(2002) 01 DEL CK 0108

In the Delhi High Court

Case No : CMs 11681 and 12908/01 in CWP 3139/93

A.K. Garg and Another APPELLANT

Vs

Kailash Nath and Associates and Others RESPONDENT

Date of Decision : 07-01-2002

Acts Referred:

Citation : (2002) 3 AD 905 : (2002) 62 DRJ 12 : (2002) 256 ITR 662 : (2002) 122 TAXMAN 692

Hon'ble Judges : S.B. Sinha, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : S.K. Jain and Jaya Tomar, for the Appellant; R.S. Endlaw, R.D. Jolly and Ajay Jha, for the Respondent

Judgement

D.K. Jain. J.

1. Respondents No. 1 and 4 in the titled writ petition, in their respective applications, being CM Nos. 11681/01 and 12908/01 seek modification of the order, dated 5 October 2001, passed by this Court, while disposing of petitioners'' application (CM 9134/01). Since the modification/directions sought for in the applications are in substance similar, both the applications are being disposed of by this common order.

2. To understand and appreciate the controversy raised in the applications, it would be necessary to note a few background facts.

(sic)Respondent No. 1, a builder (hereinafter referred to as the vendor) had entered into an agreement dated 25 June 1991 with the petitioners (hereinafter referred to the vendees) for the sale of residential flat No. 2 on the 4th Floor of the multistoreyed building known as Neelgiri Apartments, situated at 9, Barakhamba Road, New Delhi. The vendor and the vendees filed a statement in form No. 37-I prescribed under Rule 48-L of the Income Tax Rules, 1962 and as required under Chapter XX-C of the Income Tax Act, 1961 (for short ''the Act''). The Appropriate Authority under the Act, respondent No. 4 herein, vide order dated 28 May 1993, decided to purchase the said flat and, thus, passed the order u/s 269-UD(1) of the Act. The vendees challenged the said order by filing the present writ petition, inter alia, assailing the order on the plea of non-compliance with the provisions of Section 269-UG of the Act. The writ petition was finally disposed on 17 December 1997 [Since reported as 1. Mrs. Kailash Suneja (C.W. NO. 5220 of 1993 AND C.M. No. 1988 of 1994) 2. Shatabdi Trading and Investments Pvt. Ltd. and others. (C.W. NO. 4153 of 1993 and C.M. No. 3199 of 1994) 3. Chauhan Builders and Constructions Pvt. Ltd. (C.W. NO. 4589 of 1994) 4. Shashi Sehgal (C.W. No. 3726 of 1994) 5. R. C. Chawla and Another (C.W. No. 3884 of 1994) Vs. Appropriate Authority and Others. DR. A. K. Garg and Another (C.W. No. 3139 of 1993) v. Kailash Nath and Associates and Others. Chiranji Estates Pvt. Ltd. (C.W. No. 5613 of 1993) v. Union of India and Others. Express Towers Pvt. Ltd. and Another (C.W. No. 4357 and C.M.S. Nos. 7857 of 1993, 2043 of 1994 and 1811 of 1995) v. Deputy Commissioner of Income Tax and Others. Mahesh Chandra Agarwal and Another (C.W. No. 3594 of 1990 and C.M. No. 6632 of 1993) v. Union of India and Others.,], wherein the order passed by the Appropriate Authority was quashed. While holding so, K. Ramamoorthy, J. did not go into the question of alleged non-compliance with the provisions of Section 269UG of the Act but Y.K. Sabharwal, J. (as his Lordship then was) accepted the plea and held that the balance sale consideration was tendered by the Central Government to the vendor on 6 September 1993, which was beyond the stipulated period u/s 269-UG(1), thereby attracting the rigours of Section 269-UH, resulting in the abrogation of the purchase order. The Appropriate Authority unsuccessfully challenged the said order in the Supreme Court in its appeal (Civil Appeal No. 6048/98) which was dismissed on 4 May 2001, upholding the view taken by Y.K. Sabharwal, J.

3. According to the vendees, on the dismissal of the said appeal by the Supreme Court, they wrote to the Appropriate Authority to deliver to them possession of the Property but having failed to get any response thereto they filed an application (CM 9134/2001), seeking a direction to the Appropriate Authority to accept Rs. 23.10 lakhs, the amount paid by it to the vendor and to hand over physical possession of the property to them. The application was disposed of by this Court on 5 October 2001 with the following order:

Heard. On payment of the balance apartment consideration to the authorities within two weeks from today, possession of the property in question shall be handed over to the vendee, petitioner in the writ petition. If the Department has any claim regarding interest so far as the vendor is concerned, it is open to it to take action as is available in law. Though a stand was taken by learned counsel for the respondent that physical possession was not handed over, we find this stand to be clearly untenable in view of what has been stated in order dated 16th March, 1994. If any other amount is payable by the vendee to the vendor, that is a question with which we are not presently concerned. Application stands disposed of.

4. As noted above, the present applications have been filed for modification of the said order. The vendor in its application seeks clarification to the effect that : (1) the claim, if any, of the Appropriate Authority towards interest on the amount paid is against the vendees only and not against the vendor and (2) that nothing contained in order dated 5 October 2001 entitled the petitioner to receive possession of the flat from the vendor without paying the dues thereof. The Appropriate Authority, on the other hand, in their application seek a direction to the vendee and/or the vendor to pay interest @ 18% per annum on Rs. 23,13,994/-, the amount paid to the vendor by the Central Government for the period from 1 September 1993 till the date of realisation of the amount.

5. Having heard learned counsel for the parties, we are of the opinion that the afore-extracted order requires a little modification/clarification, more so to shorten the litigation between the parties.

6. From a reading of the aforenoted order of the Supreme Court made in Appropriate Authority''s appeal, it would appear that the only issue urged and decided by the Apex Court was with regard to the applicability of Section 269-UH on the facts in hand and the Court held that the Section was clearly attracted. Therefore, the said order hardly leaves any room for doubt that on account of failure on the part of the Central Government to tender/pay a part of the consideration, required to be tendered/paid to the vendor within the specified period, the purchase order stood abrogated and the property in question re-vested in the vendor. In the event of such a situation, Sub-section(2) of Section 269-UH provides that the Appropriate Authority is to make, soon thereafter, a declaration to that effect and serve a copy of such declaration on the owner-transferor and deliver or cause to be delivered possession of the property to the transferor or to the person(s) from whom possession was obtained by it. These are mandatory statutory requirements and the Appropriate Authority is bound to comply with the same. The stand of the Appropriate Authority that it was not in possession of the property is untenable, particularly in view of the observations made in the order dated 5 October 2001 and the fact that the Central Government had even issued an advertisement for auction of the property in question. It was only on a motion by the vendees that the auction was stayed vide order dated 16 March 1994. It is difficult to comprehend that without taking over possession, symbolic or otherwise, the Central Government would ever put the property to auction.

7. The question which now remains to be considered is as to whether the Appropriate Authority is entitled to claim interest on a part of the consideration paid by it to the vendor, either from the vendor or the vendees, for the period the amount remained with the vendor and whether the Appropriate Authority could be held responsible for the delay in delivery of possession of the property, as alleged by the vendees.

8. Having given our thoughtful consideration to the rival submission, we are of the view that it would not be fair and proper to lay any fault on either of the

three parties. So far as the Appropriate Authority is concerned, we have no reason to doubt its bonafides. It was acting in the discharge of its statutory duties and could not be blamed for passing order for pre-emptive purchase of the property by the Central Government. Merely because its order was ultimately set aside, it cannot be said that its action was malafide. So far as the vendor is concerned, it again cannot be held liable for payment of any interest to the Appropriate Authority inasmuch as it had to receive total consideration for the property in terms of the agreement to sell dated 25 June 1991. Since as per Sub-section(2) of Section 269-UE, the Vendor had to surrender or deliver possession of the property to the Appropriate Authority and no complaint in this respect was made by the Appropriate Authority warranting coercive action in terms of Sub-section(3) and (4) thereof, there was no reason why the vendor should not have received the balance sale consideration. Furthermore, if the vendor is now called upon to pay interest as demanded by the Appropriate Authority, for no fault of theirs, a substantial part of the sale consideration would be lost to the vendor. Similarly, in our view, the vendees cannot be blamed for protecting their interest in the property by taking recourse to their legal right to challenge the order of pre-emptive purchase by the Central Government. In fact they ultimately succeeded in getting the order quashed. Indeed, but for their action in getting the auction stayed, the property would have gone out of their hands, or in any case third party rights would have emerged. At best, the vendees could, perhaps, have derived some benefit in the bargain for not parting with the balance sale consideration which remained with them and presumably they could have earned some interest on it. We feel that the deprivation of the use and fruits of the property to vendees was greater loss to them as compared to he amount of interest which they could have earned. As observed by the Apex Court in Mrs. Rajalakshmi Narayanan Vs. Mrs. Margret Kathleen Gandhi and others, the question of grant of interest has to be decided on the facts and circumstances of a particular case, considering the equities of the matter. In our view, on the facts in hand, equity does not warrant to call upon the vendees to pay interest to the Appropriate Authority. Under the circumstances, we are of the opinion that the prayer of the Appropriate Authority (CM 12908/01) for direction to the vendor or the vendees to pay interest cannot granted.

9. As regards the apprehension of the vendors that the vendees are trying to take possession of the property in question without paying the dues, we do not consider it necessary to deal with the same inasmuch as the order passed u/s 269-UD(1) having been declared as abrogated and the property having re-vested in the vendor, in terms of Section 269-UH of the Act, there is no impediment left in now giving full effect to the agreement to sell dated 25 June 1991. However, to avoid any further dispute it may be clarified that since the vendors had received the balance sale consideration from the Appropriate Authority, they will not be entitled to charge any interest on the said amount for the period the order passed by the Appropriate Authority u/s 269UD(1) remained subjudice either before this Court or the Supreme Court. The order of pre-emptive purchase

made u/s 269UD(1) of the Act having abrogated, all restrictions imposed by Chapter XX-C of the Act disappear and the rights and liabilities of the vendor and the vendees shall obviously be governed by the agreement of sale entered into by them.

10. Both the applications stand disposed of. Order dated 5 October 2001 is modified to the extend that the Appropriate Authority shall issue the requisite declaration u/s 269-UH(2) of the Act and deliver or cause to be delivered possession of the property in question to the vendor within eight weeks from date of this order. On the Appropriate Authority complying with these directions, the vendor will take appropriate steps to deliver physical possession of the immovable property to the vendees in terms of the said agreement to sell.