

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

WRIT PETITION (C) NO 7566 OF 2019

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

**IN THE MATTER OF:**

Ashwini Kumar Upadhyay ...Petitioner

Verses

Union of India & Another ...Respondents

**URGENT APPLICATION**

**To,**

The Registrar,

High Court of Delhi at New Delhi,

**Sir,**

Kindly treat the accompanying application as an urgent one in accordance with the High Court Rules and Orders.

Petitioner is filing this writ petition under Article 226 of the Constitution. Matter is urgent in public interest as prayed.

**PETITIONER-IN-PERSON  
(Ashwini Kumar Upadhyay)**

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**NOTICE OF MOTION**

**To,**

The Standing Council

Union of India / Election Commission of India

High Court of Delhi, New Delhi,

**Sir,**

Please find enclosed herewith 3 copies of above mentioned Writ Petition, which is being filed today before this Hon'ble Court and likely to be listed before the Hon'ble Court on 16.7.2019 or any other date fixed by the registry.

It's for your information and necessary action.

**PETITIONER-IN-PERSON  
(Ashwini Kumar Upadhyay)**

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**MEMO OF PARTIES**

Ashwini Kumar Upadhyay

...Petitioner

Verses

**1. Union of India**

Through the Secretary,  
Ministry of Home Affairs  
North Block, New Delhi-110001

**2. Government of NCT of Delhi**

Through the Chief Secretary  
Delhi Secretariat, IP Estate,  
New Delhi - 110002,

Respondents

**PETITIONER-IN-PERSON  
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**SYNOPSIS**

Corruption is an insidious plague that has wide range of corrosive effects on our country. Corruption is the source of Benami Transaction and Black Money generation. Corruption undermines democracy and rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime like separatism, terrorism, naxalism, radicalism, gambling, smuggling, kidnapping, money laundering, extortion and dowry and other threats to human security to flourish. It hurts the poor disproportionately by diverting funds intended for development, undermines government's ability to provide basic services, feeds inequality & injustice and discourages foreign aids and investment. Corruption and Benami Money is key element in economic underperformance and a major obstacle in poverty alleviation and development. The *Right to Life* guaranteed under Article 21 cannot be secured and the golden goals, set out in Preamble cannot be achieved without curbing

the corruption and benami transaction. Therefore, it is duty of the State to take apposite steps to curb corruption and seize the benami properties made by illegal means to give a strong message that Government is determined to fight against corruption and black money generation. Executive action should be taken to warn the corrupt that betrayal of the public trust will no longer be tolerated and to reaffirm the rule of law and transparency.

Benami transaction in high denomination currency is used in illegal activities - terrorism, naxalism, separatism, radicalism, gambling, smuggling, money laundering, kidnapping, extortion, bribing and dowry. It also inflates the price of essential commodities as well as major assets like real estate, gold etc. These problems can be curbed up to great extent by linking movable-immovable properties with the owner's Aadhaar number. Black money holders would be forced to declare their unaudited movable and unmovable properties and it will take years to generate that amount of benami property again. Thus, in a long way it will help in putting an end to the black money generation. Another benefit is that people will deposit their money in banks; government will get good amount of revenue, which can be used for betterment of society and to provide good infrastructure and facilities to needy

people. India cannot move forward without clean and transparent governance, for which corruption-free society is a basic requirement. But State has not taken appropriate steps till date.

There is no country in top 50 of the Human Development Index, which has a significant amount of corruption and Benami property. There is correlation between Welfare State with appropriate attention to education and public health and absence of corruption and black money so it is obligation of the State to take steps to curb the Corruption and Benami transaction.

Berlin-based Corruption watchdog “Transparency International” has put India at 78 in Corruption Perception Index 2018. India was ranked 66 in 1998, 72 in 1999, 69 in 2000, 71 in 2001, 71 in 2002, 83 in 2003, 90 in 2004, 88 in 2005, 70 in 2006, 72 in 2007, 85 in 2008, 84 in 2009, 87 in 2010, 95 in 2011, 94 in 2012, 87 in 2013, 85 in 2014, 76 in 2015, 79 in 2016 and 81 in 2017 and root cause of the pathetic ranking is corruption and benami transaction.

Corruption and Benami Transaction distorts and disrupts the public distribution system with great violence. It is inimical to the fostering of excellence and has adverse impact on the EWS and BPL families. After

seven decades of independence, our 50% of population is still in distress, leading a hand-to-mouth existence, large segments not knowing where the next meal is coming from, with abominable health standards and primary education levels. Much of this malaise is traceable to widespread corruption, benami transaction and existence of black money.

If we see the International Ranking in “Ease of Doing Business”, India was ranked 77 in 2018, 100 in 2017, 130 in 2016, 130 in 2015, 142 in 2014, 134 in 2013, 132 in 2012, 132 in 2011, 134 in 2010, 133 in 2009, 122 in 2008, 120 in 2007, 134 in 2006 and 116 in 2005 and the root causes of this pathetic ranking is the same– Corruption, Benami Transaction and Black Money Generation.

If we see the World Happiness Index, India ranked 140 in 2019, 133 in 2018, 122 in 2017, 118 in 2016, 117 in 2015, 120 in 2014, 111 in 2013 and 133 in 2012 and the root cause of the pathetic ranking is Corruption and Benami Transaction.

In Global Peace Index, India ranked 141 in 2019, 137 in 2018, 137 in 2017, 141 in 2016, 144 in 2015, 142 in 2014, 141 in 2013, 144 in 2012, 147 in 2011, 144 in 2010, 144 in 2009, 143 in 2008 and 107 in 2007 and the root cause of our pathetic ranking is Corruption and Benami Transaction.

Corruption and Population Explosion is the root cause of pitiable condition of our International Ranking. We are ranked 103 in the Global Hunger Index, 43 in Suicide Rate, 168 in Literacy Rate, 133 in World Happiness Index, 125 in Gender Discrimination, 124 in Minimum Pay, 42 in Employment Rate, 66 in Rule of Law Index, 43 in Quality of Life Index, 51 in Financial Development Index, 177 in Environment Performance Index, 139 in GDP Per Capita. However, we are first in draining underground water, though we possess only 4% of ground water and merely 2% of agricultural land of the world.

If Government link property with Aadhaar, it will lead to an increment of 2% in annual growth. It will clean our electoral process, which is dominated by black-money and benami transaction and thrives on a cycle of large black investments, capture of power through foul means, use of political strength to amass private wealth, all with disdain of the citizen. There may be some inconvenience for a short period and political leaders who have fostered corruption and have benami property may focus on the distress to common man, but no honest citizen will lose his savings and nothing will get confiscated.

In several addresses to the nation (Mann Ki Baat), Hon'ble Prime Minister has repeated his plans to root out black money by cracking down on benami properties. This is

because a major part of black money is held in the form of benami properties (gold and cash are other forms). Demonetization, announced on 08.11.2016, was fight against black money held in form of cash.

India has numerous legislations, but fails miserably in implementing them. The Benami Transactions (Prohibition) Act, passed in 1988 was gathering dust without any action. Though the present government added more teeth to it by amending it (Benami Transactions (Prohibition) Amended Act, 2016), activities to catch benami properties are still going on slowly. For example, this amended Act came into existence from 1.11.2016. But, action taken is restricted to a few immovable properties and bank deposits after demonetization. Finding real beneficiary of benami properties is a Herculean task and that is the main reason for its slow implementation. To speed up this information gathering, government came out with cash reward up to Rs 1 crore for '*secret informers*'. But, success is less because people scare that some rogue employees from these agencies will leak information of informer. Similar rules in income tax and customs rules are not fetching big information.

#### **LIST OF DATES**

06.02.2018: Petitioner filed WP(C) 97/2018 in the Supreme Court seeking direction for linking of AADHAAR number with voter id to curtail bogus votes and with property documents to

curtail benami transaction and black money generation.

08.03.2019: The Apex Court disposed of the petition with direction to approach government authority.

11.03.2019: Petitioner submitted Representation to Hon'ble Home Minister and Chief Minister for linking AADHAAR number with property documents but apposite steps has not been taken till date.

15.07.2019: Right to clean air, right to drinking water, right to health, right to sleep, right to shelter, right to livelihood and right to education guaranteed under Articles 21, can't be secured to citizens without curbing corruption, but, Government has not linked AADHAAR number with property documents till date. Hence this PIL.

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**IN THE MATTER OF:**

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**PIL TO LINK AADHAAR NUMBER WITH PROPERTY DOCUMENTS**

**To,**

THE HON'BLE CHIEF JUSTICE

AND LORDSHIP'S COMPANION JUSTICES

OF THE HON'BLE HIGH COURT OF DELHI

HUMBLE PETITION OF ABOVE-NAMED PETITIONER

**THE MOST RESPECTFULLY SHOWETH AS THE UNDER:**

1. Petition is not guided by self-gain or for gain of any other individual person, institution or body. There is no motive other than the larger public interest in filing this petition. Petitioner has no personal interest or individual gain, private motive or oblique reasons in filing this PIL. It is bona-fide with sole purpose of larger public interest and interest of justice.
2. The source of averments made in this petition is personal knowledge and information collected from various sources, including newspapers and websites. Petitioner is filing this PIL to link AADHAAR number with property documents.
3. Present petition is for benefit of poor, disabled, economically weaker section and socially-economically down trodden people. As they are incapable of accessing this Hon'ble Court themselves, petitioner is filing this PIL to secure fundamental rights guaranteed under Article 21 of the Constitution.
4. The Centre Government and Government of NCT of Delhi is likely to be affected by the orders sought in this petition, which have been impleaded as Respondents. Petitioner submits that to its knowledge, no other persons, bodies, institutions are likely to be affected by the order sought in this petition.
5. Petitioner is an Advocate, practice in this Hon'ble Court and a social-political activist, contributing his best to the development of socially-economically downtrodden people. Petitioner is able to bear the cost if any, imposed by the Court.

6. Petitioner has not filed any other petition either in this Court or in any other Court seeking same or similar directions except WP(C)57/2018, which was withdrawn. (**Annexure-1**, Pg.23-24)
7. Petitioner submitted Representation to Respondents which is annexed as **Annexure-2**. (Pg. 25-29) & **Annexure-3** (Pg. 30-34). There is no requirement to move concerned authority for relief sought in the petition again. There is no other remedy available except approaching the Hon'ble Court by way of instant PIL.
8. Right to clean air, right to drinking water, right to health, right to peaceful sleep, right to shelter, right to livelihood and right to education guaranteed under Article 21, can't be secured to the citizens without curbing the corruption, but, Government has not linked AADHAAR with property documents till date.
9. Corruption is the source of Benami Transaction and Black Money generation. It is an insidious plague that has wide range of corrosive effects on our country. It undermines democracy and rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime like separatism, terrorism, naxalism, radicalism, gambling, smuggling, kidnapping, money laundering, extortion and dowry and other threats to human security to flourish. It hurts the poor disproportionately by diverting funds intended for

development, undermines government's ability to provide basic services, feeds inequality & injustice and discourages foreign aids and investment. Corruption and Benami Money is key element in economic underperformance and a major obstacle in poverty alleviation and development. The *Right to Life* guaranteed under Article 21 cannot be secured and the golden goals, set out in Preamble cannot be achieved without curbing the corruption and benami transaction.

**10.** Therefore, it is duty of the State to take apposite steps to curb corruption and seize the benami properties made by illegal means to give a strong message that Government is determined to fight against corruption and black money generation. Executive action should be taken to warn the corrupt that betrayal of the public trust will no longer be tolerated and to reaffirm the rule of law and transparency.

**11.** Benami transaction in high denomination currency is used in illegal activities - terrorism, naxalism, separatism, radicalism, gambling, smuggling, money laundering, kidnapping, extortion, bribing and dowry. It also inflates the price of essential commodities as well as major assets like real estate, gold etc. These problems can be curbed up to great extent by linking movable-immovable properties

with the owner's Aadhaar number. Black money holders would be forced to declare their unaudited movable and immovable properties and it will take years to generate that amount of benami property again. Thus, in a long way it will help in putting an end to the black money generation. Another benefit is that people will deposit their money in banks; government will get good amount of revenue, which can be used for betterment of society and to provide good infrastructure and facilities to needy people. India cannot move forward without clean and transparent governance, for which corruption-free society is a basic requirement.

**12.** There is no country in top 50 of the Human Development Index, which has a significant amount of corruption and Benami property. There is correlation between Welfare State with appropriate attention to education and public health and absence of corruption and black money so it is obligation of the State to take steps to curb the Corruption and Benami transaction.

**13.** The Berlin-based Corruption watchdog "Transparency International" has put India at 78 in Corruption Perception Index 2018. India was ranked 66 in 1998, 72 in 1999, 69 in 2000, 71 in 2001, 71 in 2002, 83 in 2003, 90 in 2004, 88 in 2005, 70 in 2006, 72 in 2007,

85 in 2008, 84 in 2009, 87 in 2010, 95 in 2011, 94 in 2012, 87 in 2013, 85 in 2014, 76 in 2015, 79 in 2016 and 81 in 2017 and root cause of the pathetic ranking is corruption and benami transaction.

**14.** Corruption and Benami Transaction distorts and disrupts the public distribution system with great violence. It is inimical to the fostering of excellence and has adverse impact on the EWS and BPL families. After seven decades of independence, our 50% of population is still in distress, leading a hand-to-mouth existence, large segments not knowing where the next meal is coming from, with abominable health standards and primary education levels. Much of this malaise is traceable to widespread corruption, benami transaction and existence of black money.

**15.** If we see the International Ranking in “Ease of Doing Business”, India was ranked 77 in 2018, 100 in 2017, 130 in 2016, 130 in 2015, 142 in 2014, 134 in 2013, 132 in 2012, 132 in 2011, 134 in 2010, 133 in 2009, 122 in 2008, 120 in 2007, 134 in 2006 and 116 in 2005 and the root causes of this pathetic ranking is the same– Corruption, Benami Transaction and Black Money Generation.

**16.** If we see the World Happiness Index, India ranked 140 in 2019, 133 in 2018, 122 in 2017, 118 in 2016, 117 in 2015,

120 in 2014, 111 in 2013 and 133 in 2012 and the root cause of the pathetic ranking is Corruption and Benami Transaction.

**17.** In Global Peace Index, India ranked 141 in 2019, 137 in 2018, 137 in 2017, 141 in 2016, 144 in 2015, 142 in 2014, 141 in 2013, 144 in 2012, 147 in 2011, 144 in 2010, 144 in 2009, 143 in 2008 and 107 in 2007 and the root cause of our pathetic ranking is Corruption and Benami Transaction.

**18.** Corruption and Population Explosion is the root cause of pitiable condition of our International Ranking. We are ranked 103 in the Global Hunger Index, 43 in Suicide Rate, 168 in Literacy Rate, 133 in World Happiness Index, 125 in Gender Discrimination, 124 in Minimum Pay, 42 in Employment Rate, 66 in Rule of Law Index, 43 in Quality of Life Index, 51 in Financial Development Index, 177 in Environment Performance Index, 139 in GDP Per Capita. However, we are first in draining underground water, though we possess only 4% of ground water and merely 2% of agricultural land of the world.

**19.** If Government link property with Aadhaar, it will lead to an increment of 2% in annual growth. It will clean our electoral process, which is dominated by black-money and benami transaction and thrives on a cycle of large black investments, capture of power through foul means, use of political strength to amass private wealth, all with disdain of the citizen. There may be some inconvenience for a

short period and political leaders who have fostered corruption and have benami property may focus on the distress to common man, but no honest citizen will lose his savings and nothing will get confiscated.

**20.** In several addresses to the nation (Mann Ki Baat), Hon'ble Prime Minister has repeated his plans to root out black money by cracking down on benami properties. This is because a major part of black money is held in the form of benami properties (gold and cash are other forms). Demonetization, announced on 08.11.2016, was fight against black money held in form of cash.

**21.** India has numerous legislations, but fails miserably in implementing them. The Benami Transactions (Prohibition) Act, passed in 1988 was gathering dust without any action. Though the present government added more teeth to it by amending it (Benami Transactions (Prohibition) Amended Act, 2016), activities to catch benami properties are still going on slowly. For example, this amended Act came into existence from 1.11.2016. But, action taken is restricted to a few immovable properties and bank deposits after demonetization. Finding real beneficiary of benami properties is a Herculean task and that is the main reason for its slow implementation. To speed up this information gathering, government came out with cash reward up to Rs 1 crore for 'secret informers'. But, success is less because people scare that some rogue employees from these agencies will leak

information of informer. Similar rules in income tax and customs rules are not fetching big information.

**22.** As on today, every citizen of our country have an Aadhaar number, asking them to link it to their property documents is a better option. The main advantage of this strategy is that the tax authorities will get details about 'legal owners' immediately. Several historical property deals might have happened in fictitious names and they will get stuck immediately. Black money hoarders also used to register properties in other's name (e.g. in the name of servants, some family members who are poor, etc.) after getting their signatures (these poor people have no idea what these signatures are meant for). In these cases, the original property documents are kept by the 'original owners' and in most cases, they also keep power of attorney signed by *'legal owners'*.

**23.** Once the Aadhaar linkage happens, tax authorities can approach the 'legal owners' and it can be treated as benami property if the 'legal owners' are unaware or denies knowledge of the ownership'. Even if the 'legal owner' takes onus and claims that it is his property, he needs to show the 'source of income' for buying that property (It will be difficult for a house maid to show source for property worth crores). The Aadhaar opponents (due to fear about losing their data or others vested interests want to continue with their illegal activities) may come out against this also. Will this amount to harassing the 'genuine tax payers' as the Aadhaar opponents will put it? No,

because there are several provisions in the Benami Transactions (Prohibition) Amended Act, 2016 to protect them.

- 24.** The usual transactions like buying property in the name of spouse, kids, parents, joint names with siblings, etc is already exempt in the Benami Act. However, they need to show the source of money used for such purchase. This may amount to some discomfort to 'genuine tax payers' because they may have to visit the registrar's office for updating their Aadhaar number but most of the citizens will support this move because it will result in unearthing huge black money. Only thing, since this process will be time consuming (some people may be working in cities but may have properties in villages), government should give enough time for doing this.
- 25.** Noting that Aadhaar is helping in bringing about an *irreversible change* in people's interest, Hon'ble Prime Minister has reiterated that the AADHAR will work as *big weapon* in the fight against benami property. Aadhaar has played a big role in ensuring that ration at proper rates, scholarships, pension and government subsidies reached the poor. At the inaugural session of the '*Hindustan Times Leadership Summit-2017*', Hon'ble Prime Minister said: "*Linking Aadhaar with mobile and Jan Dhan accounts have evolved such a system which was not even thought of till some years ago -- a system which is irreversible. Earlier, pension money and students stipend was distributed in crores of fake accounts. All that has been addressed with the help of Aadhaar in the last three*

*years.*" Petitioner respectfully submits that linking of AADHAAR with property documents will definitely curtail the corruption.

**26.** The day our country will have a technical and digital address for all monetary transactions, organized corruption, and money laundering and bribing will be checked to a great extent. Black money coming into the banking system had also brought along with it massive data, a "treasure trove" that would enable the government take action against wrongdoers. Ill-gotten wealth earlier funding a parallel economy was now a part of the formal economy.

**27.** Preamble is not a mere flourish of words, but is an ideal setup for practices and observances as a matter of law through Constitutional mechanism. The purpose of Preamble is to clarify who has made the Constitution, what is its source, what is the ultimate sanction behind it; what is the nature of polity, which is sought to be established by the Constitution and what are its Goals and Objectives. Preamble acknowledges, recognizes and proclaims that the Constitution emanates from 'People of India' and not from any external or lesser source and meant for the 'Welfare of the People'. So Constitution must be read as a whole and in case of doubt; it is interpreted consistent with the basic structure to promote the great objectives stated in the Preamble. Welfare of the people is ultimate goal of all laws, State actions and above all the Constitution. They have one common object that is to

promote well-being of the society as a whole. It is impossible to achieve the great golden goals as set out in the Preamble without curbing the corruption, the greatest menace to our democracy and development.

**28.** In *Subramanian Swamy v. Manmohan Singh*, [(2012) 3 SCC 64], the Hon'ble Supreme Court very categorically observed: "Corruption not only poses a grave danger to concept of constitutional governance, it also threatens the very foundation of the democracy and the Rule of Law. The magnitude of corruption in public life is incompatible with concept of the Socialist, Secular and Democratic Republic. Where corruption begins all rights end. Corruption devalues human rights, chokes development, and undermines justice, liberty, equality and fraternity, which are the values in Indian Preambular vision...".

**29.** In *State of Gujarat versus R.A. Mehta*, [(2013) 3 SCC 1], the Hon'ble Court once again observed about the menace of corruption and its grave effect on our society and country: "Corruption threatens constitutional governance and shakes the foundation of democracy and rule of law. Corruption is opposed to democracy and social order as being not only anti-people, but also due to the fact, that it affects the economy of a country and destroys its cultural heritage. It threatens security of the society, undermines the ethical value and justice and jeopardizes sustainable development. Corruption devalues human rights, chokes development and corrodes the

moral fabric of society. It causes considerable damage to the national economy, national interest and image of the country. The very object, the noble and grand vision of the Preamble will be defeated if corruption is not curbed immediately”.

**PRAYER**

Keeping in view the above stated facts and circumstances, the terrible effects of corruption and benami transaction, it is the most respectfully prayed that this Hon’ble Court may be pleased to issue a writ, order or direction or a writ in the nature of mandamus to the Government of NCT of Delhi to:

- a) take appropriate steps to link movable and immovable property documents of citizens with their Aadhaar number to curb corruption, black money generation and benami transaction;
- b) in the alternative, direct the Union of India and Government of NCT of Delhi to pass a reasoned order on the petitioner’s representation dated 11.03.2019 within 30 days;
- c) take such other steps as this Hon’ble Court deems fit and proper to control corruption and benami transaction;
- d) allow the cost of this petition to petitioner.

**PETITIONER-IN-PERSON**  
**(Ashwini Kumar Upadhyay)**

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**AFFIDAVIT**

I Ashwini Kumar Upadhyay aged 44 years, , at present at New Delhi, do hereby solemnly affirm and declare as under:

1. I am sole petitioner above named and well acquainted with facts and circumstances of the case and as such competent to swear this affidavit.
2. I have filed the present writ petition as PIL. There is no personal gain, private motive or oblique reasons in filing this petition. It is totally bona-fide and purely in larger public interest and interest of justice.
3. I have gone through the Delhi High Court (Public Interest Litigation) Rules, 2010 and do hereby affirm that the PIL is in conformity thereof.
4. I have no personal interest in the litigation and neither myself nor any body in whom I am interested, would in any manner benefit from the relief sought in the present litigation save as a member of the General Public. The petition is not guided by self-gain or gain of any person, institution, body and there is no motive other than of Public Interest.
5. I have done whatsoever enquiry/investigation, which was in my power to do, to collect all data/material which was available and relevant for this Court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/material/information which may have enabled this Court to form an opinion whether to entertain this petition or not and/or whether to grant any relief or not.
6. I have read and understood the contents of accompanying synopsis and list of dates (pages 4-9) and writ petition (pages (10-21) and total pages (1-35) which are true and correct to my personal knowledge and belief.
7. Annexures filed along with this are true copies of respective originals.
8. Averments in the affidavit are true/correct to my personal knowledge and belief. No part of Affidavit is false nor has anything been concealed.

DEPONENT

(Ashwini Kumar Upadhyay)

**VERIFICATION**

I, the Deponent do hereby verify that contents of above affidavit are true and correct to my personal knowledge and belief. No part of it is false nor has anything material been concealed there from.

I solemnly affirm today i.e. the 15th day of July 2019 at New Delhi.

DEPONENT  
(Ashwini Kumar Upadhyay)

**Annexure-1**

ITEM NO.7 COURT NO.1 SECTION PIL-W

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Writ Petition (Civil) No.97/2018

ASHWINI KUMAR UPADHYAY Petitioner(s)

VERSUS

UNION OF INDIA & ANR. Respondent(s)

(With appln.(s) for impleadment) WITH W.P.(C) No.999/2018 (PIL-W)

Date: 08-03-2019, This petition was called on for hearing today.

CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE

MR. JUSTICE S. ABDUL NAZEER

HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s) Mr. Vikas Singh, Sr. Adv.

Mr. Ashwini Kumar Upadhyay, Adv.

Mr. Kapish Seth, Adv.

Ms. Deepika Kalia, Adv.

Mr. Prashant Kr. Umrao, Adv.

Mr. Krishna Kant Shukla, Adv.

Mr. R. D. Upadhyay, AOR

WP 999/18 Mr. Varun Thakur, Adv.

Ms. Shraddha Saran, Adv.

Mr. Varinder Kumar Sharma, AOR

For Respondent(s) Mr. Tushar Mehta, SG

Mr. Vikramjit Banerjee, ASG

Mr. Nachiketa Joshi, Adv.

Mr. Zoheb Hussain, Adv.

Mr. Bimal Roy Jad, Adv.

Mr. Arvind Kr. Sharma, Adv.

Mr. B.V. Balaram Das, Adv.

Mr. V.K. Shukla, Sr. Adv.

Ms. Parul Shukla, AOR

Mr. Amit Sharma, AOR

Mr. Dipesh Sinha, Adv.

Ms. Ayiala Imti, Adv.

Mr. Pankaj Sharma, Adv.

Mr. Ashwani Kr. Dubey, AOR

Mr. Chandra Shekhar Mishra, Adv.

Mr. Ashutosh Garg, AOR

UPON hearing the counsel the Court made the following

O R D E R

Heard learned counsel for petitioners and perused the relevant material.

We do not entertain the public interest litigations at this stage, instead we would ask the petitioners to move the Election Commission of India and thereafter the Election Commission will pass a reasoned order in the matter. If the petitioners are still aggrieved, it will be open for them to come to this Court once again.

The writ petitions are, accordingly, disposed of. Pending applications, if any, stand disposed of.

(Chetan Kumar)

A.R.-cum-P.S.

(Anand Prakash)

Court Master

To,

11.3.2019

**The Home Minister**

**Government of India,**

**North Block, New Delhi-110001,**

**Subject: To link AADHAAR number with property documents**

**Sir,**

1. Corruption is the source of Benami Transaction/ Black Money generation. It is an insidious plague that has wide range of corrosive effects on our country. It undermines democracy and rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime like separatism, terrorism, naxalism, radicalism, gambling, smuggling, kidnapping, money laundering, extortion and dowry and other threats to human security to flourish. It hurts the poor disproportionately by diverting funds intended for development, undermines government's ability to provide basic services, feeds inequality & injustice and discourages foreign aids and investment. Corruption and Benami Money is key element in economic underperformance and a major obstacle in poverty alleviation and development. The *Right to Life* guaranteed under Article 21 cannot be secured and the golden goals, set out in Preamble cannot be achieved without curbing the corruption and benami transaction. Therefore, it is duty of the government to take steps to curb corruption and seize the benami properties made by illegal means to give a strong message that Government is determined to fight against corruption and black money generation. Executive action should be taken to warn the corrupt that betrayal of the public trust will no longer be tolerated and to reaffirm the rule of law and transparency.
2. Benami transaction in high denomination currency is used in illegal activities - terrorism, naxalism, separatism, radicalism, gambling, smuggling, money laundering, kidnapping, extortion, bribing and dowry. It also inflates the price of essential commodities as well as major assets like real estate, gold etc. These problems can be curbed up to great extent by linking movable-immovable properties with the owner's Aadhaar number. Black money holders would be forced to declare their unaudited movable and unmovable properties and it will take years to

generate that amount of benami property again. Thus, in a long way it will help in putting an end to the black money generation. Another benefit is that people will deposit their money in banks; government will get good amount of revenue, which can be used for betterment of society and to provide good infrastructure and facilities to needy people. India cannot move forward without clean and transparent governance, for which corruption-free society is a basic requirement.

3. There is no country in top 50 of the Human Development Index, which has a significant amount of corruption/Benami property. There is correlation between Welfare State with appropriate attention to education and public health and absence of corruption and black money so it is obligation of the State to take steps to curb Corruption and Benami transaction.
4. The Berlin-based Corruption watchdog “Transparency International” has put India at 78 in Corruption Perception Index 2018. India was ranked 66 in 1998, 72 in 1999, 69 in 2000, 71 in 2001, 71 in 2002, 83 in 2003, 90 in 2004, 88 in 2005, 70 in 2006, 72 in 2007, 85 in 2008, 84 in 2009, 87 in 2010, 95 in 2011, 94 in 2012, 87 in 2013, 85 in 2014, 76 in 2015, 79 in 2016 and 81 in 2017 and root cause of the pathetic ranking is corruption and benami transaction.
5. Corruption and Benami Transaction distorts and disrupts the public distribution system with great violence. It is inimical to the fostering of excellence and has adverse impact on the EWS and BPL families. After seven decades of independence, our 50% of population is still in distress, leading a hand-to-mouth existence, large segments not knowing where the next meal is coming from, with abominable health standards and primary education levels. Much of this malaise is traceable to widespread corruption, benami transaction and existence of black money.
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147 in 2011, 144 in 2010, 144 in 2009, 143 in 2008 and 107 in 2007 and root cause of our pathetic ranking is Corruption and Benami Transaction.

- 9.** Corruption and Population Explosion is the root cause of pitiable condition of our International Ranking. We are ranked 103 in the Global Hunger Index, 43 in Suicide Rate, 168 in Literacy Rate, 133 in World Happiness Index, 125 in Gender Discrimination, 124 in Minimum Pay, 42 in Employment Rate, 66 in Rule of Law Index, 43 in Quality of Life Index, 51 in Financial Development Index, 177 in Environment Performance Index, 139 in GDP Per Capita. However, we are first in draining underground water, though we possess only 4% of ground water and merely 2% of agricultural land of the world.
- 10.** If Government link property with Aadhaar, it will lead to an increment of 2% in annual growth. It will clean our electoral process, which is dominated by black-money and benami transaction and thrives on a cycle of large black investments, capture of power through foul means, use of political strength to amass private wealth, all with disdain of the citizen. There may be some inconvenience for a short period and political leaders who have fostered corruption and have benami property may focus on the distress to common man, but no honest citizen will lose his savings and nothing will get confiscated.
- 11.** In several addresses to the nation (Mann Ki Baat), Hon'ble Prime Minister has repeated his plans to root out black money by cracking down on benami properties. This is because a major part of black money is held in the form of benami properties (goldcash are other forms). Demonetization, announced on 08.11.2016, was fight against black money held in form of cash.
- 12.** India has numerous legislations, but fails miserably in implementing them. The Benami Transactions (Prohibition) Act, passed in 1988 was gathering dust without any action. Though the present government added more teeth to it by amending it (Benami Transactions (Prohibition) Amended Act, 2016), activities to catch benami properties are still going on slowly. For example, this amended Act came into existence from 1.11.2016. But, action taken is restricted to a few immovable properties and bank deposits after demonetization. Finding real beneficiary of benami properties is a Herculean task and that is the main reason for its slow implementation. To speed up this information gathering, government came out with cash reward up to Rs 1 crore for 'secret informers'. But, success is less because people scare that some rogue employees from these agencies will leak information of

informer. Similar rules in income tax and customs rules are not fetching big information.

- 13.** As on today, every citizen of our country have an Aadhaar number, asking them to link it to their property documents is a better option. The main advantage of this strategy is that the tax authorities will get details about 'legal owners' immediately. Several historical property deals might have happened in fictitious names and they will get stuck immediately. Black money hoarders also used to register properties in other's name (e.g. in the name of servants, some family members who are poor, etc.) after getting their signatures (these poor people have no idea what these signatures are meant for). In these cases, the original property documents are kept by the 'original owners' and in most cases, they also keep power of attorney signed by 'legal owners'.
- 14.** Once the Aadhaar linkage happens, tax authorities can approach the 'legal owners' and it can be treated as benami property if the 'legal owners' are unaware or denies knowledge of the ownership'. Even if the 'legal owner' takes onus and claims that it is his property, he needs to show the 'source of income' for buying that property (It will be difficult for a house maid to show source for property worth crores). The Aadhaar opponents (due to fear about losing their data or others vested interests want to continue with their illegal activities) may come out against this also. Will this amount to harassing the 'genuine tax payers' as the Aadhaar opponents will put it? No, because there are several provisions in the Benami Transactions (Prohibition) Amended Act, 2016 to protect them.
- 15.** The usual transactions like buying property in the name of spouse, kids, parents, joint names with siblings, etc is already exempt in the Benami Act. However, they need to show the source of money used for such purchase. This may amount to some discomfort to 'genuine tax payers' because they may have to visit the registrar's office for updating their Aadhaar number but most of the citizens will support this move because it will result in unearthing huge black money. Only thing, since this process will be time consuming (some people may be working in cities but may have properties in villages), government should give enough time for doing this.
- 16.** Noting that Aadhaar is helping in bringing about an *irreversible change* in people's interest, Hon'ble Prime Minister has reiterated that the AADHAR will work as *big weapon* in the fight against benami property. Aadhaar has a played a big role in ensuring that ration at proper rates, scholarships, pension and government subsidies reached

the poor. At the inaugural session of the *'Hindustan Times Leadership Summit-2017'*, Hon'ble Prime Minister said: *"Linking Aadhaar with mobile and Jan Dhan accounts have evolved such a system which was not even thought of till some years ago -- a system which is irreversible. Earlier, pension money and students stipend was distributed in crores of fake accounts. All that has been addressed with the help of Aadhaar in the last three years."* Petitioner respectfully submits that linking of AADHAAR with property documents will definitely curtail the corruption.

- 17.** The day our country will have a technical and digital address for all monetary transactions, organized corruption, and money laundering and bribing will be checked to a great extent. Black money coming into the banking system had also brought along with it massive data, a "treasure trove" that would enable the government take action against wrongdoers. Ill-gotten wealth earlier funding a parallel economy was now a part of the formal economy.
- 18.** Preamble clarifies who has made the Constitution, what is source, what is ultimate sanction behind it; what is nature of polity, which is to be established by the Constitution and what are its Goals. Preamble acknowledges, recognizes and proclaims that the Constitution emanates from 'People of India' and not from any external source and meant for the 'Welfare of the People'. So Constitution must be read as a whole and in case of doubt; it is interpreted consistent with the basic structure to promote the great objectives stated in the Preamble. Welfare of the people is ultimate goal of all laws, State actions and above all the Constitution. They have one common object that is to promote well-being of the society as a whole. It is impossible to achieve the golden goals without curbing corruption, the greatest menace to our democracy and development.
- 19.** In *Subramanian Swamy v. Manmohan Singh*, [(2012) 3 SCC 64], the Apex Court held: "Corruption not only poses a grave danger to concept of constitutional governance, it also threatens the very foundation of the democracy and the Rule of Law. The magnitude of corruption in public life is incompatible with concept of the Socialist, Secular and Democratic Republic. Where corruption begins all rights end. Corruption devalues human rights, chokes development, and undermines justice, liberty, equality and fraternity, which are values in Indian Preambular vision...".
- 20.** In *State of Gujarat versus R.A. Mehta*, [(2013) 3 SCC 1], the Apex Court once again observed about the menace of corruption and its grave effect on our society and country: "Corruption threatens constitutional governance and shakes the foundation of democracy and

rule of law. Corruption is opposed to democracy and social order as being not only anti-people, but also due to the fact, that it affects the economy of a country and destroys its cultural heritage. It threatens security of the society, undermines the ethical value and justice and jeopardizes sustainable development. Corruption devalues human rights, chokes development and corrodes the moral fabric of society. It causes considerable damage to the national economy, national interest and image of the country. The very object, the noble and grand vision of the Preamble will be defeated if corruption is not curbed immediately”.

- 21.** Right to clean air, right to drinking water, right to health, right to peaceful sleep, right to shelter, right to livelihood and right to education guaranteed under Article 21, can't be secured to citizens without curbing the corruption, therefore, please take steps to link movable and immovable property documents with Aadhaar. It will help in curbing corruption, black money generation and benami transaction;

**Ashwini Kumar Upadhyay**

15, MC Setalvad Chambers, Supreme Court, New Delhi-01, 8800278866,

**To,**

**11.3.2019**

**The Chief Minister**

**Government of NCT of Delhi,**

**Delhi Secretariat, IP Estate, New Delhi-110002,**

**Subject: To link AADHAAR number with property documents**

**Sir,**

1. Corruption is the source of Benami Transaction/ Black Money generation. It is an insidious plague that has wide range of corrosive effects on our country. It undermines democracy and rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime like separatism, terrorism, naxalism, radicalism, gambling, smuggling, kidnapping, money laundering, extortion and dowry and other threats to human security to flourish. It hurts the poor disproportionately by diverting funds intended for development, undermines government's ability to provide basic services, feeds inequality & injustice and discourages foreign aids and investment. Corruption and Benami Money is key element in economic underperformance and a major obstacle in poverty alleviation and development. The *Right to Life* guaranteed under Article 21 cannot be secured and the golden goals, set out in Preamble cannot be achieved without curbing the corruption and benami transaction. Therefore, it is duty of the government to take steps to curb corruption and seize the benami properties made by illegal means to give a strong message that

Government is determined to fight against corruption and black money generation. Executive action should be taken to warn the corrupt that betrayal of the public trust will no longer be tolerated and to reaffirm the rule of law and transparency.

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**Ashwini Kumar Upadhyay**

15, MC Setalvad Chambers, Supreme Court, New Delhi-01, 8800278866,

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

WRIT PETITION (C) NO 7566 OF 2019

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

**IN THE MATTER OF:**

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & Another

...Respondents

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**PETITIONER-IN-PERSON**  
**(Ashwini Kumar Upadhyay)**