

The Jammu and Kashmir Benami Transactions (Prohibition) Act, 2010

JAMMU & KASHMIR

India

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Act 5 of 2010

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The Jammu and Kashmir Benami Transactions (Prohibition) Act, 2010 Act No. 5 of 2010 [Received the assent of Governor on 20th April, 2010 and published in the Government Gazette dated 21st April, 2010.] An Act to prohibit benami transactions and the right to recover property held benami and for matters connected therewith or incidental thereto. Be it enacted by the Jammu and Kashmir State Legislature in the Sixty-first Year of the Republic of India as follows:-

1. Short title and commencement.

(1) This Act may be called the Jammu and Kashmir Benami Transactions (Prohibition) Act, 2010. (2) It extends to the whole of the State of Jammu and Kashmir. (3) It shall come into force from the date of its publication in the Government Gazette.

2. Definitions.

- In this Act, unless, the context otherwise, require, -(a) "benami transaction" means any transaction in which property is transferred to one person for a consideration paid or provided by another person; (b) "Government" means the Government of Jammu and Kashmir; (c) "prescribed" means prescribed by rules made under this Act; (d) "property" means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.

3. Prohibition of benami transactions.

(1) No person shall enter into benami transaction. (2) Nothing in sub-section (1) shall apply to -(a) 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.(b)The securities held by a -(i)Depository as a registered owner under sub-section (1) of section 10 of the Depositories Act, 1996;(ii)Participant as an agent of a depository.Explanation. - The expressions "depository" and "participant" shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories Act, 1996 (Central).

4. Penalty.

(1)Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to seven years or with fine which may extend up to rupees five lacs or with both.(2)Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989, an offence under this section shall be non-cognizable and non-bailable.

5. 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, shall be allowed in any suit, claim or action or 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.

6. Property held benami 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 be 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. Act not to apply in certain cases.

- Nothing in this Act shall affect the provisions of section 53 of the Transfer of Property Act; Samvat 1977 or any law relating to transfer for an illegal purpose.

8. Repeal of provisions of certain Acts.

- Sections 81, 82 and 94 of the Trusts Act, Samvat 1977 (Act No. XLI of Samvat, 1977) and section 66 of the Code of Civil Procedure, Samvat 1989 are hereby repealed.

9. Power to make rules.

(1)The Government may, by notification in the Government Gazette, make rules for carrying out the purpose of this Act.(2)In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-(a)the authority competent to acquire properties under section 6;(b)the manner in which, and the procedure to be followed for, the acquisition of properties under section 6;(c)any other matter which is required to be prescribed.(3)Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive-sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule.