

(1985) 03 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 5597 of 1983

Yugal Kishore Singh and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-03-1985

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16, 16(1), 16(2), 16(3), 17

Citation : AIR 1985 Patna 265 : (1985) 33 BLJR 383 : (1985) PLJR 554

Hon'ble Judges : S.S. Sandhawalia, C.J.; S.K. Choudhuri, J.; P.S. Mishra, J

Bench : Full Bench

Advocate : Shrawan Kumar and Abha Singh, for the Appellant; Kamalapati Singh, Govt. Pleader and Ramakant Tewary, for the Respondent

Judgement

S.S. Sandhawalia, C.J.—The significant issues that come to the fore in this civil writ jurisdiction case admitted to hearing by the Full Bench may be conveniently formulated in the terms following :

(1) Can the issue of benami ownership be raised and investigated into in the pre-emption proceedings u/s 16(3), Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act 1961?

(2) Whether the case of Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others, answering the aforesaid question in the affirmative has been correctly decided?

(3) Whether it is incumbent for the Court for the pre-emptor to implead and bring on the record the real owner of the property sought to be pre-empted (despite the presence of the ostensible owner) in a proceeding u/s 16(3) of the Act aforesaid?

2. The facts are not in serious dispute. By a registered deed executed on the 17th of March, 1979, a plot bearing R. S. P. No. 415 situated in village Chainpur was purchased by Debendra Mehta (petitioner 2) from the respondents

(transferees) 5 to 7. It is the claim of the writ petitioners that this purchase was in fact a benami transaction and the real purchaser was Jugal Kishore Singh (petitioner 1) whilst the ostensible purchaser (petitioner 2) was merely his domestic servant and employee. Ganesh Mahto (respondent 4) thereafter preferred an application for preemption of the land in which he obviously impleaded only the registered transferee Debendra Mahto (petitioner 2). In the subsequent proceedings being Ceiling Case No. 4 of 1979, Debendra Mahto showed cause and sought to take up the plea that in fact the real purchaser was petitioner 1 Jugal Kishore Singh. It is, however, the admitted position that petitioner 1 was not formally impleaded as a party in the proceeding. After trial the pre-emption application was allowed by the D.C.L.R., Muzaffarpur West, on the 12th of December, 1979. Against the said order an appeal was then preferred by petitioner 2 Devendra Mahto in which the petitioner 1 was merely arrayed as respondent 5. It is common ground that petitioner 1, the alleged real owner, did not himself prefer any appeal against the order aforesaid. The said appeal was, however, allowed by the Additional Collector, Muzaffarpur, on the 29th of March, 1982, whereby he set aside the order of preemption passed by the learned D.C.L.R. mainly on the ground that the real owner had not been impleaded as a party and, therefore, remanded the case back to the lower Court for investigating the issue of the benami transaction and, thereafter, to dispose it of in accordance with law. Aggrieved thereby, the pre-emptor (respondent 4) preferred a revision before the Board of Revenue. By the impugned order of the Board it has been held, inter alia, that unless the real purchaser himself volunteers and becomes a party to the proceeding in the pre-emption case, the ostensible owner has to be treated as a real purchaser and neither the pre-emptor nor the Court has any legal obligation to add the real purchaser as a party and consequently the decree or order against the ostensible owner is wholly binding on the real owner as well. The revision was consequently allowed and the appellate order remanding the matter was set aside. Aggrieved thereby the present writ petition has been preferred by both the ostensible and the real owners.

3. When this case came up for admission before my learned brother P.S. Mishra, J., primary reliance was placed on *Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others*, for contending that the issue of benami had to be necessarily investigated into. Opining that this approach may in a way be inconsistent with the larger scheme of the Act and might help unscrupulous transferees to exceed the aggregate of the ceiling area through purchases made by ostensible owners the matter was directed to be placed before a Division Bench. In view of the significance of the issue raised the Division Bench admitted the case for hearing by a Full Bench and that is how it is before us.

4. It seems apt to deal with questions 1 and 2 framed at the outset together since they are inextricably connected with each other. With regard thereto the core of the submission ably presented on behalf of the writ petitioners by their counsel Mr. Shrawan Kumar is that the well entrenched concept of benami

ownership in Indian law is in no way ousted for the purpose of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as "the Act") generally or for the particular provisions of Section 16 and Sub-section (3) thereof, which, according to learned counsel, give statutory sanction to the concept of pre-emption. Apart from principle, reliance was sought to be placed on Sections 5(1)(iii), 16(1) and (2) and 17 of the Act and with regard to precedent on the categorical observation in Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others, .

4A. Since the controversy herein centres around Section 16 of the Act, it is necessary to quote the relevant parts thereof for facility of reference.

"16. Restriction on future acquisition by transfer, etc. -- (1) No person shall after the commencement of this Act, either by himself or through any other person, acquire or possess by transfer, exchange, lease, mortgage, agreement or settlement any land which together with the land, if any, already held by him exceeds in the aggregate the ceiling area.

Explanation. -- For the purposes of this section "transfer" does not include inheritance, bequest or gift.

(2)(i) After the commencement of this Act, no document incorporating any transaction for acquisition or possession of any land by way of transfer, exchange, lease, mortgage, agreement or settlement shall be registered, unless a declaration in writing duly verified is made and filed by the transferee before the registering authority under the Registration Act 1908 (XVI of 1908), as to the total area of land held by himself or through any other person any where in the State.

*** ** (3)(i) When any transfer of land is made after the commencement of this Act to any person other than a co-sharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the document of the transfer to make an application before the Collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the said deed :

Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten per cent thereof is deposited in the prescribed manner within the said period.

(ii) On such deposit being made the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under Clause (i) is pending for decision :

Provided that where the application is rejected, the co-sharer or the raiyat, as the case may be, shall be evicted from land and possession thereof shall be restored to the transferee and the transferee shall be entitled to be paid a sum equal to ten per cent of the purchase-money out of the deposit made under

Clause (i).

(iii) If the application is allowed, the Collector shall by an order direct the transferee to convey the land in favour of the applicant by executing and registering a document of transfer within a period to be specified in the order and, if he neglects or refuses to comply with the direction, the procedure prescribed in Order 21 Rule 34. Civil P.C. 1908 (V of 1908) shall be, so far as may be followed."

Perhaps at the very outset it must be noticed that benami transactions have been invoked from time immemorial in India and subsequently have undoubtedly been accorded legal recognition. Indeed it could not be disputed before us and one may fairly proceed on the assumption that the concept of benami transaction is by now well entrenched in our land. The basic issue herein, therefore, is whether by express enactment or necessary intendment the benami transaction has been ousted and done away with qua the Ceiling Act aforesaid. It would appear that far from doing so, the said Act seems to irresistibly accord statutory recognition to the concept of benami ownership, namely, the holding of land either directly or through any other person. Reference in this connection may first be made to Section 5(1)(iii), which refers to the retaining of agricultural land either benami or farzi. True it is that herein the reference is that such ownership would not be used to defeat the ceiling laws but within the parameter of the permissible holding the concept of benami seems to be not implicitly but expressly recognised by reference to such ownership. If it were to be the intention of the statute to stamp out the very concept of benami ownership for the purpose of the ceiling laws then it would obviously have been put in more categorical and express terms. Though by itself the provision of Section 5(1)(iii) may not be conclusive the same has to be viewed along with the provisions of Section 16. Sub-section (1) thereof whilst placing restrictions on the future acquisition by transfer etc., expressly states that no person shall after the commencement of the said Act either by himself or through any other person shall acquire or possess by transfer, etc., any land which exceeds in the aggregate the ceiling area. Herein also whilst barring the transgression of the prescribed limits of holding, the law seems to visualise and in a way recognises ownership either directly or through any other person. This is again so in Sub-section (2) which requires a declaration by the transferee as to the total area of land held by himself or through any other person anywhere in the State. Without labouring the point it seems to follow from these provisions that the ceiling law though they prohibit the holding of land in excess of the ceiling area either directly or benami or farzi holding yet they do not seem to oust or abolish the well entrenched concept of benami holding in Indian law where the same is within the limits of the permissible areas.

5. Much argument was then raised before us with regard to the statutory declaration by the transferee mandated by Section 16(2)(i). Pointedly the issue herein was whether such a declaration was to be made by the real owner or the

ostensible owner and in case it is to be by the latter the same may have a tendency to defeat the ceiling laws. Learned counsel for the writ petitioners after some ambivalence in the beginning took up the firm stand that this declaration u/s 16(2)(i) by the very nature of things has to be by the ostensible owner

6. Now viewing the matter of the statutory declaration u/s 16(2)(i) in its correct perspective it must be noticed that it is intended to generally and primarily govern genuine transactions where the transferee is ordinarily the real owner. Plainly enough this declaration is required to keep a vigilant eye in the enforcement of ceiling laws and to safeguard that the transferee does not come to acquire land above the prescribed holding. Though the concept of benami ownership now stands recognised by the law yet this is in the nature of exception and ordinarily and generally the ownership vests in the person who is specifically named as such. Section 16(2)(i) has not made separate and distinct provisions for statutory declaration in the case of the genuine transaction and the benami transaction. Therefore, as the law now stands, the statutory declaration herein would have to cover a fourfold situation

(i) A genuine transaction where the transferee is himself the real owner and is also within the ceiling limit and thus the transaction in no way infracts the ceiling laws.

(ii) Where the transferee is the real owner but either by design or inadvertence the transaction may tend to exceed the prescribed ceiling limits for the transferee

(iii) Where the transferee is only the ostensible owner but the transaction remains within the ceiling laws.

(iv) Where the transferee is only the ostensible owner but the transaction is intended to or in any case circumvents or transgresses the ceiling law.

Because Section 16(2)(i) encompasses all the aforesaid situations, it comes under some strain or anomaly under (iv) above. This is so because the provision is intended to curb the exceeding of real ownership of the land above the ceiling limits whereas the declaration would pertain to the land of the ostensible owner and not that of the real owner. This, however, is the inevitable result of the recognition of the concept of benami ownership with its resultant duality of ownership; one ostensible and the other real, As regards the other three situations visualised above, Section 16(2)(i) covers the same without any infirmity. Now by the very nature of things in a benami transaction the real owner at the initial stage remains behind the curtain. Consequently at that point of the original purchase the declaration will inevitably have to be of the ostensible owner since the real owner is not even known (barring the knowledge of the benami holder and the benamidari. Inevitably, therefore, the declaration would at that stage pertain to the ownership of land by the ostensible owner alone. The function of interpretation herein is to iron out the creases in the statute because of the fact Section 16(2)(i) embraces a wide variety of situations. To some, it may not fit in like a glove. This functional exercise can

only be done by holding that at the initial stage of the purchase the statutory declaration in a benami transaction by the very nature of things has to be by the ostensible owner with regard to his holding. In any case, in the subsequent proceeding, either when the question exceeding the ceiling area arises or for the requirement of pre-emption u/s 16(3), the issue of the benami transaction is raised it has necessarily to be investigated within the parameters of the statute. The view I am inclined to take receives support from the following observation in Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others,

"Here one may think that the declaration is to be made by the ostensible transferee although while making such declaration he can include in it not only the land held by himself but also the land held by him through any other person anywhere in the State."

7. In view of the aforequoted observation and the discussion preceding the same, I am inclined to take the view that the benami purchase with reference to the ceiling law can be made where neither the original owner's land nor the ostensible owner's land, when tagged separately with the purchased land, would exceed the ceiling limit. If, however, it exceeds the ceiling limit then the penal provision of Section 17 of the Act will at once be attracted. These provide sufficient safeguard against such benami purchases by unscrupulous persons in contravention of the ceiling law.

8. This view would be the correct and over all meaningful interpretation of the provisions and the same would give effect to the words, namely, "as to the total area of the land held by himself or through any other person anywhere in the State" as employed in Section 16(2)(i) of the Act. Thus the observations quoted from Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others, stand explained and affirmed. In my view any other interpretation would make the position somewhat incongruous and not easy to explain.

9. Once it is held as above that the statutory declaration has at that stage to be by the ostensible owner, a fear was sought to be expressed that the same may be misused or abused to evade the ceiling laws. However, it is well settled that a provision is not to be construed on the presumption that it would necessarily be abused. As has already been shown, in a case of benami transaction, where the real owner remains wholly within the ceiling limits, the same would be wholly innocuous and within the four corners of the law. No reason would thus appear as to why in such a situation the provision should not be given its plain meaning. However, where the same is sought to be misused to circumvent or transgress the ceiling law, the statute gives more than ample and indeed stringent powers u/s 17 of the Act to curb the same. A reference thereto would show that it provides almost a draconian penalty for the violation of Section 16(1). The basic tenet laid in Section 16 is to bar the future acquisition of land exceeding the ceiling area where the same is contravened by the misuse of the statutory declaration to cover up the real ownership beyond the ceiling area. The mischief would at once come u/s 17. Its provisions take more than ample care of such a situation.

Thereafter they provide in terms that no right, title or interest would accrue in favour of a transferee who acquires land in excess of the ceiling area by virtue of any transaction contravening the provisions of Section 16. Not only that, as penalty for such transaction the right, title and interest of the transferee in the said land would become void with effect from the date of declaration made by the Collector in this behalf. Again by Sub-section (2) of Section 17 the Collector is given wide ranging powers to implement the same and further Sub-section (3) provides that if the transaction was one of sale, the land would be liable to be forfeited to the State and if otherwise it shall be restored to the transferor on such terms and conditions as may be prescribed. It, therefore, seems to be plain that the framers of the law have provided for any misuse or abuse of the provisions by Section 17 in fairly stringent terms.

10. Therefore, on principle, on the language of the statute and on previous precedent it must be held that the well-established and well entrenched concept of benami transaction is not ousted or abolished for the purposes of Section 16(3) of the Act. No meaningful challenge could be laid to the observation in *Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others*, . As it will be manifest from the above for independent and added reasons, I would concur with that view.

11. One may now advert to the ancillary but equally important question 3, namely, whether it is incumbent for the Court or the pre-emptor to implead the real owner despite the presence of the ostensible owner on the record of the proceeding u/s 16(3) of the Act. The Board of Revenue for cogent reasons has come to the conclusion that the onus lies on the real owner himself to intervene and become a party to the proceeding and it is neither for the Court nor for the pre-emptor to compel him to appear. In case the real owner chooses to stay away he must take the consequences and has only himself to blame because the order or decree against the ostensible owner would be wholly binding upon him both on principle as also on settled precedent. This would apply equally to the investigation and the finding with regard to the issue of benami ownership and it cannot possibly be urged that the absence of the real owner as a party to the proceeding would introduce any infirmity therein. The issue seems to be so well settled on principle that it is unnecessary to labour the point. Way back in *Gur Narayan v. Sheolal Singh* AIR 1918 PC 140 it was authoritatively held as follows : "The bulk of judicial opinion in India is in favour of the proposition that in a proceeding by or against the benamidar, the person beneficially entitled is fully affected by the rules of *res judicata*. With this view their Lordships concur. It is open to the latter to apply to be joined in the action; but whether he is made a party or not, a proceeding by or against his representative in its ultimate result is fully binding on him. In case of a contest between an alleged benamidar and an alleged real owner, other considerations arise with which their Lordships are not concerned in the present case."

The aforesaid view has been accepted and reiterated by the final Court and was

expressly referred to by Untwalia, J. in Narendra Kumar Ghose's case AIR 1972 Pat 1 (supra).

12. Now once the principle is clearly established whether the real purchaser is a party to the proceeding or not, he is bound by the order or decree against the ostensible owner then it would necessarily follow that no duty can possibly be cast either on the pre-emptor or on the Court to compel the impleading of the real owner. Whatever investigation into the question of the transaction being benami has, therefore, to be conducted, it can lawfully be done in the presence of the ostensible owner alone. This is not to say that the Court or the pre-emptor would not have the discretion or the option to implead the real owner but only to hold that the real owner would be bound by any finding given in the proceedings against the ostensible owner despite his absence. Equally it must be noticed that notice to the ostensible owner in the proceeding would in the eye of law be notice to the real owner as well and, therefore, the decision on the question of benami ownership either in the presence of the real owner or in his absence made against the ostensible owner would undisputably be binding. An identical view has been taken by a Division Bench of this Court in *Sk. Halaluddin and Others Vs. Nabi Hasan and Others*, wherein S.K. Choudhuri, J., speaking for the Bench, has observed as follows :

"I fully agree with the view taken in *Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others*, . As it is now settled that the benami question can be entertained by the revenue authority in the absence of the real owner and the decision would be binding upon the latter, it cannot be argued that the decision of the D.C.L.R. on that score is without jurisdiction."

13. To finally conclude : The answer to question 1 is rendered in the affirmative and it is held that the issue of benami ownership can be raised and investigated into in a pre-emption proceeding u/s 16(3) of the Act.

Question 2 -- *Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others*, on this point is correctly decided and its ratio is hereby affirmed.

Answer to question 3 is rendered in the negative and it is held that it is not obligatory for the Court or the pre-emptor to implead the real owner of the property sought to be pre-empted in the presence of the ostensible owner and the order and decree against the latter would be equally binding upon the former.

14. Now applying the above it is common ground before us that petitioner 1 Yugal Kishore Singh, the real owner, did not himself choose to get himself impleaded as a party to the proceedings. There is no dispute that the ostensible owner was duly served with notice and had filed show cause and was a party to the proceedings throughout. Even when the issue was decided in favour of the pre-emptor the real owner yugal Kishore Singh himself did not prefer any appeal against the same and it was done only by the ostensible owner. The Board of Revenue was, therefore, right in its view that the mere absence of the real owner in this context did not in any way vitiate or introduce any infirmity in the finding

of the D.C.L.R. and no further remand for the purpose of investigation of the issue of benami ownership was warranted. Affirming the said view, I do not find any merit in this writ petition which is hereby dismissed. The parties are left to bear their own costs.

S.K. Choudhuri, J.

15. I agree.

P.S. Mishra, J.

16. I have the privilege of going through the proposed judgment by C. J., and although I concur with the conclusion and answers to the questions formulated at the hearing of the writ application, I have some reservations in respect of some of the observations made in the judgment.

17. Viewing the matter of the statutory declaration u/s 16(2)(i), it has rightly been observed that the statutory declaration, as the law now stands, would have to cover a fourfold situation :

i) A genuine transaction where the transferee is himself the real owner and is also within the ceiling limit and thus the transaction in no way infracts the ceiling laws:

ii) Where the transferee is the real owner but either by design or inadvertence the transaction may tend to exceed the prescribed ceiling limits for the transferee:

iii) Where the transferee is only the ostensible owner but the transaction remains within the ceiling laws: and

iv) Where the transferee is only the ostensible owner but the transaction is intended to or in any case circumvents or transgresses the ceiling law.

Because Section 16(2)(i) encompasses all the aforesaid situations, it comes under some strain or anomaly under (iv) above. This is so because the provision is intended to curb the exceeding of real ownership of the land above the ceiling limits whereas the declaration would pertain to the land of the ostensible owner and not that of the real owner. It has been rightly observed that this strain or anomaly is inevitable result of the recognition of the concept of benami ownership; its resultant duality of ownership, the ostensible and the real. As regards the other three situations visualized above. Section 16(2)(i) covers them without any infirmity. My reservations, however, compel me to question : Will the duality of ownership, one the ostensible and the other real, give to the latter escape from the requirement of the declaration in writing as such a declaration may be filed by the former, namely, the ostensible owner, although the latter shall own and possess the land purchased under the document executed in favour of the former? In a benami transaction the real owner remains behind the curtain. One may think, therefore, that at the point of the original purchase the declaration will inevitably have to be of the ostensible owner since the real owner

is not in know except to the ostensible owner. This declaration by the ostensible owner, as required by Sub-section (2)(i) of Section 16 of the Act, shall not inform the registering authority about the land held by the real owner and whether the purchase by him shall exceed the ceiling limit in possession of the real owner or not. How then to interpret who, for the purposes of Sub-section (2)(i) of Section 16 of the Act, the transferee is? It is well recognised that, when a rule or section is a part of an integral scheme, it should not be considered or construed in isolation. One must have regard to the scheme of the fasciculous of the relevant rules or sections in order to determine the true meaning of any one or more of them. An isolated consideration of a provision leads to the risk of some other inter related provision becoming otiose or devoid of meaning (See O.P. Singla and Another Vs. Union of India (UOI) and Others, : (O.P. Singla and Another Vs. Union of India (UOI) and Others,). If a rule or a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act. and is more beneficial to the person in whose interest the Act has been passed. When, however, the language is plain and unambiguous, the Court must give effect to it whatever may be the consequences, for, in that case, the words of the statutes speak the intention of the legislature. When the language is explicit, the consequences are for the legislature and not for the Courts to consider. In their anxiety to advance beneficent purpose of legislation, the Court must not yield to the temptation of seeking ambiguity when there is none (See Jeewanlal (1929) Ltd. Vs. Appellate Authority under the Payment of Gratuity Act and Others,). In Narendra Kumar Ghose v. Sheodeni Ram AIR 1972 Pat 1 speaking for the Court, Untwalia, J. has said :--

"The base is, therefore, on a person who wants to acquire or possess land by transfer within the meaning of that section not to acquire an excess area beyond the ceiling area even benami in the name of or through any person."

Should the Court in its anxiety to acknowledge the ostensible owner as the transferee for the purpose of the declaration u/s 16(2)(i) ignore the very purpose for which Section 16(1) has introduced the restrictions on future acquisition by transfer etc., that no person shall, either by himself or through any other person, acquire or possess by transfer, exchange, lease, mortgage, agreement or settlement any land which together with the land, if any, already held by him exceeds in aggregate the ceiling area? Section 16(2)(i) says that the transferee shall declare in writing, duly verified and filed by him before the registering authority under the Registration Act, 1908, as to the total area of land held by himself or through any other person anywhere in the State. If the ostensible owner has to make this declaration, he shall speak about the land held by himself and/or possessed by him but acquired in the name of any other person. It contemplates nowhere that he shall state about the total area of land held by the real owner, although he shall not be owning or possessing the land acquired in his name and (he acquisition shall add to the area of the land held and possessed by the real owner.

18. In *Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others*, after correctly recognising the base, *Untwalia, J.* (as he then was) has said :--

"....of course, under Sub-section (2) there is an inhibition on the registering authority not to register a document of transfer unless a declaration in writing duly verified is made and filed by the transferee before the registering authority under the Registration Act, 1908, as to the total area of land held by him. Here, one may think that the declaration is to be made by the ostensible transferee although while making such declaration he can include in it not only the land held by himself but also the land held by him through any other person anywhere to the State. If benami transactions are recognised even after the passing of the Act, one may think that it will give a handle to the real transferee to circumvent the rigour of the law engrafted in Sub-section (2) of Section 16 of the Act. But such a fraudulent act of the real transferee can be amply checked and controlled by taking recourse to the provision of law contained in Section 17 of the Act. If any person has acquired land in excess of the ceiling area benami in the name of some person, the land can be forfeited to the State under the provision of law contained in Section 17.

19. Section 17 of the Act provides for penal action against any person contravening the provisions of Section 16 of the Act. How to know by such a purchase the real owner is contravening the provisions of Section 16 of the Act? In *Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others*, , the Court was concerned primarily with the question, whether the revenue authorities considering the cases u/s 16(3) of the Act would be competent to go into the benami transaction or not. Its conclusion in the judgment, that the procedure under Sub-rule (4) of Rule 19 Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Rules, 1963, is comprehensive enough to decide a question of benami and hence it cannot be contended that there was no procedure in the Act or Rules framed thereunder to decide the question of benami and also that since the delivery of possession ordered under Sub-section (3) Section 16 of the Act against an ostensible transferee is binding on the real transferee who cannot reclaim the possession from the Civil Court because of the bar of S, 43 of the Act are, if I may say so with respect, correct. There are good reasons to hold that the question of benami transaction raised before the revenue authorities is one by and under the Act. The revenue authority cannot refuse to go into the question of benami, while ordering delivery of possession to a pre-emptor and direct the real owner or the benamidar to get the question of benami transaction settled in Civil Courts. The question as to who should file the declaration, the ostensible owner or the real owner, had not arisen for consideration in *Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others*, . In *Sk. Halaluddin and Others Vs. Nabi Hasan and Others*, , a Division Bench of this Court has again considered, whether the question of benami transaction can be gone into by the revenue authority and endorsed the view taken in *Narendra Kumar Ghose's* case. In *Sk. Halaluddin's* case (supra) it has been further said that benami transaction can be entered into by the revenue

authority in the absence of the real owner and the decision will be liable on the latter. In this case the question who should file the declaration before the registering authority had not arisen.

20. In my considered view a Court of law is bound to proceed upon the assumption that the legislature is an ideal person, that does not make mistakes and that it had informed itself as to the state of the law then existing when it undertook to legislate. The Court of law is not authorised to supply a *casus omissus* or to alter the language of the statute. A constitutional morality has developed to honour and respect the legislature's wisdom. In *O.P. Singla and Another Vs. Union of India (UOI) and Others*, it has been pointed out by the Supreme Court that a rule or a section is a part of an integral scheme. It should not be considered or construed in isolation. Section 16 of the Act, which has in its Sub-section (3) extended statutory recognition to the customary law of pre-emption prevalent in the State of Bihar has started with the prohibition saying, no person shall, after the commencement of the Act, either by himself or through any other person, acquire or possess any land which together with the land, if any, already held by him exceeds in aggregate the ceiling area. This is followed by the provision requiring the transferee to make and file a declaration in writing before the registering authority as to the total area of land held by himself or through any other person anywhere in the State. Obviously the ostensible owner's declaration as to the total area of land held by himself or through any other person will not substitute the land held and possessed by the real owner to show whether the acquisition together with the land already held by the real owner would exceed in the aggregate ceiling area or not. While the ostensible owner making the declaration and filing it before the registering authority would state about himself not holding or otherwise land in benami or through any other person, he would say nothing about the benami transaction in his name. This requirement of making and filing the declaration by the transferee would be complied in its breach if the ostensible owner's declaration is accepted. The prohibition u/s 16(1) of the Act shall not operate at all in that situation and action u/s 17 of the Act, in my view will be no answer to a declaration u/s 16(2) (i) by the ostensible owner a declaration which shall not inform as to the real state of affairs, about the person who wants to acquire or possess land by benami transfer in the name of the ostensible owner.

21. The view that I have taken shall not oust or abolish the well established and well entrenched concept of benami transaction. The real owner who, for all purposes, shall remain behind the curtain, shall not remain so for the purposes of making and filing the declaration before the registering authority under the Registration Act, 1908 as to the total area of land held by himself or through any other person anywhere in the State. The cloak or veil of benami shall still keep the real transferee well concealed in so far as the document of transfer is concerned; the ostensible owner shall figure as the purchaser, the revenue authorities shall know from the declaration by the real purchaser whether by such purchase by him the total land in life possession shall exceed the ceiling

area or not and it shall give to them, if such a purchase is granted, option to act u/s 17 of the Act including action to nullify the transfer.

22. It is not possible to doubt without casus omissus or something of that kind that the legislature has intended that the real transferee should make the declaration in respect of the lands held and possessed by him before he is allowed to acquire the land

23. Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others, gives the impression that ostensible owner may make and file the declaration before the registering authority under the Registration Act, 1908. In my judgment, however, that will not be a correct declaration A declaration by the ostensible owner of the land held by himself and the land held by him through any other person shall itself contravene Section 16(2)(i) of the Act and shall make the acquisition invalid attracting action u/s 17 of the Act.

24. I have no difference to the conclusions that the answer to question 1 is in the affirmative and the issue of benami ownership can be raised and investigated into in a preemption proceeding u/s 16(3) of the Act and the answer to question 3 is in the negative that it is not obligatory for the Court or the pre-emptor to implead the real owner and the property sought to be pre-empted in the presence of the ostensible owner and the order and the decree against the latter would be equally binding upon the former. But in my view in answer to question 2 it should be clarified that Narendra Kumar Ghose and Another Vs. Sheodeni Ram and Others, has correctly decided the points, except to the extent it creates the impression that ostensible owner can make and file the declaration before the registering authority under the Registration Act, 1908. I am in full agreement with the judgment of the Chief Justice except what I have said above.

25. In the result, the application is dismissed, but without costs.