

BENAMI LAW UPDATE

“A BONAFIDE LOAN / FINANCIAL ARRANGEMENT OR MERE FINANCIAL ASSISTANCE TO BUY PROPERTY CANNOT BE TERMED BENAMI TRANSACTION”

*** If person proves the genuineness of transaction by producing sales deeds and documents pertaining to the loan amount, then that transaction is not benami transaction- held in the case of M/s. Manpreet Estates LLP, Mumbai by Appellate Tribunal for Benami**

It would have to be seen that what the real intent of the transaction was, and whether it was, or was not executed for an illegal purpose.

The mischief of Benami Law would be attracted only when “A property is held in the name of one, but the enjoyment of the property and real ownership is with another person who had contributed funds for purchase of the property”.

If transferee purchase property through money taken as loan, and it is shown that both real title and beneficial interests are with the transferee and the consideration had flown from a third party merely as a matter of convenience and on the basis of an underlying financial arrangement, *bona fide* in nature and not in nature of benami transaction .

Example:-

Y purchases property from Z, for which X gave the loan to Y. On instruction of Y, X gave directly amount to Z and considered as loan to Y. Whether the transaction can be called Benami or not?

In the given situation it would have to be seen as to what the real intent of the transaction, whether the property is held for the immediate or future benefit of 'X', or is it a case of pure financial assistance, and X has no stake in the property.

If it is just for financial assistance and the loan provider(X) has no interest or benefit in the property then this transaction will not be the benami transaction.

**“CIRCUMSTANCES TO DECIDE WHETHER THE TRANSACTION IS
BENAMI IN NATURE”**

“Circumstances decided by court in the case of **“Valliammal v Subramaniam”** which can be taken as a guide to determine the transaction is benami or not:-

- (1) The source from which money to purchase came;
- (2) After purchase of property, its nature and possession;
- (3) Motive, if any, for giving the transaction a benami colour;
- (4) The position of the parties and the relationship, if any between the claimant and the alleged benamidar;
- (5) The custody of the title-deeds after the sale and
- (6) The conduct of the parties concerned in dealing with the property after the sale.

For any discussion contact:-

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