

(1994) 11 PAT CK 0026

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 4283 and 6734 of 1994

Ajay Construction and Muzaffarpur Properties Private Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-11-1994

Acts Referred:

Citation : (1994) 11 PAT CK 0026

Judgement

B.P. Singh, J.—These two writ petitions raise common questions and have been heard together. They are being disposed of by this common judgment. Civil Writ Jurisdiction Case No. 6734 of 1994 has been filed by the vendee, whereas Civil Writ Jurisdiction Case No. 4283 of 1994 has been filed by the vendor. The representative facts are taken from Civil Writ Jurisdiction Case No. 6734 of 1994. The petitioner has challenged the notice dated April 12, 1994 (annexure "8"), issued by the Deputy Commissioner of Income Tax (appropriate authority), and the order passed by him dated July 26, 1994 (annexure "11"), whereby the competent authority has ordered the pre-emptive purchase of the property in question. The petitioner has also prayed for a writ of mandamus commanding the appropriate authority to issue a "no objection" certificate and directing the Sub-Registrar, Patna, to compulsorily register the sale deed in favour of the petitioner. The petitioner's grievance is that the order for pre-emptive purchase has been passed in utter violation of law and causing much harassment to the petitioner who has been compelled to approach this court thrice against the arbitrary and illegal actions of the respondents. The purchase order impugned in this writ petition is the third purchase order passed by the appropriate authority. Apart from other objections, the petitioner mainly challenges the issuance of the pre-emptive order on the ground that the appropriate authority was not authorised to pass such an order which is barred by limitation prescribed by law. It is urged on behalf of the petitioner that if the order of pre-emptive purchase is quashed by this court, as a consequence, the respondents are bound to issue the "no objection" certificate in favour of the petitioner so that he may get the sale deed registered.

2. The facts of the case are not in dispute. The subject-matter of the proceeding is a three-storeyed building over holding No. 3/4, Circle No. 242 of Mohalla Adalatganj, Budh Marg, Patna. The aforesaid plot was owned by Messrs. Muzaffarpur Properties Private Limited, petitioner in Civil Writ Jurisdiction Case No. 4283 of 1994. The property was got valued by a registered valuer approved by the Government on May 15, 1989, and according to the valuation report of the valuer, the property was worth Rs. 17,52,000. By an agreement for sale executed on May 19, 1989, the aforesaid owner entered into an agreement in writing for the sale of the aforesaid property for a consideration of Rs. 21,00,000. The petitioner in Civil Writ Jurisdiction Case No. 6734 of 1994 agreed to purchase the property for the said consideration. A sum of Rs. 15,00,000 was paid by way of advance, and it was agreed that the balance sum of Rs. 6,00,000 will be paid at the time of registration. Subsequently, by another agreement dated May 21, 1989, possession was handed over to the vendee since a major part of the amount had been paid. It is not in dispute that Chapter XXC of the Income Tax Act became operative in Patna with effect from June 1, 1989, vide Notification No. S.O. 339-E, dated May 8, 1989 (see [1989] 177 ITR 238. The deed which had been presented before the registering authority even before Chapter XXC of the Act came into force in Patna, was not registered by the Sub-Registrar, Patna, who took an objection that the petitioner was required to obtain a clearance certificate from the concerned authority under the provisions of Chapter XXC of the Income Tax Act. The petitioner states that though Chapter XXC of the Act did not apply to the transaction in question, which was entered into before the aforesaid Chapter became applicable to Patna, the petitioner in good faith applied for grant of necessary permission by filling up Form No. 37-I as required and prescribed u/s 269UC of the Act. It is not disputed that though the form was filled up on August 28, 1989, it was filed on September 4, 1989. It is no one's case that the form was not filled up in the manner prescribed under the Act.

3. On November 17, 1989, the first pre-emptive purchase order was passed by the competent authority. The said order was challenged by the petitioner by filing a writ petition being Civil Writ Jurisdiction Case No. 10016 of 1989. In the aforesaid writ petition this court granted an order of stay.

4. The provisions of Chapter XX-C of the Income Tax Act were challenged before the Supreme Court in C.B. Gautam Vs. Union of India and Others, , upheld the validity of the provisions except the provision relating to vesting in the Government "free from all encumbrances". The court held that the requirement of a reasonable opportunity being given to the concerned parties, particularly the intending purchaser and the intending seller must be read into the provisions of Chapter XXC. That the time frame within which the order for compulsory purchase had to be made, though fairly tight, was not such as precluded a reasonable opportunity of being heard or to show cause being given. The court took the view that the provisions are intended to be used only in cases where, in an agreement to sell immovable property in urban area to which the provisions

of that Chapter apply, there was a significant undervaluation of the property by 15 per cent. or more. If the appropriate authority was satisfied that the apparent consideration shown in the agreement for sale was less than the market value by 15 per cent. or more, it could draw a presumption that this undervaluation had been done with a view to evading tax. Such a presumption, however, was rebuttable and the intending seller or purchaser could lead evidence to rebut it. The judgment of the Supreme Court in the writ petition was delivered on November 17, 1992.

5. The Union of India moved an application for clarifications and directions with a view to obviating certain difficulties that it envisaged in applying the principles laid down in the main judgment of the Supreme Court dated November 17, 1992. In the main judgment the court had noticed that if the original time frame prescribed in Chapter XX-C was rigidly applied, it would not be possible for the appropriate authority concerned to pass an order u/s 269UD(1) at all in respect of the property in question. The court, therefore, held that in order to avoid that situation, and yet to ensure that no injustice is caused to the petitioner, the statement in Form No. 37-I shall be treated as if it were submitted on the date of signing of the judgment, i.e., November 17, 1992. The clarification was sought by the Union of India in respect of other pending proceedings. The clarification was granted by the Supreme Court in the following terms (at page 564) :

"We, accordingly, clarify by this supplemental direction to be read as part of the judgment that, in respect of cases other than that of the petitioner, C.B. Gautam, the period of two months referred to in Section 269UD(1) shall be reckoned with reference to the date of disposal of each of such pending matters either before this court or before the High Courts, as the case may be. Where, however, the stay orders inhibiting the authorities from taking further proceedings are vacated, the period referred to in the said Section 269UD(1) shall be reckoned with reference to the date of such vacating of the stay orders. This clarification and further direction shall be supplemental to and be treated as parts of the main judgment.

The second clarification sought is in respect of matters pending before the authorities and which, though not agitated in the courts of law, are pending at various stages before the authorities in all such cases. We direct that Form No. 37-I shall be deemed to have been filed as on the date of judgment of this court dated November 17, 1992, for purposes of completion of proceedings in terms of Section 269UD(1). This further direction shall also be a part of the main judgment."

6. The writ petition filed by the petitioner before this court was disposed of by order dated April 27, 1993, in the following terms :

"We have heard counsel for the parties and they are agreed that the question now stands settled by a judgment of the Supreme Court in C.B. Gautam Vs. Union of India and Others, . We, accordingly, direct the authorities to act in

accordance with the directions contained in the aforesaid judgment and to take further steps in accordance with law. Since the petition stands disposed of so far as this court is concerned, all interim orders stand vacated and it is open to the authorities to act in accordance with law, as clarified by the Supreme Court in the aforesaid judgment.

This writ application is allowed to the extent indicated above."

7. Since the writ petition was disposed of by the High Court by its order dated April 27, 1993, and all interim orders stood vacated with a direction to the respondents to act in accordance with the judgment of the Supreme Court, it was open to the authorities to pass an order of preemptive purchase within a period of two months referred to in Section 269UD(1) reckoning the date of disposal of the writ petition as the date on which the statement under Form No. 37-I was filed.

8. I may only notice that a second proviso was added to Section 269UD by the Finance Act of 1993, with effect from June 1, 1993, whereby in respect of statements in Form No. 37-I filed on or after June 1, 1993, the period for the passing of the order was increased from two months to three months. The amendment is obviously not applicable to the instant case, because the statement in Form No. 37-I was filed on September 4, 1989, and even the deemed date of filing of such statement by reason of the order of the Supreme Court was the date of disposal of the writ petition by the High Court, namely, April 27, 1993, i.e., much before June 1, 1993.

9. It is not in dispute that thereafter a second pre-emptive purchase order was passed by the competent authority on June 15, 1993. According to the petitioners, this order was again passed in violation of the principles of natural justice. It is not necessary for me to go into this question because the petitioner challenged the second purchase order by filing a writ petition before this court being Civil Writ Jurisdiction Case No. 5971 of 1993 1. SMT. PUSPA SINGH (CWJC NO. 6427 OF 1991) 2. AJAY CONSTRUCTION (CWJC NO. 5971 OF 1993) 3. AMARNATH PANDEY (CWJC NO. 9713 OF 1993) Vs. UNION OF INDIA AND OTHERS., (see Appendix infra) which was disposed of by this court by judgment and order dated April 5, 1994. This court was pleased to quash the order as it found that the same had been passed in violation of the principles of natural justice. This court held (at page 63) :

"For the purpose of disposal of these three cases it is sufficient to state that it is agreed before us by counsel for the Revenue that the order dated June 15, 1993, was passed without hearing the petitioners. It cannot be doubted that the order dated June 15, 1993, visits the petitioners with civil consequences. Before rendering the order, the petitioners should have been heard. That is the minimal requirement. That is necessary to conform to "fairness in action". Since it is common ground before us that the petitioners were not heard by the appropriate authority before passing the order dated June 15, 1993, we are candidly of the

view that the order in question is infirm. We quash the said order in all the three cases. It is, however, open to the Revenue to proceed further in the matter, in accordance with law."

10. This court did not go into the other grounds urged in the writ petitions since the order stood quashed on the ground of violation of principles of natural justice.

11. After the writ petition filed by the petitioner was allowed by this court, a show-cause notice was issued by the appropriate authority on April 14, 1994, calling upon the petitioner to appear and show cause as to why an order u/s 269UD(1) for the property in question be not passed. The letter addressed to the petitioner mentions that the Patna High Court, vide its order dated April 5 1. SMT. PUSPA SINGH (CWJC NO. 6427 OF 1991) 2. AJAY CONSTRUCTION (CWJC NO. 5971 OF 1993) 3. AMARNATH PANDEY (CWJC NO. 9713 OF 1993) Vs. UNION OF INDIA AND OTHERS., (see Appendix infra), while setting aside the order dated June 15, 1993, passed u/s 269UD(1) had "directed that the appropriate authority may pass a fresh order according to law". The petitioner filed his show-cause and submitted that the notice had been issued on the wrong assumption that the High Court had directed the appropriate authority by remanding the matter to it to pass a fresh order in accordance with law. It was submitted that since the period of two months had lapsed, the appropriate authority had no jurisdiction to proceed any further in the matter. The notice dated April 12, 1994, has been annexed as annexure "8" to the writ petition from which it appears that April 27, 1994, was fixed as the date for filing of written submissions. By a subsequent letter dated June 8, 1994 (annexure "10"), the date for filing of the written statement was extended to July 6, 1994, and the petitioner was also required to appear before the appropriate authority at Lucknow on the same day. Thereafter the impugned purchase order dated July 26, 1994, was passed by the appropriate authority which is annexure "11" to the writ petition. Learned counsel for the petitioner submitted that in terms of the judgment of the Supreme Court in C.B. Gautam Vs. Union of India and Others, , the appropriate authority could pass an order for pre-emptive purchase within two months from the end of the month in which the statement referred to in Section 269UC in respect of the property in question was received by the appropriate authority, by reckoning the date of disposal of the writ petition as the date on which the said statement was filed as required by Section 269UC. So calculated, the appropriate authority could pass an order on or before June 30, 1993. The appropriate authority indeed purported to pass such an order on June 15, 1993. That order was quashed by this court on the ground that the same had been passed in violation of the principles of natural justice. According to the petitioner, the authority could pass another order for pre-emptive purchase after lapse of the aforesaid period, even if the order passed by it had been struck down by the court on the ground of violation of principles of natural justice. It was contended before us that the High Court while quashing the order did not remand the matter back to the appropriate authority, nor did it direct the appropriate authority to pass a fresh order. It only observed that it was open to the

authorities to proceed further in the matter in accordance with law. The High Court by its order neither conferred a right on the appropriate authority, nor did it intend to curtail the right of the petitioner which had accrued to it by reason of the fact that a valid order had not been passed by the appropriate authority within the period prescribed by law. On the other hand, counsel for the Revenue contended that by reason of the order of the High Court, the appropriate authority was directed to pass a fresh order in accordance with law, and, therefore, the provision with regard to limitation for exercise of such power did not apply in the instant case.

12. Counsel for the petitioner relied upon two decisions in support of the proposition that if the authority failed to pass an order for pre-emptive purchase within the period prescribed by law, it could not pass such an order after expiry of the period so prescribed. If an order of purchase was not passed, then it was imperative and obligatory on the appropriate authority to issue the certificate u/s 269UL(3). In the case of *Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others*, the appropriate authority did not pass an order of pre-emptive purchase, as it was of the view that the agreement between the parties was not a proper agreement. The court held that in exercise of its power to decide whether to purchase the property, the authority had other implied powers to make that power effective. It would be entitled to see materials and documents like the document of title, the agreement, etc., in order to satisfy itself whether the apparent consideration is proper or not in order to come to the conclusion whether to purchase the property or not. If it had reservations or doubts with regard to the legality of the proposed sale, it was open to it not to exercise its rights to purchase the property. Section 269UD, however, did not contemplate the rejection of any statement by the appropriate authority. There was no provision in Chapter XX-C of the Income Tax Act, 1961, which enabled the appropriate authority to create a situation whereby the Government neither decided to purchase the property nor issue a certificate u/s 269UL(3). If the appropriate authority chose not to purchase the property in question, then Section 269UD did not contemplate the passing of orders similar to those passed by the appropriate authority in that case. The court thereafter proceeded to issue a writ of mandamus directing the appropriate authority to issue a no objection certificate in terms of Section 269UL(3) to the petitioners within four weeks. It may be noticed that the aforesaid decision of the Delhi High Court was taken in appeal to the Supreme Court of India and the Supreme Court by its judgment, reported in *Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others*, , dismissed the appeal holding that under the scheme of the legislation only two alternatives were open. Firstly, the Union of India through the appropriate authority could buy the property, or secondly, in the event of its decision not to buy, it has to issue a no objection certificate leaving it open to the parties to deal with the property.

13. The Bombay High Court in the case of *Irwin Almeida and others Vs. Union of India and others*, took the same view. In that case the appropriate authority

treated Form No. 37-I filed by the transferor and the transferee to be invalid since it was of the opinion that the petitioners had no transferable interest in the property in question. The court held that an enquiry by the appropriate authority into the right, title and interest to the property in question was uncalled for and the appropriate authority had no jurisdiction to enter into that arena. The appropriate authority may either decide that the property should be purchased by the Central Government or issue the no objection certificate. It was not permissible to it to examine the issue of title to the property and then hold that Form No. 37-I filed by the transferor and the transferee was not valid. The High Court thereafter proceeded to issue a direction to the appropriate authority to issue a no objection certificate to transfer the property within a period of four weeks.

14. These authorities do support the proposition urged on behalf of the petitioner that if the appropriate authority fails to exercise its power to purchase the property in question within the period prescribed by law, it had no option but to issue the no objection certificate in favour of the transferor and the transferee as a natural consequence.

15. Reliance was placed upon a decision of the Delhi High Court in *Satwant Nakang Vs. Appropriate Authority, Income Tax Department, New Delhi*, wherein a submission was urged on behalf of the respondents that in case it was held that the impugned order of the appropriate authority was not on sound footing, it be given an opportunity to reconsider the statement of the petitioner filed in Form No. 37-I of the Act, and to make up its mind, if the Central Government would like to purchase the property on the apparent consideration in the agreement or not. Negating the submission the court held that the Act lays down a very tight schedule for the appropriate authority to make up its mind to purchase or not to purchase the property. There is no provision for extension of time. The respondents had missed the bus and had passed the impugned order rejecting the permission on quite irrelevant considerations. In such circumstances, the court would not extend the period and frame a fresh time schedule for the Department, specially when the statute did not give any such power to the court. The court observed that there was no worthwhile explanation as to why at that point of time, the Department wanted to purchase the property, except the only consideration that the prices had gone up. There was no equity in favour of allowing the respondents another opportunity to make up its mind.

16. The same view was reiterated by the Calcutta High Court in *Moi Engineering Ltd. and Another Vs. Appropriate Authority and Others*, .

17. Counsel for the Union of India placed reliance upon a judgment of the Madras High Court in *Mangilal Jain Vs. Collector of Customs, Madras and Others*, and contended that once the initial order required to be passed by the statute is passed within the period prescribed, any subsequent order that may be passed pursuant to the directions given by the High Court in exercise of its writ

jurisdiction or to any order legally passed by an authority empowered under the Act to do so, such an order would not be subject to the limitation prescribed by law. In the aforesaid case an order was passed u/s 132(5) of the Income Tax Act by the Income Tax Officer seizing an amount from the petitioner. It was not in dispute that the aforesaid order had been passed within the period of 90 days prescribed by law after seizure. The High Court, on an appreciation of the material placed before it, came to the conclusion that the Department had failed to give notice to the petitioner before passing the order u/s 132(5) of the Income Tax Act, 1961, and that such an order passed without any notice to the petitioner was in violation of the principles of natural justice and had to be set aside. A specific plea was raised before the court that in these circumstances the court should not pass any order granting the Department another opportunity of passing an order after complying with the requirements of natural justice, and that the petitioner was entitled to the relief of the writ of mandamus for the release of the money. The court after considering the authorities on the subject negatived the plea of the petitioner, but considered the scheme of Section 132 of the Act and came to the conclusion that even under the Act, a person aggrieved by an order passed u/s 132(5) of the Act, could approach the notified authority u/s 132(11) within 30 days and that authority could direct the Income Tax Officer to pass a fresh order. Relying upon the judgment of the Supreme Court in *The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another*, the court held that if the first order was made within the period of time fixed u/s 132(5), thereafter if any direction was given u/s 132(12) or by a court in writ proceedings, the order made in pursuance of such a direction would not be subject to the limitations prescribed u/s 132(5). Any other consequence would take away the right made available to persons aggrieved by the order to prefer objections u/s 132(11). It will also make any order that may be passed u/s 132(12) ineffective. Further, the court, which exercises its powers under Article 226 of the Constitution, has got inherent powers to make all such orders as are necessary for doing complete justice to the parties. Having considered the matter in the light of the Supreme Court decisions the High Court passed an order quashing the order passed by the Income Tax Officer u/s 132(5) of the Act, but directed him to pass a fresh order u/s 132(5) after giving the petitioner a reasonable opportunity of being heard.

18. Having regard to the law as laid down by the Supreme Court in *The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another*, it must be held that where an initial order is passed within the period of limitation prescribed by law, any subsequent order that may be passed pursuant to a direction or order in the appeal, revision or by any other authority in exercise of statutory power vested in it, or a direction passed by the High Court in exercise of writ jurisdiction directing the authority to pass a fresh order, such subsequent order will not be subject to the limitation prescribed for passing the initial order. There are sound reasons for the proposition. Firstly, where the law itself provides for an appellate or revisional forum or provides or

vests in an authority a statutory power to set aside or modify the order passed by a competent authority, no finality attaches to the order as the law itself envisages a scheme wherein, by the very nature of things, all subsequent orders passed pursuant to the exercise of statutory power by the authorities or writ jurisdiction by the High Court, cannot be subject to the same law of limitation as is prescribed for the initial order. In such cases it must be held that the law itself provides, by providing such a scheme, that the provision with regard to limitation will not apply to such subsequent orders passed. What is, however, of significance is the fact that the subsequent order must be passed pursuant to a direction issued by such authority or court.

19. There is another reason why when such a direction is made by the appellate, revisional or other authority under the statute or by the High Court in exercise of its writ jurisdiction, the period of limitation prescribed for passing the initial order will not apply to such subsequent orders passed in pursuance of the direction issued by an authority or court. This is justified on the principle of the binding effect of judgments. Where an order is passed in a duly constituted proceeding against a party, and that order attains finality on account of not being appealed against or not being set aside in any other proceeding, the order binds the parties to the lis. The binding nature of the order is not on account of its being right or wrong, but on the principle that once an issue has been adjudicated between the parties before the appropriate forum in a valid manner, the parties cannot be permitted to avoid the consequences that flow from such adjudication after the order attains finality.

20. Reliance was placed upon the judgment of the Andhra Pradesh High Court reported in *Mohammadi Begum and Another Vs. Commissioner of Income Tax*, . That was also a case in which the original order of assessment was revised by the Commissioner in exercise of statutory power conferred upon him u/s 264(3) of the Income Tax Act. The revisional order directed the Income Tax Officer to pass a fresh order in accordance with law, and such order was passed in pursuance of such direction. It was, therefore, held that in view of the fact that the original orders of assessment were not void and a fresh assessment was made pursuant to a positive direction given by the Commissioner u/s 153(3) of the Income Tax Act, the assessment made pursuant to such a direction was a fresh assessment and was, therefore, not barred by limitation.

21. Counsel for the Revenue then referred to the judgment of the Supreme Court in *Superintendent (Tech. I) Central Excise, I.D.D. Jabalpur and Others Vs. Pratap Rai*, . That was again a case where the Assistant Collector of Customs passed an order seizing the watches and ordering their confiscation. A penalty was also levied. The respondents carried an appeal to the Appellate Collector u/s 128 of the Customs Act. The appeal was allowed by the Appellate Collector, who passed an order vacating the order of adjudication passed by the Assistant Collector, without prejudice. The Supreme Court held that the Appellate Collector had not set aside or vacated the order of the Assistant Collector on the merits, but

vacated it only on technical infirmity, namely, violation of the Rules of natural justice. That is why the Appellate Collector advisedly used the words "without prejudice" in his order. It was further found that the Appellate Collector did not intend to bar fresh adjudicatory proceedings, provided they were conducted according to the principles of natural justice, because in that event the appellate authority should have passed a consequential order for refund of the amount of penalty and release of the property confiscated.

22. As would be noticed from the facts of the case, this was again a case in which the order of the Assistant Collector of Customs was set aside by the Appellate Collector in exercise of jurisdiction vested in him under the Act.

23. Lastly, reliance was placed upon a judgment of the Punjab and Haryana High Court in Commissioner of Wealth-tax Vs. Smt. Rajlaxmi, . That, was again a case of levy of penalty under the Wealth-tax Act, 1957. It was held that though Section 18(5)(b) of the Wealth-tax Act provided that penalty can be imposed within two years from the end of the financial year in which the proceeding in the course of which action for imposition of penalty has been initiated is complete, the prescribed period of limitation will not apply if a final order imposing penalty is passed after the expiry of the said period, but pursuant to an order passed by the highest authority in the hierarchy of appellate authorities, and where the matter is brought before the court, then after the orders passed by the court are complied with. It was, therefore, held that if the initial order was passed by the competent authority within the period prescribed by law, fresh orders passed by the Wealth-tax Officer in pursuance of the direction of the Appellate Assistant Commissioner were not barred by limitation.

24. Having regard to the authorities cited at the Bar it cannot be disputed that where a period of limitation is prescribed for the passing of an order by the competent authority, but that order is expressly made subject to any order that may be passed in appeal or revision or subject to any order that may be passed by any higher authority, then the fresh order that may be passed pursuant to orders or directions issued by such appellate, revisional or other authority will not attract the bar of limitation, provided the initial order was passed within the period of limitation prescribed by law. That is because the Act itself contemplates an appellate or revisional forum with power to set aside or modify the order passed by a competent authority. The law itself envisages a scheme wherein, by the very nature of things, all subsequent orders passed pursuant to the exercise of statutory power by the authorities or an order passed by the High Court or the Supreme Court in exercise of writ jurisdiction, cannot be subject to the same law of limitation as is prescribed for the initial order. In other words, the law prescribes that the initial order must be passed within the period of limitation prescribed by law, but the law of limitation will not apply to any subsequent order that may be passed pursuant to any direction or order by the appellate or revisional authority or by the High Court or by the Supreme Court in exercise of its writ jurisdiction.

25. So far as the instant case is concerned, it is not in dispute that there is no provision for appeal or revision against an order of pre-emptive purchase passed u/s 269UD(1) of the Act. Obviously, the principles which apply to orders that are subject to appellate or revisional jurisdiction will not apply to such an order passed u/s 269UD(1) of the Act. However, that principle will be applicable if it is shown that the order passed was pursuant to a direction or order of the High Court or the Supreme Court in exercise of writ jurisdiction, because in the absence of a provision for appeal or revision, the orders may be challenged before the High Court or the Supreme Court in writ jurisdiction. The case of the Revenue, as would appear from the show-cause notice issued by the appropriate authority, is that the High Court had directed that "the appropriate authority may pass a fresh order according to law". Obviously, therefore, the Revenue relies upon the direction of the High Court while disposing of the earlier writ petition to clothe the competent authority with the power to pass a fresh order, despite the expiry of the period of limitation. But for such a direction by the High Court, the prescribed authority could not pass an order of pre-emptive purchase after the expiry of the period of limitation.

26. Having regard to the provisions of the Act it cannot be disputed that failure on the part of the prescribed authority to make an order for preemptive purchase u/s 269UD(1) within the period of limitation prescribed by law results in accrual of a right in favour of the vendor and the vendee to dispose of the property as they like. The authorities cited at the Bar also in clear terms lay down that in such an event, the prescribed authority is bound to issue a no objection certificate enabling the parties concerned to effectuate the sale of the property in question. It cannot be disputed that in exercise of writ jurisdiction the court can pass an order in the interest of justice, even if that involves defeating the right which may have accrued to the writ petitioner. Where such a right is defeated by an order expressed in clear terms, no difficulty arises. In the instant case, if the order of the High Court disposing of the writ petition in express terms had directed the prescribed authority to pass a fresh order u/s 269UD(1) after complying with the principles of natural justice, I would have had no hesitation in holding that by reason of such an order the prescribed authority was empowered to pass a fresh order of pre-emptive purchase, notwithstanding the expiry of the period of limitation. However, the difficulty arises because all that the High Court observed after quashing the order was as follows : "It is, however, open to the Revenue to proceed further in the matter, in accordance with law". Counsel for the petitioners urged that after the order was quashed, the prescribed authority could proceed further in the matter in accordance with law by issuing a no objection certificate. The court did not consider the question as to whether in the facts and circumstances of the case, a right having accrued in favour of the petitioners, that should be defeated in the interest of justice. It was submitted that in the case, reported in *Mangilal Jain Vs. Collector of Customs, Madras and Others*, there was a clear direction by the High Court directing the Income Tax Officer to pass a fresh order u/s 132(5) of the Act after giving the petitioner a

reasonable opportunity of being heard. In that case a specific plea was raised before the court that it should not grant the Department another opportunity of passing an order after complying with the requirement of natural justice. The plea was considered by the court, and having regard to all the facts and circumstances of the case, in exercise of its inherent power to make all such orders as are necessary for doing complete justice to the parties, the High Court passed an express direction directing the Income Tax Officer to pass a fresh order. It was also submitted that in the absence of express direction by the court authorising the prescribed authority to pass a fresh order, the prescribed authority is denuded of its power to pass such an order after the expiry of the period of limitation. That is why, it is contended, it was necessary for the Department to seek a clarification from the Supreme Court in *C.B. Gautam Vs. Union of India and Others*, , because otherwise it would not have been possible for the prescribed authority to pass orders u/s 269UD(1) in pending proceedings where the period of limitation had run out.

27. There appears to be substance in the contention that the court will not readily infer that a right which has accrued in favour of a citizen has been defeated by an order of the court passed in exercise of writ jurisdiction, unless the direction in express words or by necessary implication leads to that conclusion. The power to pass a fresh order is derived from the direction of the court. If the order of the court is only to the effect that the prescribed authority may proceed in accordance with law, it cannot be read as a direction to pass a fresh order, if the same is not permitted by law otherwise. The direction of the High Court was to the effect that it was open to the Revenue to proceed further in the matter in accordance with law. There is no express direction that a fresh order may be passed by the prescribed authority despite the expiry of the period of limitation, and all that is said is that it will be open to the Revenue to proceed further in the matter in accordance with law. Obviously, therefore, the Revenue could proceed further in the matter only if the law permitted it to do so. The prescribed authority has proceeded on the basis that it is the direction of the High Court which empowered him to pass a fresh order, but a reading of the order leaves no room for doubt that the prescribed authority could proceed further only in accordance with law. So far as the provisions of the Act are concerned, it is not disputed that but for the direction of the High Court, a fresh order of pre-emptive purchase could not be passed after the expiry of the period prescribed for passing such an order. I am, therefore, of the view that the order passed by the High Court did not by its own force authorise the prescribed authority to pass a fresh order of pre-emptive purchase despite the expiry of the period of limitation prescribed by law. It authorised the prescribed authority only to proceed further in a manner permitted by law. The law did not permit the prescribed authority to pass an order after the expiry of the period of limitation prescribed under the Act and, therefore, he could not pass a fresh order. It is true that the High Court, in exercise of its writ jurisdiction, may pass all such orders as are necessary for doing complete justice to the parties. Equitable

considerations are, therefore, significant in the exercise of writ jurisdiction. In the instant case, despite the judgment of the Supreme Court in C.B. Gautam Vs. Union of India and Others, laying down the law in clear terms, and despite the order of the High Court directing the prescribed authority to proceed further in accordance with the judgment of the Supreme Court in C.B. Gautam Vs. Union of India and Others, , the prescribed authority proceeded to pass an order without complying with the principles of natural justice. Having regard to these facts, could there be any justification for the High Court to grant a further opportunity to the prescribed authority to pass a fresh order. Counsel for the petitioners submitted that the order passed by the prescribed authority was in defiance of the order of the Supreme Court which had given another opportunity to the prescribed authority to pass an order in accordance with law within the period of limitation. If despite all these, the prescribed authority chose to act in defiance of law, the petitioners could well have pleaded before the High Court that another opportunity to pass a fresh order should not be given to the prescribed authority. Since this issue was not expressly raised in the earlier proceeding, and since such an express order was not passed by the High Court, there was no occasion for the petitioners to urge these submissions before the High Court in the earlier proceedings. If such an order had been prayed for on behalf of the prescribed authority, the petitioners could well have contested the matter and satisfied the court that in the facts and circumstances of these cases a direction for passing a fresh order u/s 269UD(1) should not be made. It was, therefore, submitted and in my view rightly, that in the absence of express words in the order, the court should not readily draw an inference that the High Court by its order intended to defeat the right which had accrued in favour of the petitioners to dispose of the property as they like in the absence of a valid order u/s 269UD(1) of the Income Tax Act.

28. I am, therefore, of the view that these writ petitions deserve to be allowed and they are accordingly allowed. The notice dated April 12, 1994 (annexure "8"), issued by the Deputy Commissioner of Income Tax (appropriate authority) and the order passed by him on July 26, 1994 (annexure "11"), are hereby quashed. A writ of mandamus shall issue commanding the appropriate authority to issue no objection certificate within a period of four weeks from today. There shall be no order as to costs.

N.K. Sinha, J.

29. I agree.