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BENAMI LAND TRANSACTIONS

R. VENKATARAMAN

SHORTLY BEFORE the introduction of land reforms (fixation of land ceiling), there was a spate of transfers of land either for consideration or otherwise, in order to bring the holdings of individuals and families below the ceilings. That many renowned and ancient families all over India alienated lands ostensibly for consideration but really benami for themselves was not unknown either to the State Governments or to the public at that time. Unless the transferor or the transferee raised a dispute regarding such lands, the Government *no motu* could do precious little by way of probing into the genuineness of the transaction or getting behind the ostensible title. Over twenty years have elapsed since then and except in stray cases where either the transferor or the transferee had died and heirs had questioned the original arrangement, very few disputes had been raised before courts of law. That some of the land-holders have circumvented the law and the land ceilings, has been a sore complaint from the radical sections of all political parties and the demand for remedial action has been gaining force. Sessions of the ruling political party of the country have served as a forum for sharp and severe criticism of the Government on this score. It is in this context that the proposal to penalise land-holders, who had effected benami transfers of land, by offering proprietary rights on the titular owner and depriving the transferors of the right to assert ownership

of such land is contemplated.

Under the laws relating to the Hindu undivided family, the nominal and the real holder of immovable property could be different. Property standing in the name of the *Karta*, manager, or in the name of one of the co-parceners, might include proprietary rights of others named and unnamed in the document. In order to provide for such contingencies, it is understood that in the proposed legislation exception will be made in the case of Hindu undivided families and trusts.

The proposed legislation will debar legal action for recovery by the real owner against the nominal holder and also estop the real owner from pleading benami transfer as a defence to any action in respect of surplus land. While this may be a salutary law reform, one doubts whether the proposed legislation will really further the aims and objectives of the land reform and the land ceiling law. The object of land ceiling is to aggregate the surplus lands of large holders and to distribute them among the landless poor. Its aim is not only to limit the ownership of land in a person, but also to distribute the surplus to the landless poor and the downtrodden. The purpose of land reforms will not be served by merely restricting the ownership of land without alleviating the distress by distribution of land to the most vulnerable section of society. In most of the cases of benami transfers, the transferor has chosen a person

for nominal transfer not because of his poverty but because of his loyalty. The consideration motivating benami transfers was not distribution of land to the landless but hiding away land from the prying eyes of the law with a person who will not cheat or deceive the transferor. Thus, in most cases, the transfers were in favour of persons already owning land but within the ceiling. To confirm such transfers in favour of the chosen benamidars will only make the rich richer defeating the objective of distributing surplus lands to the poor.

Nor will the proposed measure be more effective in implementing the land reforms. The benamidars, in most cases being relations and trusted men, are less likely to assert their rights against the real owners because of their loyalties and the social odium involved. Apprehension of physical violence from the not so elegant real owners may also deter assertion of a hostile claim. In short, the proposed legislation will be ineffective both as an instrument conferring rights on benamidars and as a means of distributing surplus lands to the landless poor.

In several cases, landholders had armed themselves with promissory notes executed by the benamidars as a safeguard against the assertion of hostile claims. Any attempt by the titular owner of the property to take advantage of the proposed law may be visited with action on such instruments and exposure to litigation and harassment. The shortcomings

and drawbacks urged above in the proposed legislation call for a more effective measure for carrying out the objective of land reforms and do not militate against the validity of land ceilings or the need for enforcing them. It is our view that whatever motivated benami transfers nearly two decades ago, land-holders, as other members of society, have adapted themselves to the changed values in society and the better sections among them will be ready and willing to play their proper role in the social transformation sought by the Prime Minister. It may, therefore, be worthwhile to afford

them a chance to purge themselves of the past misdemeanour by a scheme akin to the Voluntary Disclosure Scheme in respect of evaded wealth and income-tax. The Surplus Land Disclosure Scheme may provide that all land-holders who had effected benami transfers and all nominal holders of land may disclose to the Government within 90 days the extent of such lands together with the description thereof and be eligible for compensation, if any, at the appropriate rates. If, after the expiry of the period, it was proved that a benami transfer was not disclosed either by

the transferor or by the transferee, both persons shall be subject to a deterrent punishment of imprisonment and of forfeiture of the land to the State. The carrot and the stick involved in the proposal may be more effective than the proposed measure merely restricting assertion of rights by the real holder. It will also have the merit of surplus lands going to the benefit of the landless poor instead of enriching the chosen benamidars of the transferor himself. We commend the examination of this approach to benami land transfers before finalising any proposal in this regard.

POTENTIALITIES OF RAPID ECONOMIC GROWTH

P. R. SRINIVAS

THE LEADERS of the private sector, who have met in the annual sessions of the Associated Chambers, the Federation of Indian Chambers and the Employers' Federation of India, have made it clear that they cannot share with the Government its complacent assumption that enough has been done and enough has happened to take industry to higher levels of production. They have, for their part, bestowed careful thought on the nature and extent of the improvements in the conditions of the national economy during the past one year and have come to the conclusion that while the improvements are no doubt gratifying, they are by no means sufficient to supply the motive power necessary for the economy to realise the potentialities of rapid growth which are undeniably there for all to see. The Government, on its side, is inclined to stress the brighter aspects of the prevailing conditions, the contribution that changes in official policies have made to the brightening of the position and prospects and to suggest thereby that the impetus and initiative and the practical efforts and concrete measures for further growth must come from industry itself. Such an attitude is, to some extent, necessary for the Government as a means of avoiding inconvenient commitments and as a protective guard against raising hopes which may not be found easy to fulfil.

Even making a handsome allowance for this, there is an appreciably wide divergence of views between the Government and the leaders of industry which must be narrowed before long if the current year is to accomplish all that it is now reasonable to hope for.

This divergence is, to some extent, the result of the economic events and developments of the last one year, the outstanding feature of which are the modifications which the Government made in the policies they had followed over a long period in the past. First and foremost is the fight against inflation and the readiness of the Government for retrenchment and economy which it entailed. The resoluteness which the Government brought to the fight meant a high degree of severity in credit and monetary control. And the success of the fight meant a reluctance to take any risk of losing the gains through relaxation of credit control. Likewise, the budget for the current year betokens so many departures from the past in fiscal policies that the tendency now is to call a halt to concessions rather than explore the scope or the claim for more. In the matter of other restrictive regulations, too, the liberalisation of import entitlements and the grant of other concessions would appear to the authorities as calling for a halt rather than further progress in the same direction. Above all, a popular government would be

loathe to make it appear that private industry is exonerated from all charges of inadequate devotion to the broad public interest in preference to its own self-interest.

Similar slants may be discernible in the attitude and conclusion of private industry as well. But on an issue like the scale of credit supply necessary for further industrial growth, the scope for subjective estimations will, on close scrutiny of relevant facts, be found to be narrow indeed. As Mr. Mahindra pointed out capital equipment of the value of Rs. 6,000 crores has remained idle as a consequence of the recession. And it would be hard to actuate it without a long-term plan of industrial expansion and injection of Rs. 1,600 crores of additional credit. It is no answer to this contention that credit expansion in 1975-76 is as much as Rs. 2,900 crores, against Rs. 1,064 crores two years earlier, since Rs. 1,020 crores is on account of food procurement. What with the enhanced needs on account of inventories and increased charges on different accounts, the squeeze is by no means a thing of the past. It is unfortunate that the four weeks ending April 10 should have witnessed a rise of two points in the wholesale price index, which may, understandably strengthen the Government's misgivings about relaxation of monetary control. But the rise must make it more and not less important to give an