(1994) 01 MAD CK 0062

In the Madras High Court

Case No : Writ Petition No. 9946 of 1989

Adair Dutt and Co. (India) Pvt. Ltd. APPELLANT

Vs

Appropriate Authority RESPONDENT

Date of Decision : 20-01-1994

Acts Referred:

Income Tax Act, 1961 — Section 269UA, 269UC, 269UD, 269UD(1), 269UE

Citation : (1994) 124 CTR 1 : (1994) 210 ITR 1063

Hon'ble Judges : V. Ratnam, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : R. Thiagarjan, for the Appellant; Mrs. Nalini Chidambaram, for the Respondent

Judgement

Ratnam, J.—This writ petition has been filed by Messrs. Adair Dutt and Company (India) Private Limited, Madras-2, praying for the issue

of a writ of certiorari to quash the proceedings of the respondent in AAMDS/No. 4(6) of 1989-90 dated June 22, 1989. The petitioner-company

is a tenant in occupation of 400 sq. ft. in the ground floor of the premises bearing door Nos. 109 and 110, Anna Salai, Madras-2. On March 30,

1989, an agreement for sale for Rs. 26 lakhs in respect of the premises bearing door Nos. 109 and 110, Anna Salai, Madras-2, was entered into

between its owners and another person, in and by which the owners had agreed to sell the intending purchaser had also agreed to buy the right,

title and interest of the owners in the premises referred to earlier, free from all encumbrances and charges. This agreement along with a statement in

Form No. 37-I prescribed under rule 48L of the Income Tax Rules, 1962, read with section 269UC of the Income Tax Act, 1961 (hereinafter

referred to as ""the Act""), was received by the appropriate authority, Madras, on

March 11, 1989. Pursuant to that, in the light of the documents

furnished by the parties and also in the light of the inspection report submitted by the engineers, in exercise of the powers vested u/s 269UD(1) of

the Act, the appropriate authority ordered on June 22, 1989, the purchase of door Nos. 109 and 110, Anna Salai, Madras-2, by the Central

Government for a sum of Rs. 26,00,000. It was also further stated that under the provisions of section 269UE(1) of the Act, the property shall

vest in the Central Government free from all encumbrances from that date. Consistent with the order so passed, the appropriate authority issued a

communication, enclosing a copy of the order dated June 22, 1989, to the effect that by virtue of the provisions of section 269UE(1) of the Act,

door Nos. 109 and 110, Anna Salai, Madras-2, stood vested in the Central Government free from all encumbrances with effect from June 22,

1989, and that the petitioner is requested to surrender or deliver possession of the above immovable property within 15 days of the date of receipt

of that communication. The attention of the petitioner was also drawn to sub-sections (3) and (4) of section 269UE and section 276AB of the Act.

While challenging this communication, the petitioner put forward the plea that as a tenant in occupation of the premises, it has statutory protection

under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act and ignoring such rights and protection, the petitioner cannot be

evicted from the premises, in its occupation without recourse to the provisions of the Rent Control Act. In addition, the provisions in the Income

Tax Act, 1961, providing for pre-emptive purchase and for dispossession were stated to suffer from the vice of arbitrariness and not in any manner

related to the object sought to be achieved by the provisions earlier incorporated in Chapters XXA and now XXC. Elaborating this, the petitioner

contended that though the object of the provisions in Chapter XXC is to tackle the problem of proliferation of black money in transfer of

immovable properties and tax evasion, that really had no reference or bearing on tenants and their rights in relation to the premises occupied by

them, as tenants in occupation cannot stand in the way or obstruct the acquisition of the property by the Income Tax Department, though taking

forcible possession, ignoring tenancy rights, has no nexus to the object sought to be achieved by the provisions in Chapter XXC of the Act.

2. In the counter-affidavit filed by the respondent, it was pointed out that in order to contain proliferation of the black money and tax evasion, the

provisions in Chapter XXC were introduced and, having regard to the provisions for vesting the property in the Central Government free of

encumbrances, tenancy rights of the petitioner as an encumbrance would also be included thereunder, and the provisions of the Tamil Nadu

Buildings (Lease and Rent Control) Act will have no application. Reiterating that the provision contemplated the removal of the occupants from the

property, after it vested in the Central Government, it was pointed out that the provisions relating to vesting of property free from encumbrance,

would also extinguish tenancy rights on the vesting of the property in the Central Government and the petitioner was, therefore, not entitled to any

relief.

3. In the reply affidavit filed by the petitioner, apart from disputing the stand taken by the respondent in the counter, it was pointed out that

dispossession of a tenant from the premises in his occupation by reason of the vesting order free from all encumbrances, cannot counteract evasion

of Income Tax and wealth-tax and the pre-emptive purchase will be subject to the rights of the tenant in occupation and to say that the tenant

should lose his rights and vacate the premises in 15 days is opposed to the principles of natural justice.

4. Though elaborate arguments were addressed and our attention was also drawn to several decisions, in view of the clear pronouncement of the

Supreme Court in C.B. Gautam Vs. Union of India and Others, , there is no need to set out the submissions of counsel in great detail or even to

make a detailed reference to all the authorities referred to by counsel on both sides. However, it would be necessary to set out the facts in the

decision of the Supreme Court referred to earlier, in order to appreciate the controversy arising in this case. In the case before the Supreme Court,

one Jai Lal held a plot of land under lease executed by the Delhi Development Authority and he entered into an agreement to transfer the leasehold

rights to Gautam and an advance was also paid. On the same day, an agreement for the construction of a structure on the plot was entered into

between Jailal and Gautam which was later followed by a fresh agreement to sell the residential house put up on the land along with the leasehold rights in the land, whereunder Jailal agreed to transfer to Gautam his leasehold rights along with the ownership of the construction for Rs. 16 lakh.

Under that agreement, Gautam also agreed to pay Rs. 3.4 lakhs to the Delhi Development Authority. This agreement to sell along with Form No.

37-I in duplicate was furnished to the appropriate authority as per the requirements of section 269UC of the Act and, after obtaining the report of

a registered valuer, the appropriate authority passed an order, after stating that all relevant facts and circumstances were considered, for the

purchase by the Central Government of the property, viz., leasehold rights in the land and the ownership of the building, and several the same on

Gautam. This order formed the subject-matter of challenge before the Supreme Court on a variety of grounds, all of which may not be necessary

for the present purpose. With particular reference to the rights of lessees and tenants and the vesting of the property in the Central Government

free from all encumbrances, the Supreme Court observed at page 558 thus :

It was submitted by the learned Attorney-General that the provisions of sub-section (1) of section 269UD might be read down so as to mean that

the property compulsorily purchased under an order made u/s 269UD(1) would vest in the Central Government subject to bona fide

encumbrances or leasehold interests subsisting thereon other than monthly tenancies. It was urged by him that, in a pre-emptive purchase, normally,

what would be purchased is only that which was put up for sale or sold and, if the same principle was applied to the compulsory purchase by the

Central Government u/s 269UD, the rights of the encumbrance holders or the holders of leasehold interests subject to which the property was

agreed to be sold could be protected. We agree that in order to save a statue or a part thereof from being struck down it can be suitably read

down. But such reading don is not permissible where it is negatived by the express language of the statue. Reading down is not permissible in such

a manner as would fly in the face of the express terms of the statutory provisions. In view of the express provision in section 269UE that the

property purchased would vest in the Central Government ''free from all encumbrances'', it is not possible to read down the section as submitted

by the learned Attorney-General. In the result, the expression ''free from all encumbrances'' in sub-section (1) of section 269UE is struck down and sub-section (1) of section 269UE must be read without the expression ''free from all encumbrances'' with the result that the property in

question would vest in the Central Government subject to such encumbrances and leasehold interests as are subsisting thereon except for such of

them as are agreed to be discharged by the vendor before the sale is completed. If under the relevant agreement to sell, the property is agreed to

be sold free of all encumbrances or certain encumbrances, it would vest in the Central Government free of such encumbrances. Similarly, sub-

section (2) of section 269UE will be read down so that if the holder of an encumbrance or a lessee is in possession of the property and under the

agreement to sell the property, it is not provided that the sale would e free of such encumbrances or leasehold interests, the encumbrance holder or

the lessee who is in possession will not be obliged to deliver possession of the property to the appropriate authority or any person authorised by it

and the provisions of sub-section (3) also would not apply to such persons. If the provisions of section 269UE are read down in the manner

indicated above, then, in our opinion, the provisions of sub-section (6) of that section do not present any difficulty because the vesting in the

Central Government would be subject to such encumbrances and leasehold rights as stated earlier.

The next controversy posed was regarding monthly tenancies. As far as monthly tenancies are concerned, they do not pose any difficulty because

monthly tenants are also lessees in law although their right is a very limited one. If the agreement to sell does not provide for vacant possession or

the determination of monthly tenancies, such tenancies would continue even on an order for purchase by the Central Government being made by

the appropriate authority concerned u/s 269UD(1); but such tenants would lose the protection given to tenants under the rent protection laws

because such laws are not made applicable to properties owned by the Central Government with the result that their tenancies could be terminated

by the Central Government. The loss of the protection of the Rent Control Acts cannot be regarded as an interest for which any compensation is

liable to be paid.

As we have stated earlier, where an agreement for sale provides that the property is intended to be sold free of all encumbrances or leasehold rights, the order for purchase of such property u/s 269UD(1) in the said Chapter would result in the said property vesting in the Central,

Government free of such encumbrances or leasehold interests. In such as case, the holders of the encumbrances or leasehold interests would have

to obtain their compensation from the amount awarded as he purchase price to the owner of the property. This appears to be a fair construction

because, in such a case, the apparent consideration can be expected to include the value of such leasehold interests or encumbrances. The holders

of the encumbrances or leasehold interests which would be destroyed in this manner can be said to be persons interested as contemplated in clause

(e) of section 269UA. In this connection, we may refer to sub-section (5) of section 269UE which declares that nothing in the said section which

deals with the vesting of property in the Central Government shall operate to discharge the transferor or any other person (not being the Central

Government) from liability in respect of any encumbrances on the property and, notwithstanding anything contained in any other law for the time

being in force, such liability may be enforced against the transferor or such other person. This provision makes it amply clear that, in the case we

have just referred to, the encumbrance holder or the holder of the leasehold rights could claim the fair value of his encumbrance or the leasehold

interest out of the amount paid on account of the purchase price to the owner of the immovable property acquired by the Central Government u/s

269UD.

It was urged by learned counsel for the Revenue that, in case a view is taken that the expression ''free from all encumbrances'' should be struck

down, it would be left open to an interning seller of immovable property to undervalue the property by creating a bogus lease or a bogus

encumbrance thereon and this would defeat the purpose for which Chapter XXC was introduced. We are unable to agree. If a lease or an

encumbrance is found to be bogus, it can be treated as of no legal effect and in that event, it would not affect any of the rights of the Central

Government on the vesting of the property in the event of an order for purchase being made u/s 269UD(1). If it is so considered necessary, the

provisions of the Chapter might be so amended so as to clarify that if any lease or encumbrance is created with a view to defeat the provisions of

Chapter XXC, such lease or encumbrance will be regarded as void or ignored for the purposes of the said Chapter. That, however, is for

Parliament to consider.

5. In this case, the agreement dated March 30, 1989, between the owners of door Nos. 109 and 110, Anna Salai, Madras-2, and the intending

purchaser was free from all encumbrances. As pointed out by the Supreme Court, if under the agreement to sell the property, it was agreed to be

sold free of all encumbrances, the property would vest in the Central Government free of such encumbrances. Care had been taken by the

Supreme Court to point out that if under the agreement of sale it is not provided that the intending sale would be free of such encumbrance or

leasehold interests, the encumbrance holder or the lessee in possession, will not be obliged to deliver possession of the property to the appropriate

authority and the provisions of sub-section (3) of section 269UE would not be applicable to such persons. When the agreement in this case

provides for a sale free of all encumbrances, the property agreed to be sold would also vest in the Central Government free of such encumbrances.

Only in a case where the agreement does not provide that the sale would be free of all encumbrances, the encumbrance holder or lessee in

possession may not be obliged to deliver possession of the property. Though this would be the position with reference to encumbrance holders or

lessees in occupation, it is seen that in this case the petitioner had claimed only statutory protection under the provisions of the Tamil Nadu

Buildings (Lease and Rent Control) Act. In relation to such statutory tenancy rights, there is no protection as such available, as the rent control

laws are inapplicable to properties owned by the central Government, and such tenancies could be terminated by the Government and such

termination resulting in the loss of protection cannot also be regarded as an interest for which compensation should be paid. We are of the view

that, on the facts and circumstances of this case, the petitioner as a statutory tenant in occupation, may not be entitle to claim the benefit of

protection under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act. At the same time, it must also be borne in mind that the

petitioner cannot be summarily dispossessed and the respondent has, as pointed out by the Supreme Court, to take steps to determine the tenancy and take possession. We, accordingly, direct the respondent to do so. Subject to the aforesaid direction, the rule nisi is discharged and the writ

petition is dismissed. There will be, however, no order as to costs.