



BENAMI TRANSACTIONS AND PUNJAB LAND REFORM LEGISLATIONS

Dr. Rajdeep Singh¹ and Dheeraj Kumar²

¹Assistant Professor, Department of Law, Punjabi University, Patiala.

²Assistant Professor, Department of Punjab School of Law, Punjab University, Patiala.

ABSTRACT :

It is necessary to have certain amount of property for sustenance. The legal system defines property in different types tangible or intangible. It is the right of every individual to deal his property according to his wishes. The concept of property remained different in the different societies; the schools of jurisprudence too give different aspects of the property and thought that it has developed in full-fledged rights from ownerless occupation of the objects, which was considered available for all common good. The new development of social welfare society wanted to provide that property for all common good through reforms.



KEYWORDS : Property, Proprietary Rights, Rights in rem and Rights in Persona, Common Good, Private Rights, Community, Social Welfare State, Legislations, Land Reforms, Five year Plans, Benami Property (un-named property)

INTRODUCTION

The property is necessary for the sustenance of anyone, because property is the basic foundation of socio, economic and political existence of every individual. It is one of the fundamental elements of socio-economic life of an individual. Proprietary rights of an individual's claim to control and to apply to what he discovers; and reduces to his power, what he creates by his labour, physical or mental, and what he acquires under the prevailing social, economic or legal system by exchange, purchase, gift or succession.¹ Most of the legal systems distinguish different types of property; especially between land and all other forms of property.² It does not include only money and other tangible things of value, but also includes any intangible right considered as a source or element of income or wealth. It is the right to enjoy and to dispose of certain things in the most absolute manner as he pleases.³

MEANING OF PROPERTY

The term property cannot be confined to a particular meaning. It has been used in a variety of senses. According to *Halsbury's law of England*, 'property' means 'property of a tangible nature, whether real or personal, including money and wild creatures which have been ordinarily kept in captivity, but

¹ Roscoe Pound, *An Introduction to the Philosophy of Law* 109 (Yale University Press universal book Traders).

² F. S. Philbrick, *Changing Conceptions of Property in Law* 691-92 (University of Pennsylvania, Pennsylvania, 1986).

³ Available at: <http://www.legalservicesindia.com/article/article/definition-&-concept-of-property-502-1.html> (last visited on 05/01/2018).

only if, they have been reduced into possession which has not been lost or abandoned.⁴ Another definition of property is that, "property is the right and interest, which a man has in lands and chattels to the exclusion of others. The term property is a generic term of extensive application, and while strictly speaking it means only the right which a person has in relation to something, or that dominion or indefinite right of user and disposition which one may lawfully exercise over particular things or objects, it is frequently used to denote the subject of the property."⁵

Property is to be treated as belonging to any person having custody or control of it or having in it any proprietary right or interest, not being an equitable interest arising only from an agreement to transfer or grant an interest or having a charge on it.⁶ A number of jurists had tried to explain the importance of property. The property appeals to the personality of an individual and in no case to be deprived of its enjoyment. According to *John Locke*, "every man has a property in his own person; every individual has a right to preserve his property, i.e. his wife, liberty and estate." *John Locke* tried to explain the property in its wider sense.⁷ According to *John Austin*, the term property sometimes used to denote the greatest right of enjoyment known to the law excluding servitudes. Sometimes, property means the whole of the assets of a man including both the rights in *rem* and rights in *personam*.⁸

JURISPRUDENTIAL CONCEPT OF PROPERTY

In ancient times, the existence, acquisition and use of material objects that were desirable, have been important factors in the life of man. According to *natural law theory* property was acquired by occupation of an ownerless object and as a result of individual labour. According to *Pufendorf*, a natural law jurist, "originally, all things belong to the people as a whole. There was no individual ownership. By means of an agreement or a pact, private ownership was established." According to *Blackstone*, an another natural law jurist, viewed that "by the law of nature and reason, he who first began to use a thing acquired therein a kind of transient property that lasted so long as he was using it and no longer; the theory of occupancy is the ground and foundation of all property or of holding those things in severalty which by the law of nature were common to all mankind."⁹ *Rousseau* gave the theory of first occupier; certain conditions must be satisfied to establish the right of the first occupier over a plot of land. In the first place, the land must not yet be inhabited; secondly, a man must occupy only the area he needs for his subsistence, and in the third place, possession must be taken not only by an empty ceremony, but by labour and cultivation, which should be respected by others.¹⁰ However, the acquisition has been made; the right which each individual has is always subordinate to the right which is enjoyed by the community.

The jurists of historical school viewed that private property had a slow and steady growth. It has grown out of collective group or joint property. According to *Sir Henry Maine*, "for many years past, there has been sufficient evidence to warrant that the oldest discoverable forms of property in land were of collective property and private property had grown through a series of changes, out of collective property or ownership in common." Again, "property originally belonged not to individuals, not even to isolated families, but to larger societies. According to *Dean Roscoe Pound*, the earliest form of property was group property; it was later on that individual property came into existence.¹¹ According to the sociological theory, property should not be considered in terms of private rights but should be considered in terms of social functions. Property is an institution which secures a maximum of interests and satisfies the maximum of wants.¹²

⁴ *Halsbury's Law of England*, Vol. XXVII 571-73(2nd edn., Butterworths, London, 1937).

⁵ *The Law Lexicon, The Encyclopaedic Law Dictionary* 1030 (5th edn., Wadhwa and Company, 2017).

⁶ R.W.M. Dias, *Jurisprudence* 299-301 (5th edn., Butterworths London, 1985).

⁷ V. D. Mahajan, *Jurisprudence and Legal Theory* 458 (Eastern Book Company, Lucknow, 2006).

⁸ *Id.* at 459.

⁹ *Supra* note 6 at 306.

¹⁰ *Sir Henry Maine, Ancient Law* 148 (JM Dent & Sons, London, 1978).

¹¹ *Supra* note 7 at 473.

¹² *Ibid.*

PROPERTY AND SOCIAL WELFARE STATE

The rise of the welfare state has created new forms of property. In a welfare state, the government is the regulator, dispenser of benefits and a mass employer. Property is an essential guarantee for human dignity, a man may be able to develop himself only if he attains the opportunity to own the property and it is a welfare state to make available such opportunities for man. Property has always been seen as an instrument of life and justified as an instrument to a full human life. That is the reason our Constitution makers included the right to hold and dispose of property as a fundamental right. They certainly intended that the right must be available to every citizen in the country.¹³

India is world's largest democratic state and constitution of it declares India a socialist and welfare state.¹⁴ Spirit of our constitution is social welfare, common good and to secure to all its citizens, justice-social and economic. The basic aim of the welfare state is the attainment of substantial degree of social, economic and political equalities through the state.¹⁵ The state government directed that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good¹⁶ and that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment.¹⁷ The expression material resources mean all things which are capable of producing wealth for the community. Everything of value or use in the material world is material resources and the individual being a member of the community; his resources are part of the community.¹⁸ It is wide enough to cover not only natural or physical resources but also movable or immovable property such as land, building, etc.¹⁹

PROPERTY AND LAND REFORM LEGISLATIONS

For proper implementation of Constitutional directives, the government brought First Five Year Plan in 1950. A number of states enacted laws to give proprietary rights to the landless persons. In that way states brought land reform legislations such as the Bihar Land Reforms Act, 1950²⁰, the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950²¹, the Bihar Displaced Persons Rehabilitation (Acquisition of Land) Act, 1950.²² The Punjab Security of Land Tenures Act, 1953²³ and the PEPSU Tenancy and Agricultural Lands Act, 1955²⁴ were the outcome of the recommendations of the Congress Agrarian Reforms Committee and to achieve the Constitutional objectives²⁵ to accommodate the interest of dwarf land holdings and of the landless persons in the state of Punjab.

By mid-term appraisal of the Third Five Year Plan in 1963, the National Development Council reviewed the progress made in the implementation of the land reforms in states and observed that the legislation had not been fully enforced. The National Development Council sought speedy execution of the land reform programmes in the states and called upon all the state governments to complete the

¹³ This is the text of the second Dr. Rajendra Prasad Memorial Lectures delivered by Justice Shri K.K. Mathew, Judge, Supreme Court of India, under the auspices of the Institute of Constitutional and Parliamentary Studies on December 9, 1975, at New Delhi.

¹⁴ The Constitution of India, 1950, Part IV.

¹⁵ Dr. Narender Kumar, *constitutional Law of India* 508 (Allahabad Law Agency, Faridabaad 2016).

¹⁶ *Supra* note 14 Part IV, Article 39(b).

¹⁷ *Id* Art. 39(c).

¹⁸ *State of Karnataka v. Ranganatha Reddy*, AIR 1978 SC 215.

¹⁹ *State of Tamil Nadu v. Abu Kavur Bai*, AIR 1984 SC 326.

²⁰ Bihar Act No. 30 of 1950.

²¹ Uttar Pradesh Act No. 1 of 1951.

²² Bihar Act No. 38 of 1950.

²³ Punjab Act No.10 of 1953 (w.e.f. 15.04.1953).

²⁴ Act No. 13 of 1955.

²⁵ That the ownership and control of the material resources of the community will be so distributed as to best sub-serve the common good, Article 39(b). That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment, Article 39(c) the Constitution of India, 1950.

land reform programmes before the end of the Third Five Year Plan.²⁶ The Council also constituted an Implementation Committee²⁷ to review the progress of land reforms in different states and to propose measures for securing implementation.²⁸

After considering the measures taken by the states in the progress of the land reforms, Planning Commission of India issued guidelines to the states to take effective steps to implement these laws. On receiving the guidelines from the Government of India, the Punjab Land Reforms Act, 1972²⁹ was enacted and the Punjab Utilization of Surplus Area Scheme, 1973³⁰ was framed for the effective implementation of land reforms.

The aims of the Act is to consider the land reform measures necessary in the interest of social justice, to rehabilitate the downtrodden classes and to provide proprietary rights on the agricultural land as the object of the Act provides under Section 2.³¹ This Act provides ceiling limits and property is divided in four parts. The Act provides the 'permissible area', a person can hold, based on the irrigation facilities and according to the production value of the land.³²

1. Where assured irrigation is available for two crops in a year 7 hectares i.e. 17.297 acres.
2. Where assured irrigation is available for one crop in a year 11 hectares i.e. 27.181 acres.
3. Where the land is unirrigated or barani 20.5 hectares i.e. 50.655 acres.
4. Other land including banjar 21.8 hectares i.e. 53.867 acres considering the quality of land with reference to the intensity of irrigation, productivity of soil etc.

To protect the surplus property from ceiling, problem of *Benami* transactions came into existence.

PROBLEM OF BENAMI TRANSACTIONS IN IMPLEMENTING LAND REFORM LEGISLATIONS

Needless to say that *benami* transaction has acted as the biggest roadblock to achieve such measures. Under the Land Reform Laws when ceiling was imposed on property, the concept of *benami* transactions came into existence and such types of transactions were in a way to protect surplus property. To curb such activities the President of India promulgated the *Benami* Transactions (Prohibition of Right to Recover Property) Ordinance, 1988.³³ It prohibited right to recover property held *benami* but did not define the expression "*benami*", later it was converted into full-fledged legislation,³⁴ which will touch all the facets of property like concealing the real property. To plug this loopholes the *Benami* Transactions (Prohibition) Act, 1988 was passed and recently it has been replaced by the *Benami* Transactions (Prohibition) Amendment Act, 2016.

In India the *benami* transactions have been rampant. The practice has long been common in this country for intending alienation of the land to take document of transfer in the name of their friends or relatives, in view to defeat the restrictions imposed by the Government regulations and ceiling legislations. *Benami* Transaction is one of the key tools in the hands of such unscrupulous people to achieve their nefarious designs.

²⁶ *Implementation of Land Reforms*, Planning Commission of India, 1966 at 277.

²⁷ The Committee constituted with the Ministry of Home Affairs, Shri Gulzari Lal Nanda, as Chairman and the Ministry of Food and Agriculture, the member in-charge land reforms in the Planning Commission and five Chief Ministers who were Vice-Chairmen of the zonal councils, as members.

²⁸ *Supra* note 26.

²⁹ Punjab Act No. 10 of 1973.

³⁰ Scheme framed vide notification published in gazette of Punjab (extra) leg. Suppl. Part III dated July 4, 1973.

³¹ *Supra* note 29, Section 2. **Declaration as to giving effect to certain 'Directive Principles'** which declared that this Act is for giving effect to the policy of the State towards securing the principles specified in Clause (b) which provides that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good; and clause (c) provides that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; Article 39 of the Constitution of India, 1950.

³² *Supra* note 29, Section 4(2).

³³ The Ordinance was promulgated by the 57th Report of the Law Commission 1973 on *Benami* Transactions.

³⁴ The *Benami* Transaction (Prohibition) Act, 1988 (Act No. 45 of 1988).

The word "Benami" is derived from Persian word 'be' (without) + 'nam' (name) that means no name or nameless or fictitious. This word is also synonym of word **Farzi**. In common parlance, *Benami* means without name. So, Purchase or holding of properties on fictitious person in whose name the *benami* property is transferred. The word 'benami' is used to denote two classes of transactions which differ from each other in their legal character and incidents. In one sense, it signifies a transaction which is real and the real purchaser is someone else than the one who is recorded so.³⁵ In this transfer there is no intention to transfer the title. The object of the Act is to prohibit *benami* transactions and right to recover property held *benami*. The essential legal characteristic of *benami* transactions is that there is no intention to benefit the person in whose name transaction is made. The Supreme Court had also again elaborated the concept of "Benami Transaction" and included primarily 2 types of transactions broadly under its purview. Firstly, when a person buys a property with his own money in the name of another person without any intention to benefit such other person and secondly, when a person who is owner of the property executes a conveyance in favour of another without the intention of transferring the title to the property.³⁶

HARCHAND SINGH, MLA COMMITTEE³⁷ REPORT ON LAND REFORMS

A legislators' Enquiry Committee was set up by the state government. It was a 'Fact-finding Committee', and to arrive at its conclusions. The committee hit on a number of issues and found the causes of the failure of the land reforms. The important aspect of this committee was to confine its enquiry to the disposal of the 'Surplus rural evacuee agricultural land' transferred in different categories by the central government to the state government through a package deal in 1961.³⁸ That land was to dispose of by an open auction, that provided an opportunity to many, even who were not eligible to bid in the auction, to purchase big chunks of land on cheap rates in several names. The given sale suffered from various defects. The persons with means had an edge over the poor tillers the committee said. As a result, the poor and needy persons depending upon agriculture alone had been deprived of the opportunity of purchasing that land. This was the tragic outcome of the policy of open auctions. It frustrated the cherished ideology of 'land for landless tillers'.

The committee has noticed that some of these rich and influential unauthorized occupants have got the possession thereof, entered in the *khasra girdawaris* and other revenue records in the names of different persons including members of the Scheduled Castes, who are either their relatives or employees and who are not the actual tillers. The obvious intention of these persons is that as and when an opportunity comes their way, they would purchase the land in *benami* transactions. *Benami* transactions proliferated during India's socialist past. Large scale *benami* deals happened when land reforms entailed the abolition of zamindari, giving tillers rights to own the land as well as imposition of agricultural land ceilings. (In urban areas, this became quite rampant after the passage of the now-scraped Urban Land (Ceiling and Regulation) Act, 1976.³⁹

³⁵ *Sree Meenakshi Mills Ltd., Madurai v. Commissioner of Income -Tax, Madras*, AIR 1957 SC 49.

³⁶ *Thakur Bhim Singh v. Thakur Kan Singh* [1980] 3 SCC 72,

³⁷ The Enquiry Committee of Legislators, Appointed by Government to probe into the setting up of Sizeable Agricultural Farms on Evacuee Lands by Officers, their relatives and other influential Public Men. The Committee was headed by Mr. Harchand Singh, MLA. Other members of the Committee were Shri Jaswinder Singh Brar, MLA; Shri Darshan Singh K.P.MLA; Shrimati Gurdev Kaur, MLA; Shri Darshan Singh Canadian, MLA; shri Satpal Singh Randhawa, MLA; Shri Brij Lal Goel, MLA and Chaudhary Darshan Singh, MLA.

³⁸ Cultivable land about 80,000 standard acres, banjar land about 111,000 acres and gairmumkin land (which was not known) about 103,344 ordinary acres during 1961-62.

³⁹ Available at, <https://swarajyamag.com/economy/explained-what-is-benami-property-and-how-to-deal-with-it>. (last visited on 25/02/2018).

OBJECTS AND REASONS OF THE *BENAMI* TRANSACTIONS (PROHIBITION) ACT, 1988

The Law Commission again submitted its Report⁴⁰ in 1988 on *benami* transactions to the Central government. The Law Commission has recommended the inclusion of the following provisions in the Bill to replace the Ordinance: -

- i. *Benami* transactions should cover all kinds of property;
- ii. Entering into a *benami* transaction after the commencement of the new law should be declared as an offence.
- iii. Voluntary organisations should be authorised to file complaints about the entering of *benami* transactions and the District Judges should be designated as Tribunals. Even Grma Nyayala recommended by the Law Commission may also be utilized for this purpose.

The recommendations of the Law Commission have been examined by the Central government and enacted 'the *Benami* Transactions (Prohibition) Act, 1988⁴¹ seeks to achieve the above object. The *benami* transaction is one of the key tools in the hands of such unscrupulous people to achieve their nefarious designs. The Act gives the definition of *benami* transaction as a transaction in which property is transferred to one person for a consideration paid or provided by another person.⁴² It also defines the property as of any kind, whether moveable or immovable, tangible or intangible, and includes any right or interest in such property.⁴³ The Act prohibits of *benami* transactions⁴⁴, subjects to some exceptions⁴⁵, which will be punishable for three years or fine or both.⁴⁶ Further the Act puts prohibition on the right to recover property held *benami* i.e. there will not be any suit, claim or action to enforce any right in respect of any property held *benami*.⁴⁷ All the property held *benami* will be subject to acquisition by such authority.⁴⁸ The Act seems not sufficient; therefore, it invited comprehensive amendments in the Act.

THE *BENAMI* TRANSACTIONS (PROHIBITION) AMENDMENT ACT, 2016

The *Benami* Transactions (Prohibition) Act, 1988 has been on statute book since more than 28 years, the same could not be made operational because of certain inherent defects. The Act has been amended in 2016 with a view to provide effective regime. The *Benami* Transactions (Prohibition) Amendment Act, 2016⁴⁹ came into effect from 1st November, 2016.

The statement of objects and reasons to the Act, states that it was found that the provisions of the 1988 Act inadequate to deal with *benami* transactions. The amending Act defines '*benami* transaction' as a transaction or an arrangement where a property is transferred to, or is held by, a person and consideration for such property has been provided, or paid by another person; and the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration or a transaction or an arrangement in respect of a property carried out or made in a fictitious name or where the owner of the property not aware.⁵⁰ The amended law empowers the specified authorities to provisionally attach *benami* properties which can eventually be confiscated.⁵¹ Besides, if a person is found guilty of offence of *benami* transaction by the competent court, he will be punished with rigorous imprisonment for a term not less than one year which may be extendable upto

⁴⁰ 130th Report of Law Commission of India 1988 on *Benami Transactions*, Ministry of Law & Justice, Government of India.

⁴¹ *Supra* note 34

⁴² *Id.* Section 2(a).

⁴³ *Id.* Section 2(c).

⁴⁴ *Id.* Section 3(1).

⁴⁵ *Id.* Section 3(2)(a)(b).

⁴⁶ *Id.* Section 3 (3).

⁴⁷ *Id.* Section 4.

⁴⁸ *Id.* Section 5.

⁴⁹ Act No. 50 of 2016.

⁵⁰ *Id.* Section 4.

⁵¹ *Id.* Section 8.

7 years and shall also be liable to fine which may extend to 25% of the fair market value of the property.⁵²

Several *benami* transactions have been identified since the coming into effect of the amended law and show cause notices for provisional attachment of *benami* properties have been issued in 140 cases involving properties of the value of about Rs. 200 crore. Out of these, provisional attachment has already been effected in 124 cases. The *benami* properties attached include deposits in the bank accounts and immovable properties. The Government has put in place empowered institutions for efficient implementation of the amended law.⁵³

CONCLUSION

It has been seen that the ceiling laws were enacted to limit the land holdings in the country. The aim of the new Act and new developments was to implement the constitutional directives as well as to give the proprietary rights to the small land holders and agricultural labourers. The establishment of Unique Identification Authority of India (UIDAI) by the central government which has issued Aadhaar Unique Identification numbers (UIDs) and cards to 118,46,79,944 number of Indians as on date and the thrust of the government to link it with Bank accounts and other essential services and digitization of the land record and proposal to link it with Aadhar Card would help in greater and effective implementation of the *Benami* Prohibition laws. The Union of India is also considering linking Aadhaar Numbers with the ownership of said properties, so that by these new developments, three objectives; 1) to put ceiling limits on the land holding, 2) utilization of the surplus area, and 3) land to the landless tillers; to become successful.

⁵² *Id.* Section 53.

⁵³ Shri Santosh Kumar Gangwar, Minister of State in the Finance Affairs, replied to a question in Lok Sabha, available at, <http://www.zeebiz.com/india/news-govt-issues-notices-in-140-cases-of-benami-properties-worth-rs-200-crore-14135> (last visited on 03/03/2018).