

**Union of India & Anr.**

v.

**M/s Ganpati Dealcom Pvt. Ltd.**

Review Petition (Civil) No. 359 of 2023  
in

Civil Appeal No. 5783 of 2022

18 October 2024

**[Dr Dhananjaya Y Chandrachud, CJI,  
Pamidighantam Sri Narasimha, Manoj Misra, JJ.]**

**Issue for Consideration**

Whether a challenge to the constitutional validity of a statutory provision can be adjudicated upon in the absence of a lis and contest between the parties.

**Headnotes<sup>†</sup>**

**Ground for recall for judgment – Supreme Court declared unamended provisions of the Prohibition of Benami Property Transactions Act 1988 unconstitutional – Held not permissible – There was no challenge to the constitutional validity of the provisions – No adjudication on the constitutional validity of a law without there being any contest between the parties – Submissions by the parties do not address the issue of constitutional validity. [Paras 5-6]**

**Effect of recall – The recalled proceedings shall stand restored for fresh adjudication – Where any other proceedings have been disposed of by relying on the judgment that has been recalled – Aggrieved party may seek review of such proceedings. [Paras 6-7]**

**Held:** (1) A challenge to the constitutional validity of a statutory provision cannot be adjudicated upon in the absence of a lis and contest between the parties. [Paras 5-6]; (2) Recall of judgment is permissible where a judgment adjudicated the challenge to the constitutional validity of a statutory provision without a lis and contest between the parties. [Paras 6-7]

**Case Law Cited**

*Union of India and Another v. Ganpati Dealcom Private Ltd, 2022 INSC 853 – recalled.*

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### List of Acts

Benami Transactions (Prohibition) Amendment Act, 2016;  
Prohibition of Benami Property Transactions Act, 1988.

### List of Keywords

Constitutional validity; Without contest; Without lis; Recall; Review.

### Case Arising From

INHERENT JURISDICTION: Review Petition (Civil) No. 359 of 2023

In

Civil Appeal No. 5783 of 2022

From the Judgment and Order dated 23.08.2022 of the Supreme Court of India in C.A. No. 5783 of 2022.

### Appearances for Parties

Tushar Mehta, Solicitor General, Suryaprakash V Raju, A.S.G.,  
Vikramjit Bannerjee, Siddharth Sinha, Zoheb Hussain, S A Haseeb,  
Mrs. Aakansha Kaul, Bhuvan Mishra, Ritwiz Rishabh, Kanu Agarwal,  
Raj Bahadur Yadav, Advs. for the Petitioners.

Ajay Vohra, Ms. Manisha T Karia, Sr. Advs., Ankit Anandraj Shah,  
Aniket, Ms. Bhoomija Verma, Abhimanyu Singh, Shantanu Singh,  
Ravi Sehgal, Pai Amit, Deepin Deepak Sahni, Ms. Ananya Arora,  
Ms. Shreya Gupta, Anandh K, Ms. Iyer Shruti Gopal, Advs. for  
the Respondent.

### Judgment / Order of the Supreme Court

#### Order

1. We have heard Mr Tushar Mehta, Solicitor General appearing on behalf of the Union of India, and Mr Ajay Vohra, senior counsel appearing on behalf of the respondent.
2. The review has been sought in these proceedings of the judgment of a three-Judge Bench of this Court in **Union of India and Another v Ganpati Dealcom Private Ltd.**<sup>1</sup> The only question which was framed for consideration by this Court was in the following terms:

<sup>1</sup> [2022] 12 SCR 320 : (2023) 3 SCC 315

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- "3. The short legal question which arises for this Court's consideration is whether the Prohibition of Benami Property Transactions Act, 1988 (for short "the 1988 Act"), as amended by the Benami Transactions (Prohibition) Amendment Act, 2016 (for short "the 2016 Act") has a prospective effect. Although a purely legal question arises in this appeal, it is necessary to have a brief factual background in mind before we advert to the analysis."
3. The conclusion which was arrived at by the Court, was in the following terms:
- 127.1. Section 3(2) (***sic*** Section 3) of the unamended 1988 Act is declared as unconstitutional for being manifestly arbitrary. Accordingly, Section 3(2) of the 2016 Act is also unconstitutional as it is violative of Article 20(1) of the Constitution.
  - 127.2. In rem forfeiture provision under Section 5 of the unamended 1988 Act, prior to the 2016 Amendment Act, was unconstitutional for being manifestly arbitrary.
  - 127.3. The 2016 Amendment Act was not merely procedural, rather, prescribed substantive provisions.
  - 127.4. In rem forfeiture provision under Section 5 of the 2016 Act, being punitive in nature, can only be applied prospectively and not retroactively.
  - 127.5. The authorities concerned cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the 2016 Act viz. 25-10-2016. As a consequence of the above declaration, all such prosecutions or confiscation proceedings shall stand quashed.
  - 127.6. As this Court is not concerned with the constitutionality of such independent forfeiture proceedings contemplated under the 2016 Amendment Act on the other grounds, the aforesaid questions are left open to be adjudicated in appropriate proceedings."
4. The Court has declared Section 3(2) of the unamended provisions of the Prohibition of Benami Property Transactions Act 1988 as

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unconstitutional for being manifestly arbitrary and as violative of Article 20(1) of the Constitution. The provisions of Section 5 of the unamended Act, prior to the Amendment of 2016, have been declared to be unconstitutional on the ground that they are manifestly arbitrary.

5. It is not disputed that there was no challenge to the constitutional validity of the unamended provisions. This is also clear from the formulation of the question which arose for consideration before the Bench in paragraph 3 of the judgment, which has been extracted above. In the submissions of parties which have been recorded in the judgment, the issue of constitutional validity was not squarely addressed.
6. A challenge to the constitutional validity of a statutory provision cannot be adjudicated upon in the absence of a lis and contest between the parties. We accordingly allow the review petition and recall the judgment dated 23 August 2022. Civil Appeal No 5783 of 2022 shall stand restored to file for fresh adjudication before a Bench to be nominated by the Chief Justice of India on the administrative side.
7. Where any other proceedings have been disposed of by relying on the judgment of this Court in **Ganpati Dealcom Private Ltd** (supra), liberty is granted to the aggrieved party to seek a review in view of the present judgment.
8. Pending application, if any, stands disposed of.

*Result of the case:* Review Petition (Civil) No 359 of 2023 allowed;  
Civil Appeal No. 5783 of 2022 restored to file for  
fresh adjudication.

<sup>†</sup>*Headnotes prepared by:* Ankitesh Ojha, Hon. Associate Editor  
(*Verified by:* Abhinav Mukerji, Sr. Adv.)