did make such a recommendation : but, while issuing the Ordinance, the President chose - we must presume deliberately - not to incorporate clause (b) in section 3 while incorporating clause (a) in section 3, which saved section 53 of the Transfer of Property Act, or any other law relating to transfers for an illegal purpose. The very fact that while issuing the Ordinance and the Act, clause (b) of section 3 of the Draft Bills was omitted while incorporating clause (a), shows that it was done advisedly and deliberately. Section 3 of the Ordinance and section 6 of the Act say : "3/6 : Nothing in this Act shall affect the provisions of section 53 of the Transfer of Property Act, 1882, or any law relating to transfers for an illegal purpose."

36. section 3 of the Draft Bill suggested in the 57th Report of the Law Commission, read thus :

"3. Nothing in this Act shall, -

(a) affect the provisions of section 53 of the Transfer of Property Act, 1882, or the law relating to transfers for an illegal purpose, or

(b) apply in relation to any property held benami at the commencement of this Act."

37. The President and Parliament have made their intention clear beyond any doubt, by deliberate omission of clause (b), that they did not accept the said part of the recommendation of the Law Commission.

38. It is argued for the petitioners that unless there are clear words to that effect, a law must be so construed as not to disturb or affect vested rights. Quite a few text books are brought to our notice laying down the said proposition. There can, indeed, be no quarrel with the said general proposition. But we must remember that retrospectivity may result not only from the express language employed in a statute, but also by necessary implication. This question has to be answered in each case having regard to the language used, the nature of the enactment, viz, whether it is procedural, declaratory, remedial, or otherwise, and also keeping in view the object sought to be achieved and the mischief sought to be eradicated by the enactment. After all, the goal of every rule of interpretation is to ascertain and give effect to the intention of the Legislature. The Act concerned herein is a remedial statute. It is a statute made in public interest and in the interest of public revenue. It must receive a beneficial construction - a construction which advances its purpose and object. It must also be remembered that there were similar provisions in other enactments-in particular section 281A of the Income Tax Act-but which were, evidently, found to be inadequate. A more drastic provision was found necessary to check the evil.

39. It is also argued for the petitioners that, according to section 1(3) of the Act, section 4, among some other sections, shall be deemed to have come into force on May 19, 1988. This is indicative of the intention of Parliament, according to them, to apply the bar contained in section 4 only to transactions entered into on or after the said date. It is not possible to agree. Commencement of an Act is different from the operation of the Act. An Act may commence a particular date, but it may have retrospective operation. These concepts are distinct and cannot be mixed up. They cannot be confused for one another. The language of section 4 is clear. The object sought to be achieved is equally evident. The legislative history also is a pointer. Having regard to all the above circumstances, we are of the opinion that section 4 governs transactions not only entered into on or after May 19, 1988, but all transactions entered into prior to the said date as well. This is the view taken by a learned single judge of this court, Ramaswamy J., in *P. Ramachandra Rao Vs. G. Jangaiah and Others*, . Of course, the learned judge was dealing only with the Ordinance, since by that time the Act had not come into force. Same is the view taken by a learned single judge of the Kerala High Court in *VELAYUDHAN RAMAKRISHNAN AND OTHERS Vs. RAJEEV AND OTHERS*, .

40. We must record that the constitutionality of section 5 has not been questioned before us and, therefore, it is not necessary for us to deal with the same or express any opinion thereon.

41. For the above reasons, both the contention raised by the petitioners, viz., with respect to the legislative competence of Parliament and with respect to the operation of section 4 (termed as retrospective operation) are rejected.

42. Post the matters for disposal on merits.