
(1997) 05 AHC CK 0166

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 961 of 1994

Ajeet Singh and Another

APPELLANT

Vs

Appropriate Authority and Others

RESPONDENT

Date of Decision : 27-05-1997

Acts Referred:

Income Tax Act, 1961 — Section 269UD

Citation : (1997) 226 ITR 330 : (1997) 94 TAXMAN 409

Hon'ble Judges : S.L. Saraf, J;Om Prakash, J

Bench : Division Bench

Advocate : V.B. Upadhyaya and Ajay Sharma, for the Appellant; Bhartji Agarwal and Shekhar Srivastava, for the Respondent

Final Decision : Allowed

Judgement

S.L. Saraf, J.—By this writ petition, the petitioner seeks a writ of certiorari praying for quashing of the order dated September 12, 1994, passed u/s 269UD of the Income Tax Act, 1961, whereby the appropriate authority had passed an order for pre-emptive sale of the property being Plot No. 404, Sector-XVA, Noida district, Ghaziabad. The petitioner further prays that the respondents be directed not to take possession of the property in question.

2. The writ petitioners jointly agreed to purchase the aforesaid property on July 25, 1991, for Rs. 14,50,000. A sum of Rs. 4,35,000 was paid by the petitioners to the said respondent No. 3 and it was agreed that balance of Rs. 10,15,000 will be paid on execution and registration of the sale deed by the buyer to the seller. Thereafter, the petitioner sought permission for transfer of the land u/s 269UD of the Income Tax Act in the prescribed form from the appropriate authority. On October 28, 1991, the valuer of the Income Tax Department had directed the petitioners to produce certain documents relating to the property in question. The said direction of the Valuation Officer was complied with by the petitioner.

3. On December 17, 1991, the petitioners received an order from the appropriate

authority informing the petitioners that their property had been acquired for purchase by the Central Government u/s 269UD(1) of the Income Tax Act, 1961, and had become vested in the Central Government from that date. Another order was passed on December 16, 1991, and was also sent to the seller, Sri Manoj Lal, respondent No. 3, calling upon him to deliver possession of the aforesaid property within 15 days to the Central Government. The Valuation Officer, Meerut, was directed to take over the aforesaid property, i.e., Plot No. 404, Sector-XVA, Noida, vide letter dated December 17, 1991. As no opportunity was afforded to the petitioner before acquiring the said property, the petitioners moved this court. This court, vide its judgment and order dated July 19, 1994, was pleased to direct the authorities concerned to decide the case of the petitioners after affording an opportunity of hearing to the petitioners. Pursuant to the orders of this court, the respondents issued a show-cause notice as to why Plot No. 404, Sector XV-A, Noida, be not acquired by the Central Government under the provisions of Chapter XX-C of the Income Tax Act, 1961. Along with the said show-cause notice, the valuation report was also furnished to the petitioners.

4. In reply to the said show-cause notice the petitioners made representations before the authorities on September 6, 1994. The petitioners challenged the vesting of the said property under the provisions of Section 269UD, inter alia, on several grounds. It was stated that the basis of the prevailing market price was totally incorrect and illogical. The said property was valued at a very high rate instead of the actual market price. The Valuation Officer wrongly and arbitrarily took the date of valuation as the 31st December, 1991, i.e., five months after the date of agreement between the parties in the instant case. Secondly, it was urged that no copy of the survey report and/or inquiry report of any property dealers were ever served upon the petitioners. Neither the name nor the addresses nor eligibility or competence of such dealers were disclosed to the petitioners making it impossible for the petitioners to make proper representations. The allegations contained in the inquiry report were too vague to be answered. The respondents did not disclose the rate provided by the property dealers for similarly situated plots of the said area. It was further contended that no factual evidence was adduced by the Valuation Officer in the report which could determine such a major decision. Thirdly, it was contended that Plot No. 241 which was sold at the same time and was of the same size was not comparable to plot No. 404 of the petitioners particularly in view of the fact that Plot No. 241 was on an 18 metre wide road and a number of properties has already been developed in that locality. It was better placed whereas Plot No. 404 of the petitioners was on a non-developed area of the said block and was on a very narrow road. According to the petitioners, the comparable plots which were sold during the said period were Plot Nos. 238, 80, 146 and 379. All the aforesaid plots were of the same size and in the said block. None of the plots sold during the said period fetched a better price than that at which the petitioners agreed to purchase the said property. According to the petitioners,

the rate prevailing for the said plots ranged between Rs. 1,800 and Rs. 2,700, whereas the petitioners finalised the negotiation at Rs. 3,200 per sq. mtr. The valuation report was biased and based on hearsay without any relation and nexus with the prevailing market rate. The report as such was arbitrary and based on erroneous and irrelevant considerations. For better appreciation of the case, the petitioners submitted as annexure "4" the details of registrations done of several plots during the said period. The same are set out hereinbelow :

The details of registrations done at the office of the Sub-Registrar, Noida, of residential plots in Sector-XV-A., Noida, during the year 1991 :

Date

Plot No.

Area

Amount

Document No.

Rate/sq.

Rs,

15-1-1991

80

450 sq. mtrs.

8,10,000

205-211

1,800

4-2-1991

238

450 "

12,20,094

638-639

2,710

20-2-1991

450

200 "

4,70,000

908-909
2,350
6-4-1991
291
200 "
4,69,000
1522-1523
2,345
2-5-1991
330
200 "
3,09,000
1879-1880
1,545
1-7-1991
355
200 "
5,40,000
2639-2640
2,700
28-8-1991
325
240 "
5,52,000
3560-3561
2,300
17-9-1991
210
450 "
9,50,000

3909-3910

2,110

28-9-1991

194

200 "

4,60,000

41244125

2,300

15-10-1991

146

455 "

9,23,175

43604361

1,866

29-11-1991

379

220 "

6,60,000

5092-5095

3,000

5. The appropriate authority subsequently heard the matter and disposed of the representations of the petitioners by confirming the order of preemptive purchase of Plot No. 404 and rejecting the representations of the petitioners primarily holding that for arriving at the fair market value of land/building rates prevailing at a particular time, the officials do make enquiries from various property dealers and other connected persons before coming to their decision. This is not an unusual methodology. However, in this case the Valuation Officer had cited a definite case of sale transaction of a similar sized plot in the same sector. He had then arrived at the fair market value of the instant property. The cases cited by the transferor are not for comparable areas/cost indicated therein and as such the appropriate authority did not have any chance to examine these cases.

6. Further, one of the cases cited by the petitioners being Plot No. 238 having a better location was not considered as a comparable case in view of the fact that

the transaction was prior to the jurisdiction having come under the purview of the appropriate authority. The date on which the jurisdiction and powers were conferred upon the appropriate authority was April 1, 1991, whereas the said sale took place on February 4, 1991.

7. Counsel for the petitioners strongly urged that the findings given by the appropriate authority were totally perverse and based on no evidence. The appropriate authority had taken into cognizance the irrelevant and extraneous materials to arrive at the aforesaid conclusion. According to the petitioners, Plots Nos. 241 and 404 were not comparable plots at all Plot No. 241 has a very wide front on the main road of 18 metres width and close proximity to the market and commercial centre and opposite to a club. According to counsel for the petitioners being opposite to the club there was no possibility of any high rise building in front of house No. 241 and the inhabitants of the area enjoy free, fresh and unpolluted air whereas the property situated on a very narrow road surrounded by houses on all sides would necessarily be of lesser value. In support of the aforesaid contention, counsel for the petitioners relies on a decision of Shrichand Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others,

" The principles to determine the fair market value of property are well-settled by a catena of decisions of the Supreme Court. The principles are adopted while determining the compensation payable in respect of property acquired under the Land Acquisition Act, 1894. The determination is to be made on the basis of what a hypothetical purchaser willing to purchase land from the open market and prepared to pay a reasonable price would offer. It has to be assumed that the vendor is willing to sell the land at a reasonable price. While determining the price, normally the authority has to take into account genuine instances. The most comparable instances out of the genuine instances have to be identified on the consideration of proximity from the time angle and proximity from the situation angle. After identifying the instances which provide the index of market value, the price reflected therein may be taken as a norm and the value of the land in question may be deducted by making suitable adjustments for the plus and minus factors, vis-a-vis, the land under consideration by placing the two in juxtaposition. The plus factors are proximity to a road, frontage on a road, regular shape, etc., while the minus factors are situation in the interior at a distance from the road, narrow strip of land with small frontage, compared to depth and some special disadvantageous factor which would deter the purchaser. It is not possible to lay down any hard and fast rule to ascertain the fair value by adopting instance method but the authority should determine the fair value after taking an overall view of the situation. A reference can be made in this connection to the decision of the Supreme Court in Chimanolal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, ."

8. Counsel for the petitioners further relies on the observations of the Bombay High Court at page 53 which read as follows :

" We are conscious that the exercise is only to ascertain whether the order is passed by relying upon extraneous or irrelevant material. It is not permissible to reassess the material and the order cannot be disturbed unless it is found that the order suffers from serious infirmity, bordering on perversity."

9. Learned counsel for the petitioners relied on a decision reported in Commissioner of Wealth-tax Vs. Mrs. Sara Varghese, where Justice Pari-poornan (as he then was) of the Kerala High Court has observed as follows (page 453) :

"..... that for valuation a hypothetical market is contemplated. Imponderables are involved in the matter of valuation. The market value of the property is the price which a willing buyer will pay to a willing seller. It will vary from case to case. Valuation is not an exact science. Mathematical calculation is not possible. The money value attributable to the asset should be decided and estimated by the concerned statutory authority in a reasonable and judicial manner on the basis of the facts and circumstances available. The valuation should be made objectively and should be based on some material. The qualitative and quantitative analysis in the matter of valuation will differ from asset to asset, from place to place, and also considering the particular statute for which the valuation and price of the property has to be determined. It cannot be a wooden rule. Different methods and approaches, necessary in the context of different statutes under which the market value of an asset has got to be determined, pose difficult problems. The market value has got to be fixed with reference to the particular statute. The approach will differ, according to the nature of the statute, between fiscal statutes or non-fiscal statutes. Among the non-fiscal statutes, the Land Acquisition Act is an important legislation. Among the fiscal statutes, the Income Tax Act, the Wealth-tax Act, the Gift-tax Act, the Municipalities Act, etc., are important. In fixing the market value of a particular asset or property, the approach and analysis are likely to vary according to the subject-matter of legislation. The principles that are ordinarily applied in the case of non-fiscal statutes like the Land Acquisition Act cannot be applied mechanically to cases arising under the fiscal statutes." (see also [1995] 214 ITR 623).

10. In Debi Prosad Poddar Vs. Commissioner of Wealth Tax, , his Lordship Mr. Justice Sabyasachi Mukharji (as he then was), was pleased to summarise the principles of valuation of immovable property in the following observations (page 773) :

"(i) Attempt must be made to find out the price which the immovable property would fetch on the valuation date, imagining a willing buyer to purchase the property from a willing seller in respect of the property.

(ii) In respect of the immovable property, there is no fixed market for shares or for other commodities, like sugar, cloth, etc. In order to arrive at a valuation in respect of the property there must necessarily be certain element of guess. But the guess must be based on certain facts and according to certain principles which would be, in the facts and circumstances of each case, as fair as possible

to the Revenue as well as to the assessee in trying to imagine reasonably and intelligently the price which was expected to be fetched if it was possible to sell the property in question on the relevant valuation date.

(iii) Such a determination, therefore, involves adopting certain methods in determining the valuation and there are different kinds of methods as mentioned in the circulars of the Board and the principles enunciated in the several decisions of the court as noticed before.

(iv) Which one of the various methods would be suitable for a particular case must depend upon the nature of the property, the location of the property, the purpose for which the property is used, and several other objective factors, viz., the time when the valuation is made, the prospect of buying and selling in respect of the property at the relevant time and also special features in respect of the property, if there be any. Taking all these factors into consideration it is, therefore, necessary to determine which one of the various methods will be most suitable to reach as accurate as possible a guess as to the valuation on the valuation date,

(v) Another factor which has to be borne in mind is that such a method should be preferred which has more objective reliable data to rely upon than mere subjective opinions. For instance, if there are more objective data to work out in respect of one method more reliable than another, then that method for a particular land should be preferred. If, however, there is any objective reliable evidence of any transaction of sale of the land or property similar in quality or of the same type and in approximately same time then that would, however, provide more reliable method to follow."

11. In *Raghubans Narain Singh v. U. P. Government* AIR 1967 SC 465, it was observed by the apex court that the value to be ascertained is the price to be paid for the land in all its potentiality and with all the use that can be made by the vendor.

12. The last case cited by the petitioner's counsel is *KRISHNA KUMAR RAWAT AND OTHERS Vs. UNION OF INDIA AND OTHERS*, where the hon"ble Justice V. K. Singhal of the Rajasthan High Court has observed as follows :

" The principles for valuation in respect of an immovable property under the Wealth-tax Act or other taxation laws are different from the principles which are applicable to acquisition proceedings. The proceedings under Chapter XX-C are akin to acquisition proceedings and not to the valuation principles which are applicable for assessing the tax on the basis of the valuation of the property.

The valuation has no doubt to be made objectively and not on the subjective satisfaction of the appropriate authority. The figure which is arrived at has to be based on the material on record. There may be a certain element of arbitrariness while estimating the market value and it is for that reason alone, that without there being any mandate of the Act, the respondents have issued a circular that

the acquisition of the property under Chapter XX-C would be if the difference of the market value and agreed value shown in the instrument is more than 15 per cent. Thus, the 15 per cent. margin covers the estimation part of the valuation, so that no injustice is done while acquiring any property. The right of pre-emptive purchase by the Central Government of immovable property is at an amount equal to the amount of apparent consideration so as to relieve the transferor of any grievance. The order u/s 269UD has to be passed in a time-bound programme. The appropriate authority consists of three persons ; two of whom are to be members of the Indian Income Tax Service Group "A" holding the post of the Commissioner of Income Tax or, any equivalent or higher post and one has to be a member of the Central Engineering Services Group "A" holding the post of the Chief Engineer or any equivalent or higher post. The transferor and transferee are to be given opportunity and a reasoned order has to be passed. The respondents have to make the valuation of the property by taking into consideration all relevant facts and thereafter a decision has to be taken by the appropriate authority. Viscount Simon J., in *Gold Coast Selection Trust Ltd. v. Humphrey* [1949] 17 ITR (Suppl) 19 (HL) observed that, "valuation is an art, not an exact science, mathematical certainty is not demanded, nor is it possible ?" A certain element of guess has to be there based on objective factors having reasonable nexus with the evidence on record. The various factors are there on the basis of which out of the various methods by which the valuation of the immovable property can be made, appropriate method is to be adopted. It depends on the location of the property, the purpose for which the property is used, the nature of the property, the time when the agreement is entered into and similar other objective factors. The valuation, therefore, has to be done by a method which is more objective and could furnish reliable data to arrive at a just conclusion."

13. On the basis of the principles as laid down in the said judgments, counsel for the petitioner submits that the order passed by the authorities u/s 269UD(1) of the Income Tax Act suffers from serious infirmity bordering on perversity. The authorities have relied on extraneous and irrelevant materials and have compared non-comparables whereas they have failed to compare the comparables. Relevant considerations such as the location of the land, the frontage, the transport facilities, the proximity of the market and open area in front were not considered at all by the appropriate authority. Further, deliberately, illegally and in violation of the method of valuation and perversity the authorities failed to consider the comparable plots sold during the period which fetched lesser price.

14. Counsel for the respondents, however, relying on the aforesaid decisions submitted that the authorities have acted fairly on the basis of the evidence available to them and have considered all the relevant factors in order to reach a conclusion and have passed an appropriate order u/s 269UD(1). Counsel relies on the counter-affidavit filed by one Pramod Kumar, the Deputy Commissioner, Income Tax, on behalf of the appropriate authority and particularly draws our

attention to paragraph 11 of the said counter-affidavit and also draws inspiration from his arguments that proximity to the commercial complex and club rather decreases the value of the residential properties because disturbances being created. According to the respondents' counsel, the authorities have exercised their power u/s 269UD(1) fairly and in consonance with law and as such the court should not interfere in the matter.

15. We have heard counsel for the petitioners and the respondents at length and have carefully considered the petition, the pleadings, its annexures and the counter-affidavit filed by the respondents in the matter. In our view of the matter, the respondents have miserably failed to apply the established principles of valuation and have passed orders without any application of mind. The finding arrived at by the appropriate authority is on the face of it perverse and the same should be set aside for the following reasons :

The appropriate authority deliberately ignored and failed to apply the well-established method of valuation. Nowhere in the order we find any discussion regarding the location, frontage, the wide road, transport facilities and other amenities which are relevant considerations for arriving at a fair value of the property. The aforesaid were the factors on the basis of which the valuation of the immovable property could be arrived at. In the instant case, the authorities did not apply their mind and acted contrary to the principles of law by not comparing the valuation of several other similarly situated properties which were brought to the notice of the appropriate authority. We have gone through annexure "4", which was part of the representations made by the petitioner to the authorities. The said annexure discloses that plots Nos. 80, 238, 210 and 146 were of the same size, i.e., 450 sq. mtrs. and sold during the same period at the rate of Rs. 1,800 to Rs. 2,700. It was improper on the part of the appropriate authority not to consider the valuation of these properties by one sentence that the cases cited by the transferor are not for comparable areas/costs indicated therein and as such the appropriate authority did not have any chance to examine these cases. Regarding Plot No. 238, the comment of the authority was that the transaction was prior to the jurisdiction of the Noida having come under their purview as such they did not have any chance to scrutinise the case. This court failed to appreciate the (sic) deliberately and ignore most material and relevant factors for the purposes of valuation of the market value of the property. The only basis for the said order appears to be that one property in Sector XV-A was sold at a higher rate during the said period. No attempt was made by the appropriate authority to consider any relevant or cogent factors relating to the said property with the property in question. There was total non-application of mind. The authorities have failed to establish any nexus with the evidence on record. In our view the authorities should have identified the instances which provide the index of the market value, the price reflected therein could be taken as a norm and the value of the land in question should have been reduced by making suitable adjustment for the plus and minus factors, vis-a-vis, the land under consideration by placing the two in juxtaposition, the plus factors such as

proximity to a road, regular shape and size, openness of the plot, the proximity to the commercial area while minus factors are situation in the interior at a distance from the road, narrow road, frontage, surrounded by buildings on all sides, no scope of free air and such special disadvantageous factor which would go to determine the value of the property.

16. Considering the plus and minus factors admittedly, as shown in the map plan at the time of hearing of the matter, the value of the property plot No- 241 would in any event be much higher than the property, i.e., plot No. 404 which is in the interior and away from the market. In any event of the matter it was the duty of the appropriate authority to consider the aforesaid relevant and cogent factors which the appropriate authority failed to do. The order of the appropriate authority does not disclose anywhere that they considered road frontage, proximity to the market, free access of air and openness of the plot for making their finding. The order further shows a sorry state of affairs where the appropriate authority failed to consider other comparable instances cited by the petitioners. This is a case where the authorities have deliberately or ignorantly refused to consider the cogent and relevant evidence and relied on irrelevant and extraneous considerations. The authorities are guilty of non-application of mind and have failed to apply the established principles and method of valuation of property and as such the said order suffers from severe infirmity bordering on perversity. As such in our view the order of preemptive purchase u/s 269UD in respect of plot No. 404, Sec-tor-XV-A was misconceived, unwarranted and deserves to be quashed.

17. In the result, the petition succeeds and is allowed- The impugned order dated September 12, 1994, passed u/s 269UD of the Income Tax Act, 1961, is hereby quashed. There will, however, be no orders as to costs.