TaxAaram INSIGHTS

The Return of the Retrospectivity Ghost in the Benami Law of 2016

The Return of the Retrospectivity Ghost in the Benami Law of 2016

The Hon'ble Supreme Court's recent ruling in '*Manjula & Ors. v. D.A. Srinivas'* (2026 INSC 465) [LSI-634-SC-2026-(NDEL)], may at first glance, appear to be another routine civil property dispute arising from competing Wills. However, the judgment takes a remarkably interesting turn in its latter half. In the sprawling 146-pages ruling, the discussion commencing from page 103 under paragraph 22 onwards, gradually eclipses the original civil dispute itself and shifts the centre of gravity towards the far larger constitutional and jurisprudential debate surrounding the retrospective applicability of 'The Benami Transactions (Prohibition) Amendment Act, 2016 (hereinafter referred to as 'the 2016 Act).

In many ways, the manner in which the retrospectivity issue ultimately assumes central prominence in the judgment is reminiscent of the hon'ble Apex Court's ruling in '*Tiger Global International III Holdings v. Authority for Advance Rulings'* [TS-38-SC-2026]. Interestingly, the said judgment was also authored by the same hon'ble Bench. In Tiger Global judgement, GAAR principles eventually came to dominate the entire discourse even though the anti-avoidance provisions had not been formally invoked by the Revenue itself. Similarly, in 'Manjula v. Srinivas', what began as a civil dispute concerning rival Wills and alleged benami properties gradually transformed into a much larger judicial examination of the retrospective/ retroactive applicability of 'the 2016 Act'.

The ramifications of the judgment are therefore likely to travel far beyond ordinary civil disputes concerning benami properties. In particular, paragraph 22.15 of the ruling, wherein the Hon'ble Supreme Court observes that the provisions of 'the 2016 Act', insofar as they are declaratory, curative, procedural and machinery-oriented, would operate retrospectively/retroactively, has the potential to significantly reshape the constitutional landscape of Benami jurisprudence in India.

Equally intriguing, however, are the facts of the case itself and the litigation strategies adopted by both sides, which effectively handed the Court and the State an ideal opportunity to revisit and revive the retrospective operation debate after the recall of '*Union of India v. Ganpati Dealcom Pvt. Ltd.'* (2022) 3 SCC 315.

The Intriguing Factual Matrix Behind the Judgment

The dispute revolved around properties standing in the name of late K. Raghunath. The respondent, D.A. Srinivas, claimed ownership rights over the said properties on the basis of a later Will allegedly executed by Raghunath in his favour. Srinivas's case itself was founded on the assertion that though the properties stood in the name of Raghunath, the actual consideration for acquisition had flown from Srinivas because legal restrictions prevailing at the relevant time prevented him from directly purchasing agricultural land.

The appellants, namely Manjula, wife of the deceased Raghunath, and her children, initially adopted the position that the properties were the self-acquired assets of Raghunath and had already devolved upon them under an earlier Will. However, while attempting to defeat Srinivas's claim under the subsequent Will, the appellants strategically altered their approach

by contending that, going by Srinivas's own pleadings, the transaction itself was benami in nature.

Ironically, much of the eventual judicial conclusion regarding the benami character of the transaction appears to have emerged from the meticulous pleadings and submissions advanced on behalf of the appellants themselves.

The case also carried a disturbing criminal backdrop involving allegations that Srinivas was connected with the murder of Raghunath, the alleged benamidar. Though the Hon'ble Supreme Court consciously restricted itself to the civil and statutory dimensions of the dispute, the intensity of the underlying factual narrative undoubtedly influenced the broader litigation strategy adopted by both sides.

Paragraph 22.15 and the Reopening of the Retrospectivity Debate

The true significance of the judgment lies in paragraph 22.15, where the Hon'ble Supreme Court observed that the amendments introduced by 'the 2016 Act', insofar as they are declaratory, procedural, curative and machinery-oriented, would operate retrospectively, while provisions creating new offences or enhancing punishment would operate prospectively.

This observation immediately reopens one of the most contentious constitutional debates under the Benami law.

The Court appears to proceed on the reasoning that the original Prohibition of Benami Property Transactions Act, 1988 (the 1988 Act) already contained the core legislative policy against benami transactions, and that the 2016 amendment merely strengthened and operationalised the machinery necessary for effective enforcement of the pre-existing legislative intent.

To appreciate the full implications of this reasoning, it becomes necessary to closely examine the structural differences between the original 1988 enactment and the transformed 2016 regime.

The 1988 Act and the 2016 Transformation

The original 1988 Act was comparatively skeletal. Section 3 prohibited benami transactions, while Section 4 barred suits and defences based upon benami ownership claims. Section 5 further contemplated acquisition of benami properties by the Central Government.

However, the 1988 enactment lacked a functional enforcement architecture. No effective adjudicatory machinery was created. More importantly, though Section 5 contemplated acquisition of benami properties by the Government without payment of compensation, the statutory Rules and procedures required to operationalise such acquisition were never notified.

Consequently, despite the existence of a legislative prohibition, the practical enforcement of confiscatory consequences remained largely dormant for decades. In effect, substantial possessory and proprietary rights continued to remain with benamidars and beneficial owners because the State lacked an operational statutory machinery capable of enforcing divestment.

The 2016 amendment radically altered this position. The definition of "benami transaction" under Sections 2(8) & 2(9) has been substantially widened to include the sale proceeds of the subject benami property also, which was absent in the 1988 Act. The amended law has also introduced concepts such as fictitious ownership arrangements, untraceable consideration providers and layered ownership structures far beyond the relatively narrower scope of the 1988 enactment.

Simultaneously, an entirely new adjudicatory and enforcement ecosystem was created through the appointment of Initiating Officers, Approving Authorities, Adjudicating Authorities and Appellate Tribunals. Most importantly, the 2016 amendment introduced an elaborate framework for provisional attachment, adjudication and confiscation through Sections 24 to 29.

The penal architecture was also significantly strengthened. While Section 3(3) of the original 1988 Act prescribed imprisonment up to three years, Section 53 introduced by the 2016 amendment enhanced imprisonment up to seven years together with stringent financial penalties.

Thus, the 2016 regime did not merely refine the earlier law. It transformed a largely dormant statutory prohibition into a fully operational confiscatory code.

Acquisition versus Confiscation: A Crucial Constitutional Distinction

One of the most overlooked yet constitutionally significant distinctions between the 1988 Act and the 2016 amendment lies in the transition from "acquisition" to "confiscation".

Under the original Section 5 of the 1988 Act, benami properties were to be "acquired" by the Central Government in accordance with prescribed Rules. The concept of acquisition, in constitutional jurisprudence, has historically been associated with sovereign assumption of property under eminent domain principles.

The 2016 amendment, however, replaced this framework with compulsory "confiscation".

Confiscation carries a distinctly penal and forfeiture character. It involves compulsory divestment of property as a consequence of statutory wrongdoing. Unlike ordinary acquisition, confiscation is not merely regulatory or administrative in nature. It directly imposes civil disabilities and coercive consequences upon property holders.

This distinction becomes extremely relevant while analysing retrospectivity. If confiscation provisions substantially alter proprietary consequences and enlarge the coercive powers of the State, an important constitutional question arises whether such provisions can truly be characterised as merely procedural or machinery-oriented.

The Continuing Relevance of the Apex Court Ruling in '*R. Rajagopal Reddy*'

The Hon'ble Supreme Court's ruling in *R. Rajagopal Reddy v. Padmini Chandrasekharan* (1995) 2 SCC 630 assumes renewed importance in this context.

In *Rajagopal Reddy*, the Hon'ble Supreme Court categorically held that Section 4 of the Benami Act of 1988, created substantive rights in favour of benamidars while simultaneously destroying substantive rights of real owners and imposing new liabilities. The Court expressly rejected the argument that the legislation was merely declaratory or curative merely because it employed the phrase "it is declared".

Most significantly, the Hon'ble Supreme Court held that the expressions "shall lie" in Section 4(1) and "shall be allowed" in Section 4(2) operated prospectively and applied only to future stages of litigation.

The constitutional logic underlying *Rajagopal Reddy* was not confined merely to transactions preceding the 1988 enactment. The deeper rationale was that provisions affecting substantive proprietary rights cannot ordinarily be retrospectively imposed unless the legislative intent is explicit.

Interestingly, in *Manjula v. Srinivas*, the Hon'ble Supreme Court appears to have distinguished *Rajagopal Reddy* on the ground that it dealt with transactions prior to the coming into force of the 1988 Act itself. However, with respect, this distinction may not fully dilute the broader jurisprudential foundation underlying *Rajagopal Reddy*.

If Section 4 itself was recognised by the Hon'ble Supreme Court as affecting substantive rights and therefore incapable of retrospective operation, a compelling argument remains available that the vastly expanded confiscatory and attachment framework introduced in 2016 is equally substantive in character.

The Shadow of *Ganpati Dealcom*

Prior to *Manjula v. Srinivas*, the leading authority governing retrospectivity under the Benami law was *Union of India v. Ganpati Dealcom Pvt. Ltd.* (2022) 3 SCC 315.

In *Ganpati Dealcom*, the Hon'ble Supreme Court held that the 2016 amendments introducing confiscatory consequences and enhanced punitive architecture could not be retrospectively applied. The Court strongly emphasised constitutional protections against retrospective penal consequences and treated the 2016 regime as substantially altering the legal framework.

However, the jurisprudential position dramatically changed when *Ganpati Dealcom* itself came to be recalled by the Hon'ble Supreme Court in 2024. Though, it is pertinent to mention here that the said judgement was recalled only on the ground that the 2022 bench struck down sections 3(2) and 5 of the 1988 Act without a valid challenge to their constitutionality by the parties.

This recall has created substantial uncertainty regarding the future judicial approach towards retrospectivity.

Interestingly, this very conflict surfaced inside the courtroom in *Manjula v. Srinivas*. Srinivas attempted to invoke the fiduciary capacity exception under the amended framework. To oppose

this, Manjula relied upon *Ganpati Dealcom* to contend that the 2016 Act was not retrospective. Srinivas responded by pointing out that the judgment had already been recalled.

Ironically, both sides selectively invoked or resisted retrospectivity depending upon immediate litigation convenience. In doing so, they effectively handed the Hon'ble Supreme Court a silver platter opportunity to reaffirm retrospective operation of the curative and machinery provisions of the 2016 regime.

The Legislative Intent of Retrospectivity

Another significant interpretational aspect emerges from the fact that wherever the Legislature intended retrospective applicability under the original 1988 framework, it consciously employed explicit deeming language to that effect. This assumes considerable significance while interpreting the 2016 amendment.

Had Parliament intended the sweeping amendments introduced in 2016, particularly those relating to enlarged definitions, attachment, adjudication and confiscation, to retrospectively operate upon concluded past transactions, it could very well have inserted similarly explicit deeming provisions within the amendment Act itself.

The absence of such express retrospective language becomes constitutionally relevant, especially in a statute carrying severe civil and penal consequences.

Equally important is the fact that the operational machinery governing attachment, adjudication and confiscation was not merely dormant machinery contemplated but unimplemented under the 1988 Act. Rather, the effective enforcement framework itself was substantially created and notified only pursuant to the 2016 amendment and the Rules brought into force with effect from 01.11.2016.

Therefore, it may not be entirely accurate to characterise the present confiscatory architecture as merely a continuation of pre-existing machinery under the 1988 enactment.

Does the Right to Property Continue as a Vested Right?

An equally important constitutional issue arising from the judgment concerns the relationship between the Right to Property and vested rights jurisprudence.

The judgment appears to suggest that since the Right to Property is no longer a Fundamental Right under Part III of the Constitution, the retrospectivity analysis may require a different constitutional threshold.

However, jurisprudentially, the concepts of Fundamental Rights and vested rights operate in different constitutional fields.

A vested right is generally understood as a right which has accrued, crystallised and become enforceable under existing law. Indian jurisprudence has consistently recognised that vested rights cannot ordinarily be divested retrospectively unless the statute clearly manifests such intention.

In *State of Gujarat v. Raman Lal Keshav Lal Soni* (1983) 2 SCC 33 and *Chairman, Railway Board v. C.R. Rangadhamaiah* (1997) 6 SCC 623, the Constitution Bench of the Hon'ble Supreme Court recognised that accrued and vested rights ordinarily enjoy protection against retrospective legislative impairment.

Therefore, merely because property rights now survive under Article 300A instead of Part III, it may not automatically follow that proprietary interests lose their character as vested rights.

Another important constitutional dimension which may require deeper examination in future litigation is that the vested rights potentially affected by the 2016 amendment are not confined merely to proprietary interests in the benami property itself. Even under the original 1988 framework, parties possessed certain accrued civil and legal rights flowing from the then existing statutory structure and its practical non operationality. Since the acquisition machinery contemplated under Section 5 of the 1988 Act was never effectively notified or operationalised, parties dealing with such properties arguably continued to enjoy a settled legal expectation that while civil claims may be barred under Section 4, the property itself was not exposed to an active attachment and confiscatory regime. The 2016 amendment fundamentally altered this position by introducing immediate provisional attachment, adjudicatory proceedings, compulsory confiscation and significantly enhanced penal exposure.

This distinction is likely to become increasingly important in future constitutional challenges concerning retrospective attachment and confiscation of properties acquired long before the 2016 amendment came into force.

A Siver Lining for the Constitutional Challenge to the Retrospective Income Tax Act Amendments, brought by the Finance Act 2026

An interesting and perhaps unintended implication of the reasoning adopted by the hon'ble Supreme Court in *Manjula v. Srinivas* may actually strengthen the constitutional challenge to the retrospective amendments introduced in the Income-tax Act, 1961 through the Finance Act, 2026. The foundational logic underlying the Benami judgment appears to be that the legislative intent animating both the original 1988 enactment and the expanded 2016 regime was fundamentally consistent. The Court seems to proceed on the premise that the 2016 amendments merely operationalised, strengthened and carried forward an already existing legislative policy against benami transactions and acquisition of benami properties. It is this perceived continuity of legislative intent which appears to have persuaded the Court to characterise several provisions of the 2016 framework as curative, procedural and machinery-oriented in nature.

If this very benchmark is applied to the retrospective amendments introduced by the Finance Act, 2026, the constitutional outcome may, in fact, favour the assessees rather than the Revenue. Unlike the Benami framework, the original legislative intent underlying the substantive statutory jurisdictional mandates of issuance of reopening notices u/s 148A/148 of the Act in a faceless manner, DIN compliance architecture and quasi-judicial approval safeguards under the Income-tax Act, 1961 were neither uncertain nor incomplete. Parliament

had consciously and explicitly designed a faceless jurisdictional framework, mandated DIN compliance and incorporated safeguards requiring demonstrable independent application of mind by approving authorities. The Courts merely enforced the statutory discipline deliberately enacted by Parliament itself.

The present retrospective amendments do not seek to cure any legislative vacuum, ambiguity or inadvertent omission. They are not clarificatory in nature. In substance, they seek to legislatively reverse judicial interpretations which had faithfully enforced the original statutory design. Far from merely operationalising the law, these amendments arguably alter the very character and consequences of the framework originally enacted. In that sense, they may be viewed not as curative validations but as a substantial retrospective rewriting of the governing jurisdictional architecture itself.

Therefore, unlike the Benami framework where the Court in *Manjula v. Srinivas* appears to perceive continuity of legislative policy between the 1988 and 2016 enactments, the retrospective amendments introduced through the Finance Act, 2026 may arguably represent a departure from the very substantive jurisdictional safeguards consciously enacted by Parliament and subsequently upheld and enforced by constitutional courts.

Concluding Reflections

The hon'ble Supreme Court's judgment in *Manjula v. Srinivas* is likely to emerge as a highly influential ruling in the evolving landscape of Benami jurisprudence in India. The decision substantially revives the debate on retrospective applicability of the 2016 regime and signals a clear judicial inclination towards sustaining retrospective operation of provisions characterised as curative, procedural and machinery-oriented. At the same time, it also appears to dilute, at least indirectly, the restrictive approach earlier reflected in *Ganpati Dealcom* before its recall in 2024.

However, the judgment also leaves several foundational constitutional and jurisprudential questions open. The distinction between acquisition and confiscation, the enlarged scope of "benami transaction" under the 2016 amendment, the sweeping attachment and confiscatory powers introduced therein, and the continuing protection available to vested proprietary rights all continue to raise substantial issues requiring deeper constitutional scrutiny.

Equally important is the continuing tension between the observations in *R. Rajagopal Reddy v. Padmini Chandrasekharan* (1995) 2 SCC 630 and the reasoning adopted in paragraphs 22.1 to 22.15 of *Manjula v. Srinivas*, wherein the hon'ble Apex Court appears to treat even the substantially expanded definition of "benami transaction" along with the stringent attachment and confiscation provisions, introduced under the 2016 regime, as procedural, curative and machinery-oriented for the purposes of retrospective applicability.

Given the far-reaching civil consequences flowing from retrospective attachment and confiscation of properties, coupled with the jurisprudential vacuum created after recall of *Ganpati Dealcom*, the issues involved may eventually warrant authoritative reconsideration by

a larger Bench of the hon'ble Supreme Court so as to conclusively settle the constitutional boundaries of retrospective Benami legislation.

[This Article authored by our Founder, Shri Mayank Mohanka, FCA, has also been published in Taxsutra].

****