

तस्करों द्वारा अर्जित बेनामी सम्पत्ति का जप्त किया जाना

\*302. श्री जगदीश जोशी :†

श्री कल्पनाथ :

श्री गुणानन्द ठाकुर :

श्री नागेश्वर प्रसाद शाही :

श्री नत्थी सिंह :

क्या वित्त मंत्री यह बताने की कृपा करेंगे कि :

(क) क्या सरकार ने तस्करों की बेनामी सम्पत्ति की तहकीकात कर ली है : और

(ख) यदि हां, तो सरकार उसे जप्त करने के लिए क्या कदम उठाना चाहती है ?

‡[Confiscation of Benami property acquired by smugglers

\*302. SHRI JAGDISH JOSHI :

SHRI KALP NATH :

SHRI GUNANAND

THAKUR :

SHRI NAGESHWAR

PRASAD SHAHI :

SHRI NATHI SINGH :

Will the Minister of FINANCE be pleased to state :

(a) whether Government have enquired into the benami holdings of smugglers; and

(b) if so, what steps Government propose to take to confiscate the same ?]

वित्त मंत्रालय में राज्य मंत्री (श्री प्रणब मुखर्जी) : (क) किसी विशेष व्यक्ति के नाम कोई बेनामी सम्पत्ति है अथवा नहीं, इस बात से निश्चित करने के लिए तीन स्तरों पर छानबीन करनी पड़ती है, अर्थात् :

(1) निकट सम्बन्धियों तथा सहयोगियों के नाम परिसम्पत्तियों के स्थान की जांच करना ।

(2) उनके वास्तविक स्वामित्व के प्रश्न की जांच करना ।

(3) विभिन्न न्यायालयों द्वारा दी गई व्यवस्था के अनुसार, निर्धारित परीक्षणों तथा सिद्धान्तों के अनुसार यह सिद्ध करना कि परिसम्पत्तियां वास्तव में बेनामी हैं ।

विभिन्न तस्करों के मामलों में आयकर विभाग आवश्यक जांच पड़ताल कर रहा है ।

(ख) किसी सम्पत्ति को जप्त करने के लिए आयकर अधिनियम/धनकर अधिनियम में कोई व्यवस्था नहीं है । परन्तु, सम्पत्ति को बेनामी किस्म का निश्चित करते हुए आयकर/धनकर निर्धारणों के बाद यदि करों तथा अर्थ-दण्डों की अदायगी में चूक होती है, तो चूककर्ता की चल तथा अचल सम्पत्तियों को कुर्क कर लिया जाता है और जिस मामले में आवश्यक हो उसमें करों तथा अर्थ-दण्डों आदि को वसूल करने के लिए उन्हें बंध दिया जाता है ।

‡[THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI PRANAB MUKHERJEE): (a) The task of establishing that a particular person holds any property in benami involves 3 stages of enquiry ; viz.

(i) Location of the assets standing in the names of near relations and associates.

(ii) Institution of enquiry into the question of their real ownership.

(iii) Proving in accordance with the laid-down tests and principals, as pronounced by various courts, that the assets are really benami.

The Income-tax Department is making the requisite enquiries in the cases of various smugglers.

(b) There is no provision in the Income-Tax Act/Wealth Tax Act for confiscation

†The question was actually asked on the floor of the House by Shri Jagdish Joshi.

‡[ ] English Translation.

of any property. However, after income-tax/wealth-tax assessments are made establishing the benami nature of property, if there is default in payment of taxes and penalties, the assets of the defaulter, movable and immovable, are attached followed by their sale, where necessary, for realisation of taxes, penalties etc.]

श्री जगदीश जोशी : अध्यक्ष महोदय. माननीय मंत्री जी ने उत्तर यह दिया कि इसकी तीन स्टेज हैं और तीन स्टेजों के अनुसार इनकम टैक्स अथॉरिटीज जांच कर रही हैं कि कौन सी बेंनामी सम्पत्ति है। उनका कहना यह भी है कि कोई कानून अभी तक नहीं है कि इस प्रकार की बेंनामी सम्पत्ति को जब्त किया जा सके। क्या माननीय मंत्री महोदय यह बताने की कृपा करेंगे कि जो तस्करी के जरिए माल लाया गया है उसको मुनाफे से जो सम्पत्ति अर्जित हुई है चाहे वह तस्करी के नाम से हो या बेंनामी हो, उसको बंध सम्पत्ति माना जायेगा या अवैध सम्पत्ति।

SHRI PRANAB MUKHERJEE: Sir, so far as smuggled articles are concerned, we are also seizing those smuggled articles.

SHRI JAGDISH JOSHI: No, no, no. He is confusing. Not smuggled articles but properties earned by smugglers.

SHRI PRANAB MUKHERJEE: So far as properties in the name of smugglers...

SHRI BHUPESH GUPTA: He means multi-storeyed buildings of Mastan.

SHRI PRANAB MUKHERJEE: I am coming to that. I have not yet completed. The question, if I understood the hon. Member correctly, has two aspects. So far as smuggled goods are concerned, they are already being confiscated. With regard to the question as to what steps Government are going to take in respect of assets created by the smuggler either in the name of their relations or in the name of their associates, I have already explained the position so far as the Wealth Tax Act and the Income Tax are concerned. So far as the smugglers' assets

are concerned, we have already taken steps to assess their benami properties.

SHRI NIREN GHOSH: No, no, no. He has asked if the properties—whether in the name of the smugglers or benami—are legal or illegal. That is the question here.

SHRI BHUPESH GUPTA: My point is, he should look at the question. Look at the question.

SHRI PRANAB MUKHERJEE: The question is that it has to be established that the transfer is *mala fide* and the transfer is not as per the law. That is the question and there are clear-cut provisions laid down in the law as to how it can be established.

SHRI C. SUBRAMANIAM: My colleague was explaining the existing law, the Income Tax, Act and the Wealth Tax Act. That is the normal procedure under which this is done. I do agree, the smugglers' activities and assets built up on the basis of those activities stand on a different footing and, therefore, if we have to deal with them, certainly we have to . . .

(Interruption)

SHRI BHUPESH GUPTA: Confiscate them.

SHRI C. SUBRAMANIAM: We have different laws for the purpose but now immediately our task is to identify which these properties are because they are all not standing in the name of these persons. Once we identify these properties which belong to smugglers and which have been built on the basis of their smuggled activities, certainly we can take care. If necessary, as we have detained them under the MISA, we can bring in another law to deal with the properties and assets built on these basis.

SHRI BHUPESH GUPTA: You have suspended their fundamental right to move the court. Why not do the same thing with regard to their properties also?

SHRI C. SUBRAMANIAM: I would respectfully submit that every time you cannot put a separate question unless it is permitted by the Chair. The question is how to deal with this property? It is very much in our mind but I would not disclose it now. At the appropriate time I will certainly come before the House for necessary legislation.

SHRI BHUPESH GUPTA: Sir, on a point of order. Mr. Joshi's question was...

SHRI GUNANAND THAKUR: No question of point of order. We are losing our time. हम लोगों का टाइम खत्म हो रहा है।

SHRI BHUPESH GUPTA: Mr. Joshi's question is, Government should confiscate the property. He does not want Income Tax law. Here are the properties. What are you going to do? His suggestion is, are you confiscating them?

श्री गूणानंद ठाकूर: हम लोगों का टाइम खत्म हो रहा है, हमारा नाम है। यह प्राबलम है।

MR. CHAIRMAN: Wait, wait. Why are you interfering? When the Chair has allowed it why are you interfering? You are getting the opportunity, why interfere unnecessarily. (Interruption). He wants to clarify your supplementary. You put it in your own way.

श्री जगदीश जोशी: सभापति महोदय, मेरा सवाल बहुत साफ है। कानून में ये तबदीली करेंगे या नहीं, इससे मेरा कोई मतलब नहीं है। मैंने बहुत साफ कहा है कि एक मकान 10 मीजला खड़ा है, मैं इस मकान का मालिक हूँ। मेरे पास आसमान से दौलत टपक पड़ी कि मकान बन गया? जो संपत्ति अवैध है वह है। कोई आदमी 3 एकड़ जमीन से यह नहीं कह सकता कि 20 मीजला मकान बना लेगा, 5 एकड़ जमीन से कारखाना खोल लेगा या सिनेमा-

घर खोल लेगा या फिल्म कंपनी को फाइनेंस कर देगा। तो मेरा सवाल यह है कि वित्त मंत्रालय कानून से ऐसे प्रभावी कदम ले रहा है जिससे तस्करी से अर्जित अवैध संपत्ति जप्त की जा सके? मेरा निवेदन बहुत साफ है कि केवल उनको नजरबन्द कर देने से आप उनके हक को नहीं निकाल सकते जब तक कि उनका नाजायज कमाया हुआ पैसा आप जप्त करके खजाने में नहीं लेते। आप एक बार मीसा में उनको बंद कर दीजिए, लेकिन इससे आप तस्करी नहीं रोक सकते। जब आप स्मगलर की अवैध संपत्ति या किसी और की अवैध संपत्ति को जप्त करेंगे तब इस देश में आर्थिक अपराध करने वालों का कठोर दंड होगा। तो मैं जानना चाहता हूँ कि वे कानून से कठोर कदम हैं जो आप अवैध सम्पत्ति को जप्त करने के लिए उठाना चाहते हैं?

SHRI C. SUBRAMANIAM: There is no necessity for emotion in this. As to whether there are adequate laws now for the purpose, first of all, of making an enquiry into the source of these properties, fortunately the existing laws are adequate enough to make this enquiry. Once the results are available, then how shall we deal with the property? Shall we deal with it under the existing Income-tax and Wealth-tax Acts or should it be dealt with separately is a matter which exercises the minds of all hon. Members. I am in full agreement with the hon. Members. (Interruption). Just everybody cannot get up like this. I am in full agreement with the hon. Members. Certainly these properties and assets cannot be dealt with in the same way as other properties which have been earned in a legal manner and may be they have evaded wealth-tax and income-tax. Their earning was by proper means, but later on they might have evaded income-tax or wealth-tax. It is one aspect of it. But here if it is based on an illegal act and assets have been built up, I do agree that it will have to be dealt with in a different manner altogether. Here also we cannot just confiscate as we like. We have to take the constitutional provisions into account...

SHRI BHUPESH GUPTA : Amend the Constitution.

SHRI C. SUBRAMANIAM : There is no difference of opinion. What new laws will be required will require careful consideration. That is why I say that I will come before the House at the appropriate time...

(Interruptions)

श्री गृणानन्द ठाकुर : मेरा क्वेश्चन है आप मुझे नहीं बुला रहे हैं। दूसरे लोग बीच में बोल कर हमारा टाइम खराब कर रहे हैं।

SHRI NIREN GHOSH : They want to hide it and they want to protect them.

SHRI C. SUBRAMANIAM : I will come before the House, if necessary, with a new legislation at the appropriate time.

श्री गृणानन्द ठाकुर : मैं सीधा सा सवाल पूछना चाहता हूँ माननीय वित्त मंत्री जी से कि इस देश में अरबों रुपए की सम्पत्ति चाहें मकान के रूप में हो, चाहें हीरे-जवाहरात के रूप में हो, चाहें बैंक लाकर्स में हो और लाखों एकड़ जमीन बड़े लोगों के हाथ में हैं या तो वे स्मगलर्स हैं, ब्लैक मार्केटीयर्स हैं और वह रिश्वत खाने से हैं या फार्जरी करने से हैं तो इन सम्पत्तियों को जन्त करने के लिए कोई राष्ट्रपति अध्यादेश निकालने का सरकार विचार रखती है ?

SHRI C. SUBRAMANIAM : I have already answered this question. It cannot be done by a Presidential order.

SHRI BHUPESH GUPTA : Why not ?

SHRI NIREN GHOSH : Why not ?

SHRI BHUPESH GUPTA : I submit that it is a misleading answer...

SHRI NIREN GHOSH : It is illegal property...

DR. R. K. CHAKRABARTI : You have passed an Ordinance against smugglers suspending their fundamental rights.

श्री नारायण प्रसाद शाही : अध्यक्ष महोदय सारे कानूनों के लिए ऑर्डिनैन्स सरकार इशू कर सकती है तो इनके लिए क्यों नहीं कर सकती। मंत्री महोदय इसे क्यों छिपाना चाहते हैं।

SHRI BHUPESH GUPTA : All I say is that it is misleading. By a Presidential proclamation they have suspended the fundamental rights of a citizen to move the court in the case of a smuggler. We stand for it. Why cannot the same be done in this case? Fundamental Rights to property should be suspended.

SHRI C. SUBRAMANIAM : No use getting excited over it. A Presidential order is different from an Ordinance. Ordinance is legislation and I have to come here again to the House...

DR. R. K. CHAKRABARTI : It is a Presidential declaration...

(Interruptions)

SHRI C. SUBRAMANIAM : I would not like to be advised in legal matters...

MR. CHAIRMAN : The Question Hour is over.

SHRI NIREN GHOSH : Sir, on a point of order.

DR. R. K. CHAKRABARTI : We want half-an-hour discussion on this.

SHRI NIREN GHOSH : Is the hon. Minister in order, in giving a reply to a specific supplementary question, saying that in these legal matters he is not to be guided? It is not a question of legal matters. Fundamental rights can be taken away, but about their property, you bring in legal propriety. What is the answer. They are protecting the smugglers' property.

SHRI BHUPESH GUPTA : Sir, I want your direction. We are not giving any legal advice. We can act. All that the House wanted to know was why the pro-

clamation under which even the provisions of the Constitution had been suspended to deal with the smugglers cannot be made in order to take away the fundamental rights with respect to the property of the smugglers so that, avoiding all other laws, their property could be straightaway confiscated whether in real name or in benami name. You have that power and by a stroke of the pen you can do that.

MR. CHAIRMAN: It is not necessary...

SHRI HARSH DEO MALAVIYA: A short duration discussion on this we want. The House wants it, Sir.

SHRI NIREN GHOSH: Yes, yes.

MR. CHAIRMAN: Let me say. Now, the hon. Minister has made it very clear that he will come before this hon. House with an appropriate proposal...

SHRI NIREN GHOSH: When?

MR. CHAIRMAN: When? During the Question Hour, he cannot give reply to all the problems in this world. But he has given an assurance on the floor of the House that he is going to come before this hon. House. By what time, all these things will be considered and examined.

SHRI NIREN GHOSH: When?

MR. CHAIRMAN: How can he say, when? How can a date be given?

SHRI NIREN GHOSH: When a categorical assurance was given about the CBI Report and not carried out, can we reply upon them?

SHRI BHUPESH GUPTA: Sir, you are helping the Minister. It is not a good thing. He never used the words 'appropriate proposal'; he used the word 'legis-

lation'. All that we ask is whether he has considered our proposal appropriate that they suspend the fundamental rights with regard to the property so far as the smugglers are concerned. Has he considered it to be an appropriate proposal? Ask him.

SHRI C. SUBRAMANIAM: I cannot just give an assurance immediately...

SHRI NIREN GHOSH: That is the thing.

SHRI C. SUBRAMANIAM: Sir, about the suspension of fundamental rights, suddenly a suggestion has been made. I would consult my legal experts on that, and just, simply because he might have had some (*Interruption*). Kindly sit down, I am on my legs.

SHRI NIREN GHOSH: I know that you are...

SHRI C. SUBRAMANIAM: You cannot be jumping like that.

SHRI NIREN GHOSH: Do not use that word. I can also stand on my legs.

SHRI C. SUBRAMANIAM: I have been called by the Chair, not by you.

MR. CHAIRMAN: Mr. Ghosh, I have asked the hon. Minister to reply. Please resume your seat.

SHRI C. SUBRAMANIAM: Shri Bhupesh Gupta might have studied some law some time, but I will have to consult my legal experts. What to do and when to do it, it is for the Government to decide. Certainly, I am not going to be coerced by these people as to when I am going to do. I am not going to disclose my thoughts.