

(1981) 02 BOM CK 0007

In the Bombay High Court

Case No : Special Civil Application No. 1628 Of 1973 with special Civil Application No's. 1629 to 1631 of 1973

All India Reported Ltd. and others

APPELLANT

Vs

Competent Authority, Inspecting Assistant Commissioner of Income Tax and others

RESPONDENT

Date of Decision : 06-02-1981

Acts Referred:

Income Tax Act, 1961 — Section 269, 269B, 269C, 269C(1), 269C(1)
Wealth Tax Act, 1957 — Section 18, 18(1)

Citation : (1986) 162 ITR 697

Hon'ble Judges : Tulpule, J;D.B. Padhye, J

Bench : Division Bench

Judgement

Padhye, J.—These four writ involve common questions of facts and law and, there fore, were heard together and are being disposed of by this common judgment.

Restricting ourselves to the bare minimum of facts which are necessary for deciding the four questions of law involved in these petitions, we may point out that Special Civil Applications No. 1628 of 1973 and Special Civil Application No. 1631 of 1973 are petitions filed by the transferor, All India Reporter Ltd., and the transferee, Dinkar Waman Chitaley, of an immovable property being house No. 257/1, situate on plot No. 27, Circle No. 19/27, Ward No. 1, Congress Nagar, Nagpur, with built-up area of 2, 242 sq. ft. and plot area 9, 405 sq. ft. Similarly, Special Civil Application No. 1629 of 1973 and Special Civil Application No. 1630 of 1973 are petitions filed by the same transferor and transferee, Ashok Madhav Chitaley, in respect of another immovable property being house no. 512, situate on plot No. 17, Circle No. 19/27, Ward No. 1 Congress Nagar, Nagpur with built-up area of 2, 246 sq. ft. and plot area of 9, 450 sq. ft. The Inspecting Assistant Commissioner of Income Tax, Acquisition Range, Nagpur, who has been joined as respondent No. 1 in all the above four petitions, issued two notices dated November 2, 1973, purporting to be individual notices by the Competent

Authority under the provisions of section 269D of the Income Tax Act, 1961 (referred to hereinafter as "the Act"), in respect of the above-referred two transfers intimating the transferor and transferees registered at Nagpur on May 14, 1973, for an apparent consideration of Rs. 61,000 and Rs. 85,000, respectively, were transfers in respect of which proceedings for acquisition could be taken under the provisions of section 269C of the Act because the authority had reason to believe that the fair market value of the said two properties exceeded the apparent consideration thereof by more than 15% and that the two transfers were executed with the object of facilitating reduction or evasion of the liability of the transferor to pay tax under the Act in respect of income arising from the transfer and/or for facilitating concealment of any income or any moneys or other assets which have not been or which ought to be disclosed by the transferee for the purpose of the Act as well as the Indian Income Tax of 1922 and the Wealth-tax Act of 1957.

Besides challenging the very initiation of proceedings by the two notices referred to above, the petitioners have also challenged the provisions of Chapter XX-A of the Income Tax Act, 1961, alleging that they are ultra vires, being violative of the provisions of article 19(1)(f) and (g) and article 31 of the Constitution of India, by filing these petitions on November 29, 1973. The two individual notices have been appended to these petitions as annexure "A" and were received by the transferor and transferees on November 5, 1973. The Competent Authority is required provisions of section 269C of the Act. In section 269C of the Income Tax Act, 1961, or Chapter XX-A in which the said section appears, there is no provision for communicating the reasons so recorded by the Competent Authority to the transferor or transferee. But, according to the petitioners, communication of such reasons to the transferor and transferee was implicit in the very scheme of Chapter XX-A of the Act and the proceedings u/s 269D of the Act being of quasi-judicial nature, the Competent Authority is enjoined with the duty of communicate the reasons to them by a letter dated November 13, 1973, and were informed within two days that the acquisition proceedings were started, inter alia, on the basis of the valuation report of the Assistant Valuation Officer. Besides this bare statement, the reasons recorded by the Competent Authority were not supplied and, the transferees to lodge their objections within the statutory period, showing their willingness to pay the costs of the supply of copies but this request was turned down on the very next day by the Competent Authority by informing them that it was not possible to give a copy of the reasons recorded for initiation of acquisition proceedings and valuation report at that stage and pointing out that the transferor and transferees would be apprised of these reasons and other information in the possession of the Competent Authority in the course of hearing of the objections. This was followed by a request by the transferor and the transferees on November 27, 1973, that inspection of the records may be granted to them and the case of the petitioners is that their letters dated November 27, 1973, requesting inspection were not replied to up to the date filing of the petition on November 29, 1973.

Section 269D of the Act provides that the Competent Authority shall initiate proceedings for acquisition of immovable property under Chapter XX-A "by notice to that effect published in the Official Gazette" and provides that no such proceedings shall be initiated after the expiration of a period of nine months from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act, 1908. This period was originally six months and was amended to nine months with retrospective effect from November 15, 1972, by the Taxation Laws (Amendment) Act, 1973, and, therefore, it was agreed by both the parties that a period of nine months was available to the Competent Authority to initiate proceedings for the acquisition of the immovable property in question from the publication of notice u/s 269D of the Act in the Gazette. All the four petitions came to be amended in April, 1974, mainly for including a challenge that publication of notice u/s 269D of the Act in the Official Gazette was not made up to March 15, 1974, until which date copies of the Official Gazette dated November 10, 1973, containing the notices in question were not available, not only to the transferor, transferees and the public at large but also to the Inspecting Assistant Commissioner of Income Tax, Acquisition Range, Nagpur, who is the Competent Authority under the provisions of Chapter XX-A of the Act.

The case of the Competent Authority as respondent No. 1 in all the above four petitions is that communication of reasons for acquisition of property under the provisions of Chapter XX-A of the Act to the transferor or transferee was not at all necessary and particularly so at the initial stage. So far as the publication in the Official Gazette is concerned, the case of the Competent Authority is that the notices in question were printed in Government of India Gazette, Part III, section I dated November 10, 1973 and the said Gazette was received from the Press in the office of the Controller of Publications, New Delhi, who is enjoined with the task of selling these Gazettes or supplying them to the Government Departments, on December 13, 1973, and was placed for sale to the public on that very date. For this proposition, respondent No. 1, the competent Authority, relied upon a letter dated July 11, 1974, from S. S. Roy, Deputy Controller of Publications received in the office of the Competent Authority on July 17, 1974, and filed with the return as annexure 1R-1. The Controller of Publications or the Deputy Controller of Publications has not come forward to file any affidavit in that behalf.

After hearing the arguments of the advocates appearing for both the sides, we feel that the following four questions fall for our decision in these petitions : "1. Whether the very initiation of acquisition proceedings by the Competent Authority is bad for want of publication of notice in the Official Authority is bad for want of publication of notice in the Official Gazette under 269D of Income Tax Act, 1961, within nine months from the last date of the month in which the impugned transfers took place ?

2. Whether publication in the Official Gazette is a condition precedent for giving

of individual notice and whether on that count the individual notice dated November 2, 1973, given before its appearance in the Gazette dated November 10, 1973, is bad ?

3. Is the impugned notice bad for ambivalence or indefiniteness and, therefore, invalid ?

4. What is the consequence of failure to communicate reasons and afford inspection thereof on the validity of the proceedings ?"

Regarding question No. 1. - Section 269C of the Act indicate the conditions which must exist for initiation of proceedings by the Competent Authority for acquisition of Immovable property transferred with the object of facilitating evasion of Income Tax or concealment of income. Section 269D lays down the conditions and procedure that have to be followed by the Competent Authority for initiation of such proceedings. Both these sections are in Chapter XX-A entitled "Acquisition of immovable properties in certain cases of transfer to counteract evasion of tax", and introduced in the Act by the Taxation Laws (Amendment) Act, 1972. These two sections are as under :

"269C. (1) Where the competent authority has reason to believe that any immovable property of a fair market value exceeding twenty-five thousand rupees has been transferred by a person (hereafter in this Chapter referred to as the transferor) to another person (hereafter in this Chapter referred to as the transferee) for an apparent consideration which is less than the fair market value of the property and that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object of -

(a) facilitating the reduction or evasion of the liability of the transferor to pay tax under this Act in respect of any income arising from the transfer; or

(b) facilitating the concealment of any income or any moneys or other assets which have not been or which ought to be disclosed by the transferee for the purposes of the Indian Income Tax Act, 1922 (11 of 1922), or this Act or the Wealth-tax Act, 1957 (27 of 1957),

the competent authority may, subject to the provisions of this Chapter, initiate proceedings for the acquisition of such property under this Chapter :

Provided that before initiating such proceedings, the competent authority shall record his reasons for doing so :

Provided further that no such proceedings shall be initiated unless the competent authority has reason to believe that the fair market value of the property exceeds the apparent consideration therefore by more than fifteen percent of such apparent consideration.

(2) In any proceedings under this Chapter in respect of any immovable property,
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(a) where the fair market value of such property exceeds the apparent consideration therefore by more than twenty-five per cent. of such apparent consideration, it shall be conclusive proof that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer;

(b) where the property has been transferred for an apparent consideration which is less than its fair market value, it shall be presumed, unless the contrary is proved, that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with such object as is referred to in clause(a) or clause(b) of sub-section(1).

269D. (1) The competent authority shall initiate proceedings for the acquisition, under this Chapter, of any immovable property referred to in section 269C by notice to that effect published in the Official Gazette :

Provided that no such proceedings shall be initiated in respect of any immovable property after the expiration of a period of nine months from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act, 1908 (16 of 1908) :

Provided further that -

(a) in a case where it is determined under sub-section(4) of section 269B by the competent authority who has initiated proceedings for the acquisition of any immovable property under this Chapter or by the Board that such competent authority has no jurisdiction to initiate such proceedings, the competent authority having jurisdiction may initiate such proceedings within -

(i) the period of nine months specified in the foregoing proviso; or

(ii) a period of thirty days from the date of such determination, whichever period expires later;

(b) in a case where proceedings for the acquisition of any immovable property under this Chapter could not be initiated during any period of time by reason of any injunction or order of any court prohibiting the initiation of such proceedings or preventing the examination of documents or other materials required to be examined for the purpose of determining whether such proceedings should be initiated, the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn shall be excluded in computing the period during which such proceedings may be initiated under this sub-section.

(2) The competent authority shall -

(a) cause a notice under sub-section(1) in respect of any immovable property to be served on the transferor, the transferee the person in occupation of the property, if the transferee is not in occupation thereof, and on every person whom the competent authority knows to be interested in the property;

(b) cause such notice to be published - (i) in his office by affixing a copy thereof in a conspicuous place;

(ii) in the locality in which the immovable property to which it relates is situate, by affixing a copy thereof to a conspicuous part of the property and also by making known in such manner as may be prescribed the substance of such notice at convenient places in the said locality."

Substituted for "six months" by the Income Tax (Amendment) Act, 1973, with retrospective effect from November 15, 1972.

From a reading of these two sections, it appears to us that the following conditions must be satisfied before a competent authority can validly initiate proceedings :

1. The Competent Authority must have reason to believe :

(a) that immovable property of a fair market value exceeding twenty-five thousand rupees has been transferred;

(b) it has been so transferred for an apparent consideration which is lesser by 15 per cent. (or more) than the fair market value;

(c) that the real consideration has not been truly stated by the parties in the instrument of transfer with the object of evasion or reduction of Income Tax liability of the transferor under the Act or of facilitating concealment of income or assets by the transferee which ought to have been disclosed under the Act or under the Indian Income Tax Act, 1922, or under the Wealth-tax Act, 1957;

2. The Competent Authority must record its reasons for reaching subjective satisfaction on the above three points on objective factors;

3. After fulfillment of the above two conditions, the Competent Authority can initiate proceedings for acquisition of the immovable property "by notice to that effect published in the Official Gazette", within nine months from the last date of the month in which the instrument of transfer was registered under the Registration Act, followed by publication of such notice in the prescribed manner on the office notice board of the Competent Authority, in the locality in which the immovable property is situate and by service of such notice upon the transferor, transferee and occupier of the immovable property.

5. It was contended on behalf of the petitioners that "publication" of the notice in the Official Gazette was a jurisdictional fact which must be established before valid initiation of acquisition proceedings by the Competent Authority and that "publication" of notice in the Official Gazette was not synonymous with "printing" of notice in the Official Gazette. Inviting our attention to section 82 onwards "publish" in 73 Corpus Juris Secundum, at page 1250, and the section on the word "Print" in 72 Corpus Juris Secundum, at page 845, it was argued that, as commonly understood the word "publish" means to give to public; to make public in a newspaper, book, circular or the like, to circulate or to put in circulation and

that though "print" may sometimes be used in the sense of "publish" and in that sense receives recognition in many of the dictionaries, the two words have to be distinguished according to the context in which they are used and that they have often been confused. Looking to the context in which the word "publish" has been used in section 269D of that Act and keeping in view the object of giving intimation to persons who may be interested in the immovable property to be acquired but whose name may not come to light from the recorded entries of the property in Government records, we feel that the contention that the publication of notice u/s 269D of the Act in the Official Gazette means not only printing but also making the Gazette available to the transferor, transferee, persons likely to be interested in the property and to the public, is quite correct and acceptable.

6. We now propose to examine the factual allegations in this behalf made by the petitioners and controverted by respondent No. 1. It is true that this court is not ordinarily expected to go into disputed questions of facts while exercising jurisdiction under articles 226 and 227 of the Constitution of India, but when the initiation and validity of some quasi-judicial proceedings, penal in nature, are challenged on the ground of absence of jurisdictional facts, factual contents of the adverse allegation to that limited extent will have to be examined for deciding the validity of initiation of proceedings.

7. Individual notices dated November 2, 1973, u/s 269D(2) of the Act, in respect of the two immovable properties in question, were served upon the transferor and transferees on November 5, 1973. Under the provisions of section 269E of the Act the transferor or the transferee or the occupant can lodge their objection within 45 days from the date of publication of the notice in the Gazette or within 30 days from the date of service of individual notice upon them, whichever period expires late. However, any other person interested in the property must register his objections within 45 days from the publication of the notice in the Gazette. It is, therefore, clear that publication of notice in the Gazette is a must which cannot be dispensed with before proceeding further in the process of acquisition by the Competent Authority though individual notice or locality notice, if it may be so called, could be considered as an additional safeguard to apprise the transferor, transferee and occupants and it may not be a jurisdictional fact for initiation of acquisition proceedings.

8. Transfers of immovable property in this petition have taken place in the month of May, 1973. It is, therefore, clear that the outer limit for publication of notice u/s 269D of the Act in the Official Gazette can be the end of February, 1974, and we will have to examine as to whether the Official Gazette dated November 10, 1973, in which the relevant notice has admittedly been "printed" was "published" at any time prior to the end of February, 1974. If, on consideration of the entire circumstances, pleadings, and proof in these cases, this court comes to a conclusion that the petitioners have successfully established that the relevant notice u/s 269D of the Act was not "published" up to the end of February, 1974, the two acquisition proceedings will have to be quashed for want of valid

initiation.

9. Petitioners have stated on oath in para. 11C of all four petitions that during January and February, 1974, they made an extensive search for the Gazette dated November 10, 1973, at the following 10 places :

- (1) Judges Library, High Court, Nagpur.
- (2) D.A.G.P. & T., Nagpur.
- (3) Indian Bureau of Mines, Nagpur.
- (4) Reserve Bank of India, Nagpur. (5) Collector, Nagpur.
- (6) District Judges Library, Nagpur.
- (7) Office of the Commissioner of Income Tax, Nagpur.
- (8) Office of the Competent Authority, Acquisition Range, Nagpur.
- (9) Press Information Bureau, Govt. of India, Nagpur.
- (10) Govt. Book Depot, Nagpur.

10. The Gazette in question could not be found. Authority at No. 9 above sent a telex to its head office at Bombay for the said Gazette but could not get it. Thereafter, the transferor issued registered letters dated February 13, 1974, annexure H, to the Controller of Publications, New Delhi, asking for a copy of the relevant Gazette enclosing Postal Orders of Rs. 30 towards costs and informing the authority that the said Gazette could not be found at the 10 places referred to above. Similar registered letters dated February 13, 1974, being annexures I, J, L and M were forwarded to (1) Manager of Publications, Government of India, Publications Branch, Delhi; (2) Manager, Government of India Press, New Delhi; (3) Manager, Government of India Press, Faridabad; and (4) M/s. Jain Book Agency, Agent for Government Publications, New Delhi, respectively, but the Gazette could not be obtained. Out of these, annexure "J" was replied to by the Manager, Government of India Press, New Delhi, informing the transferor that they were only printers and that the work of selling of Gazettes of the Government of India was entrusted to the Controller of Publications, Government of India, New Delhi, and that the said authority may be approached for a copy of the relevant Gazette. It is needless to point out that the transferor had approached the said authority already by annexure "H". Acknowledgments of all these registered letters have been placed on record. With all these efforts, the petitioners could for the first time get a copy of the relevant Gazette of Government of India dated November 10, 1973, only on March 18-19, 1974, under a bill dated March 15, 1974, from the Controller of Publications, New Delhi. This bill has been produced as annexure "N".

11. The petitioners have specifically alleged in para. 11C of their petitions that :

"To the best of the knowledge and information of the petitioner a copy of such

Gazette was not available even with the first respondent at any rate till March, 15, 1974."

and

"As already stated, even the Government Offices at Nagpur, including the Office of the first respondent, were not holding a copy of the aforesaid Gazette till March 15, 1974, and even in spite of the repeated attempts made on behalf of the petitioners, the said copy was not available to the petitioners or others even as late as 17/18th March, 1974, a point of time beyond the prescribed period of nine months even under the Amendment Act, 1973."

12. These allegations pertain specifically to respondent No. 1 but there is neither denial of these allegations in the return filed by respondent No. 1 nor an averment about the date on which the respondent No. 1 received the relevant Gazette. Respondent No. 1 has contended that the Gazette in question was published by the Controller of Publications, New Delhi, by putting it to sale on December 13, 1973. This averment was based on nothing but a letter dated July 11, 1974, received by respondent No. 1 from the Deputy Controller of Publications and annexed as annexure IR-1. If really the said Gazette was published on December 13, 1973, as alleged by respondent No. 1, much more evidence in that behalf could have been placed on record. We also find that the petitioners had also addressed a letter dated February 13, 1974, to the Controller of Publications requesting him to supply a copy of the Gazette in question. That officer, however, has not chosen to reply. It was, therefore, urged that had the Gazette been available on February 13, 1974, he would have sent it. It was also possible for the Controller or the Deputy Controller of Publications either by themselves or through officers working under them to swear by an affidavit as to the actual receipt of and disposal of the copies of the Gazette in question. We made enquiries from the Librarian of High Court Library at Nagpur regarding the date of receipt of this particular Gazette and we were told that it has not been received till this date. In the circumstances, we see no other course open but to come to the conclusion that the petitioners have established that the relevant Gazette was not published within nine months from the end of May, 1973, as required by section 269D of the Act.

13. The question, therefore, is as to what is the effect of this finding. It was submitted on behalf of the petitioners that the publication of notice u/s 269D of the Act within the prescribed period being a jurisdictional fact which must precede any valid initiation of acquisition proceedings by the competent authority, the two proceedings must fail even at the threshold and were liable to be quashed. The contention of respondent No. 1, however, was that even on this view of non-publication of notice u/s 269D of the Act within the prescribed period, the proceedings could be validly continued because individual notices as contemplated by sub-section (2) thereof were admittedly given and the purpose of notice inviting objections was duly served.

14. Shri V. R. Manohar, appearing for the petitioners, relied upon a decision of a Division Bench of Allahabad High Court in the case of U.S. Awasthi and Another Vs. Inspecting Assistant Commissioner of Income Tax (Acquisition Range) and Another, In that case, the sale deed of the property in question was registered on December 29, 1973, and notice u/s 269D of the Act was printed in the Gazette dated September 28, 1974, that is, within 9 months from the end of December, 1973. But, by reference to its non-availability in the office of the Controller of Publications, New Delhi, up to October 4, 1974, to the fact that it was dispatched to sub-scribers for the first time on October 14, 1974, to the fact that it was received in the Judge's Library of the Allahabad High Court and Government Pleader's office on October 17, 1974, and to the fact that it was received in the Bar Association of Allahabad on October 20, 1974, coupled with the further fact that those averments were not specifically controverted, it was held that the notice in question was not published within 9 months from the end of the month during which the instrument of transfer was registered and after referring to a Full Bench decision of Allahabad High Court in Sri Hiralal v. District Magistrate, Etah (Civil Misc. Writ No. 8935 of 1974, decided on March 19, 1975), it was observed that [1977] 107 ITR 806 :

"The initiation of proceedings under Chapter XXA of the Act can be done only by the publication of the preliminary notice in the Official Gazette within the prescribed time. The fact that individuals notices were given to the petitioners within the prescribed period will not dispense with the requirement of the publication of the notice in the Official Gazette. We have already indicated that the issuance of a notice to the transferee or transferor and other interested persons and its affixation on the notice board in the office of the competent authority or at a conspicuous part of the property in question do not provide an alternative method of the initiating the proceedings. The requirements contained in Sub-section(1) of the section 269D of the publication of the notice in Official Gazette within the prescribed time in a mandatory requirement and if this requirement is not met, the entire proceedings fail."

15. The Full Bench decision dealt with the publication of a notification in the Official Gazette relating to the Uttar Pradesh Notified Areas (Conduct of Election of President and Election Petitions) Order, 1964, and held that the publications of the notification was complete only when the Gazette containing the notification became available to the public.

16. Shri Shelat arguing for respondent No. 1 submitted that the view taken by the Allahabad High Court was incorrect and that the correct exposition of law was to be found in a Division Bench decision of the Gujarat High Court in the case of COMMISSIONER OF Income Tax, GUJARAT-III Vs. SHILABEN KANCHANLAL RANA. COMMISSIONER OF Income Tax, GUJARAT-III v. BHAGWANDAS S. RESHAMWALA., In this case, the Tribunal was of the view (p. 423) :

"That the Competent Authority had not validly initiated the acquisition proceedings because the notice for the acquisition of the property in question

dated May 18, 1974, though published in the Central Government Gazette of August 31, 1974, could not have been, in the very nature of things, immediately available to the interested or affected persons and, therefore, there was no valid publication of the notice as required u/s 269D(1) of the Act."

17. It can thus be seen that a question similar to the question involved in the cases before us and in the case of U.S. Awasthi and Another Vs. Inspecting Assistant Commissioner of Income Tax (Acquisition Range) and Another, did not fall for decision of the Tribunal or the Gujarat High Court. The view of the Tribunal that Publication of notice on the last date of the prescribed period of 9 months invalidated the proceedings because it was no publication in the sense that copies of Gazette could not have been available to interested parties on that very day was sought to be based on the reasoning in U.S. Awasthi and Another Vs. Inspecting Assistant Commissioner of Income Tax (Acquisition Range) and Another, . The Gujarat High Court observed that "Now, such facts (facts similar to Awasthi's case) regarding non-availability of Gazette in the first instance, have not been established at all before the Tribunal." The court felt that there was great force in the argument on behalf of the Revenue that there was no requirement in law that the Gazette in which the notice u/s 269D of the Act is published should be available to interested parties within 9 months of the last date of the month in which the transfer took place and, to that extent, the view in U.S. Awasthi and Another Vs. Inspecting Assistant Commissioner of Income Tax (Acquisition Range) and Another, was contrary to the earlier pronouncement of the Gujarat High Court in the case of Commissioner of Income Tax, Gujarat II Vs. Vimlaben Bhagwandas Patel and Kamlaben Kanjibhai Patel, . However, the court hastened to add that if in fact the notice for initiation of acquisition proceedings is not published in the Official Gazette, as is required u/s 269D(1)(a) of the Act, and if that fact is conclusively established, the acquisition proceedings in such a case cannot be successfully challenged as not validly and legally initiated." In fact, the Allahabad decision in U.S. Awasthi and Another Vs. Inspecting Assistant Commissioner of Income Tax (Acquisition Range) and Another, was approved by the Gujarat High Court by observing COMMISSIONER OF Income Tax, GUJARAT-III Vs. SHILABEN KANCHANLAL RANA. COMMISSIONER OF Income Tax, GUJARAT-III v. BHAGWANDAS S. RESHAMWALA.,

"That the publication of the notification was complete only when the Gazette containing the notification in question became available to the public. And as the Official Gazette containing the notification u/s 269D(1) of the Act in that case was not available to the public earlier than October 14, 1974, the Competent Authority did not acquire jurisdiction to continue the proceedings had not been commenced within the statutory period."

18. Referring to Commissioner of Income Tax, Gujarat II Vs. Vimlaben Bhagwandas Patel and Kamlaben Kanjibhai Patel, , we find that the court held that the nature of proceedings contemplated by Chapter XX-A of the Act was penal in nature and the conditions precedent for exercise of jurisdiction were not

only the subjective satisfaction of the competent authority that the fair market value exceeded by more than 15 per cent. over the apparent consideration and that on doing so the object was to evade or educe the Income Tax liability of the transferor or to facilitate concealment of income by the transferee but also recording of reasons for such subjective satisfaction and publication of the notice u/s 269D of the Act, in the Government Gazette within 9 months of the last date of month in which the instrument of transfer was registered. The question as to what is meant by publication of notice in the Official Gazette as distinguished from printing of such notice in that Official Gazette was not, in terms, before the court. We will have occasion to refer to certain observations in this case while deciding question No. 4 in the cases before us.

19. We are, therefore, of the opinion that question No. 1 in these cases will have to answered in the affirmative and the two proceedings for acquisition of the two immovable properties which are the subject matter of those petitions to be quashed on this solitary ground.

20. Regarding question No. 2-Sub-section(2) of the section 269D provides that the competent Authority shall cause "a notice under sub-section (1)" in respect of the immovable property to be served upon the transferor, transferee, occupant and shall publish it in the locality in the prescribed manner besides putting it on the notice board of the office. It was urged that this provision clearly contemplates earlier publication of the said notice in the Gazette because reference is to the notice under sub-section(1). In the present case, the Gazette is dated November 2, 1973. According to the petitioners, this was contrary to provisions of sub-section(2) and on that count alone, apart from the question of publication of notice in the Gazette within the prescribed time, the initiation of proceedings for acquisition was liable to be quashed. We are not inclined to agree with this submission. We feel that giving of individual notice and locality notice are not jurisdictional requirements, non-compliance of which must result in invalidity of initiation of acquisition proceedings. There is no doubt that giving of such individual notices in the cases before us were given earlier to Gazette notification and not subsequent to it, cannot have nullifying consequence. Similar view has been taken by the Gujarat High Court in Commissioner of Income Tax, Gujarat II Vs. Vimlaben Bhagwandas Patel and Kamlaben Kanjibhai Patel, , by observing that the provisions of sub-section(2) of section 269D cannot be said to be provisions conceived in public interest "so as to constitute essential minimum procedural requirements, the violation of which would have consequence of nullifying the entire acquisition proceedings." These provisions appear to be only additional safeguards. In any event, we are unable to persuade ourselves that the service of individual notice to the transferor and transferee constitutes a jurisdictional fact and that its services must be made and can only be made after the Gazette publication of the notice within the period. We think that the manner of service of this notice is only directory and not mandatory nor is it a jurisdictional fact so as to deprive the Competent Authority of jurisdiction to hold or initiate the proceedings. Regarding question No. 3. - The impugned notice

dated November 2, 1973, which is also subsequently published in the Government Gazette, according to the respondents, dated November 10, 1973, is at page 24 of the petition. The material part thereof may be set out for the purposes of this question.

"I have reason to believe that the fair market value of the property as aforesaid exceeds the apparent consideration therefore by more than fifteen per cent. of such apparent consideration and that the consideration for such transfer as agreed to between the transferor (s) and the transferees has not been truly stated in the said instrument of transfer with the object of -

(a) facilitating reduction or evasion of the liability of the transferor to pay tax under the Income Tax Act, 1961 (43 of 1961), in respect of any income arising from the transfer, and/or

(b) facilitating the concealment of any income or any moneys or other assets which have not been or which ought to be disclosed by the transferee for the purposes of the Indian Income Tax Act, 1922 (11 of 1922) or the Income Tax Act, 1961 (43 of 1961) or the Wealth-tax Act, 1957 (27 of 1957)."

21. It will be seen from the aforesaid portion of the notice that apart from recording the belief by the competent authority that "the market value of the property exceeds the apparent consideration therefore by more than fifteen per cent.", the Competent Authority also further goes on to say that the apparent consideration has not been truly stated in the said instrument of transfer with the object either of "facilitating reduction or evasion of tax under the Income tax Act and/or facilitating concealment of any income or moneys or other assets which have either not been or which are required to be disclosed under the Income Tax Act or the Wealth-tax Act." The two parts of the objects in the notice are joined with "and/or". We have already pointed out that the condition precedent to the exercise of power u/s 269C of the Income Tax Act apart from entertaining that reason to believe by the Competent Authority that the property had been transferred for an apparent consideration which is less than the fair market value, the property has been transferred with the object either with a view to reduce or evade the tax liability of the transferor or for the purpose of concealment of income or assets of the transferee. Unless the Competent Authority, therefore, has reason to believe that the transfer for an apparent consideration less than the fair market value of the property has been affected with either of the objects or for both the objects, no proceedings can be initiated.

22. It was contended before us that the Competent Authority must have reason to believe that the transfer was effected with one of the aforesaid objects or both the aforesaid objects as a condition precedent to the initiation of proceedings. The Competent Authority, therefore, must have come, prima facie, to believe that the transfer was for reduction or evasion of tax liability of the transferor or for concealment of assets or income of the transferee. It was also possible for a prima facie conclusion or belief to be entertained by the Competent Authority

that the object of the transfer was not one but both. But it is impermissible for the Competent Authority not to come to any conclusion albeit prima facie or hold a conjunction "and/or" in the notice indicates that the Competent Authority had not made up its mind as to whether the transfer was with the purpose of concealment of income or assets of the transferee or whether it was both or it was the one or the other. It was pointed out that clauses (a) and (b) of section 269C(1) are joined with a conjunction "or". It was perfectly permissible for the Competent Authority to entertain a belief that both the objects existed in a given case, or it was also similarly permissible for the authority to hold that any one of the objects existed. In any event, it had to make up its mind as to whether both the objects existed or which one of them, namely, (a) or (b) existed. It could not, however, say that it may be that both the objects existed or it may be that the object of reduction or evasion of tax liability of the transferor or the concealment of income or assets by the transferee was the object or may be both were the objects.

23. It was urged that initiation of proceedings which are penal and quasi-criminal in nature and result in confiscation of the property cannot be initiated without the Competent Authority coming to a conclusion one way or the other. Unless the Competent Authority comes to a conclusion of the existence of one of the objects or both of the objects of the transfer, the requisite pre-condition for exercise of jurisdiction does not arise. It was permissible for the authority to join the two clauses (a) and (b) by the conjunction "and" or either clause (a) or clause (b) which in its opinion was the object of the transfer. These provisions were likened to similar provisions of penalty u/s 271 of the Income Tax Act. It was pointed out that similar to section 271, just as penalty in that case can be imposed only upon the pre-existing conditions conferring the jurisdiction to initiate penalty proceedings being found, similarly, u/s 269 and Chapter XX-A, initiation of acquisition proceedings can be commenced with the formation of the requisite opinion or belief and not a vague possibility which may or may not exist. It was contended that the Competent Authority was not certain whether the object of the transfer was either one or both and if the Competent Authority itself was not seeking (sic), then it was contended that the notices would not be able to make a representation against the initiation of proceedings and would not know in regard to what representation had to be made by them. Neither the transferors nor the transferees would be able to know as to what was alleged against him or both or against the transferee in the case of a transferor and against the transferor in the case of a transferee. This would gravely impair the right to effective representation against the initiation of proceedings.

24. It will thus be seen that the question resolves itself into whether the conditions mentioned in section 269C are pre-conditions for the acquisition of jurisdiction and if they are pre-conditions for acquisition of jurisdiction, such jurisdiction can be acquired or received without forming a prima facie opinion as to the objects of transfer. In the present case, it is urged that the Competent Authority is not seeking as to the objects and as to whether it is the transferor or

evasion of tax liability or concealment of income or assets.

25. Reliance was placed in this context on a judgment of the Kerala High Court in *N.N. Subramania Iyer Vs. Union of India (UOI) and Another*, where a printed notice was issued u/s 18 of the Wealth-tax Act without scoring out the particular contravention which was intended or alleged. It was held that the penalty notice was illegal "on the face of it". It is on a printed form which comprehends all possible grounds on which a penalty can be imposed u/s 18(1) of Wealth-tax Act. The notice has not struck off any one of these grounds and there is no indication for what contravention the petitioner was called upon to show cause. In *Commissioner of Income Tax, Gujarat I Vs. Lakhdhir Lalji*, the Division Bench of the Gujarat High Court held that where the penalty proceedings are commenced against the assessee on one footing, levying of penalty upon him on a different footing was illegal, the reason being that it deprives the assessee of a reasonable opportunity of showing cause before the Competent Authority. It was observed that "as part of that reasonable opportunity of being heard, the assessee must be told as to what is the particular satisfaction the Income Tax Officer or the Appellate Assistant Commissioner, as the case may be, has arrived at, viz., whether the satisfaction is that he has furnished inaccurate particulars of such income". Borrowing these observations and applying them to our case, it is but clear that the assessee must know as to what the Competent Authority holds against him; whether the object was concealment of income or assets of the transferee. He cannot be left to guess as to what could be the stand of the Competent Authority during the proceedings, nor could the authority be permitted to take up a vague stand and change that stand at any time it suits him. The initiation of the proceedings is contingent and dependent upon a particular kind of infringement being alleged, or both the infringements being alleged, and not a vague statement that it may be both or it may be one or it may be either this or that. It is true that the satisfaction or having a reason to believe at the time of the commencement of the proceedings can only be and has to be only prima facie. But it cannot be left to be guessed. For, unless that opinion or belief is crystallized, the initiations of the proceedings itself cannot be allowed to be commenced. We think that this requisite formation of belief or opinion is a jurisdictional fact and unless a fair prima facie opinion is formed in regard to the categories of infringements or any one of them, the authority has not right to impose a penalty for proceeding, just as the authority has no right to impose a penalty for a different wrong discovered during the proceedings when the initiation was for another. We think that it would not be possible for the authority to initiate proceedings at all unless it comes to a firm opinion, may be prima facie, as to the category or categories of infringements. The denial of the opportunity of representation in regard to that particular satisfaction is, we think, a part of the proceeding which the assessee or the notice can be called upon to meet. Absence of a clear satisfaction would impair this right of representation and cannot be properly exercised.

26. It is material and we note that section 269C, proviso, prescribes that "before

initiating such proceedings, the Competent Authority shall record its reasons for doing so". It is commonplace that such reasons must be relevant and cannot be any reasons or fanciful reasons. We are not here expressing any opinion, nor are we concerned with the question whether the Competent Authority was justified in refusing to disclose the reasons to the petitioners. But it seems to us that the requirements to record its reasons for forming an opinion as to the apparent consideration and the objects of the transfer. Such reasons must be relevant and the court has the power to examine the nexus between the reasons and the object or circumstances conferring jurisdiction upon the authority : (See Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, and Rohtas Industries Ltd. v. S. D. Agrawal [1969] 39 Comp Cas 781. It follows, therefore, in our opinion, that if reasons are required to be recorded and these reasons must bear a nexus to the object mentioned in the Act or the requirement, then such reasons cannot be nebulous or indefinite and cannot be unsure. The fact that the Competent Authority, as the notice disclosed, is unsure as to what must be the object or what was the object of the transfer, it follows that the reasons recorded by him in writing do not similarly disclose that there was a case for initiation of proceedings of the Competent Authority coming to a definite conclusion as to which of the objects were contemplated or were instrumental for effecting the transfer in question.

27. The decision in Commissioner of Income Tax, Gujarat I Vs. Lakhdhir Lalji, was followed in Padma Ram Bharali Vs. Commissioner of Income Tax, Padma Ram's case was one u/s 271 of the Income tax Act where penalty proceedings were initiated. There, penalty proceedings were commenced on an allegation that a particular breach or infringement was committed while the conclusion was that a particular breach was disclosed and made and not the one complained of. A penalty was imposed on the discovery which was ultimately quashed. There, the penalty proceedings could be started for concealment of income or furnishing of inaccurate particulars of income. Penalty proceeding was commenced on the allegation that a particular item of income was concealed. It was, however, found in appeal and ultimately by the Tribunal that what was done by the assessee was not concealment of income but furnishing inaccurate particulars thereof. It was observed that "the basis of initiation is not identical with the ground on which the penalty has been imposed and this must have deprived the assessee of reasonable opportunity of showing cause against the penalty proceedings which after all a quasi-criminal proceeding". It was recognised that the penalty proceedings could be competently commenced for both the infringements, namely, concealment of income or furnishing inaccurate particulars of income and in certain cases, the two might also overlap. But it was observed that "in such cases the initiation of the penalty proceedings must also be for both offences. But initiating a penalty proceeding for one offence and finding the assessee guilty of another offence or finding him guilty of either the one or the other offence cannot be sustained in law." In other words, it was clearly held that the proceedings can be initiated upon an allegation of the infringement prima

facie alleged on all grounds or any one of the grounds permitting initiation of proceedings. But it cannot be for either this or that, or may be for both. The principle, in our opinion, clearly is that if the penalty cannot be imposed on a conclusion with which the proceedings were not commenced, then the right to impose penalty itself is gone as the condition precedent for the commencement of penalty proceedings disappears.

28. For the respondents, considerable reliance was placed upon the judgment for the Gujarat High Court in Commissioner of Income Tax, Gujarat II Vs. Vimlaben Bhagwandas Patel and Kamlaben Kanjibhai Patel, . The points which arose for consideration before the Gujarat High Court are to be found listed at page 154 of that report. We are concerned in the present case with what can be said to be covered by points Nos. 2 and 3 raised in that decision. That was also a case u/s 269C of the Income Tax Act. It was observed therein (at page 164) :

"In the context of section 269C of the Income Tax Act, the Competent Authority must have reason to believe about the ulterior motive of the transferor of tax evasion or tax reduction or of the transferee about the concealment of income which he should disclose for tax purposes. This is an objective fact about which he should disclose for tax purposes. This is an objective fact about which the Competent Authority must be satisfied..."

29. We may mention that that was a case where the Competent Authority had gone through the process of enquiry and the Commissioner had recommended acquisition and the acquisition was challenged by an appeal and subsequently went to the Tribunal and thereafter the matter had come before the High Court. Incidentally, a reference was made in that case to the decisions of the Supreme Court in State of Orissa Vs. Bidyabhushan Mohapatra, , Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh, and The State of Maharashtra and Another Vs. B.K. Takkamore and Others, . In all those cases, the question as to whether that a particular satisfaction of the authority based upon the facts which were found to be non-existent or irrelevant can still form the basis or sustain an action subsequently taken was considered. Such a question does not arise before us. Initiation of the proceedings in this case itself, initiated by the notices is challenged. We may however, observe that the conclusion deduced by the Gujarat High Court on the basis of decision in The State of Maharashtra and Another Vs. B.K. Takkamore and Others, , does not appear to be warranted as in that particular case, the orders of the State of Maharashtra itself said that even one of the grounds was serious enough to take action which it took. The non-existence of the other ground, therefore, in the opinion of the Supreme court was of no avail and the order could be sustained on the remaining ground also. Such a situation does not obtain here. However, in Commissioner of Income Tax, Gujarat II Vs. Vimlaben Bhagwandas Patel and Kamlaben Kanjibhai Patel, it was held that individuals notices under sub-section(2), clauses (a) and (b) of section 269C did not lay down a jurisdictional prescription.

30. In SUBHKARAN CHOWDHURY AND OTHERS Vs. INSPECTING ASSISTANT COMMISSIONER OF Income Tax, ACQUISITION RANGE I, AND OTHERS., , a similar view has been taken that before the Competent Authority there has to be material enabling him to form the belief that the transfer was "with the object of either facilitating the reduction or evasion of the liability of the transferor to pay the tax under the Income Tax Act in respect of any income arising from the transfer or for facilitating the concealment of any income or any money or other assets which had not been disclosed for the purpose of the Income Tax Act or Wealth-tax Act."

31. It is not necessary to refer to the other case relied upon behalf of the respondents in COMMISSIONER OF Income Tax, GUJARAT-III Vs. SHILABEN KANCHANLAL RANA. COMMISSIONER OF Income Tax, GUJARAT-III v. BHAGWANDAS S. RESHAMWALA., as it follows Commissioner of Income Tax, Gujarat II Vs. Vimlaben Bhagwandas Patel and Kamlaben Kanjibhai Patel,

32. Though we have formulated question No. 4 separately in the discussion above with regard to the validity of the notice on account of its ambivalence and its effect thereby upon the representation which is contemplated by the notices, we have dealt with that question also. In the present case, the respondent refused to disclose reasons which were required to be recorded in writing by the Competent Authority. The petitioner's request for inspection was also not heeded until the present petition came to be filed. The scheme in Chapter XX-A, section 269C to section 269F, will go to show that any objections to the notice have to be taken by the transferor or the transferee and any other person interested in the property within a special period. The scheme of the sections provides for hearing of these objections and a decisions thereon. Where the objections are accepted, then it follows that the acquisition proceedings would not come to an end. On the other hand, if the objections are not upheld, the Competent Authority will refer the matter to the Commissioner for acquiring the property. It follows, therefore, that the objections and representations which can be made to the notice are intended to serve a purpose, namely, to enable the objectors to satisfy the authority of the incorrectness of the action proposed to be taken. Where, however, the Competent Authority itself is not certain or clear as to which of the objects in respect of the transfer it can be imagined as to the difficulty of an objector in satisfying the Competent Authority that its prima facie view of the things was not correct. The ambivalence or indefiniteness and uncertainty as to the object would effect the representation and incapacitate the objector from doing so. We are, therefore, inclined to think that it is one of the requisite jurisdictional facts and a condition precedent to the exercise of the power and acquisition of jurisdiction by the Competent Authority, that he must come to a prima facie positive conclusion as to the object and not to be indefinite about it. In the present case, by the use of conjunction "and/or" for the two clauses of section 269C(1)(a) and (b), the power pre-condition and requirement for seizing jurisdiction and exercise of power is defective.

33. We do not think, therefore, even if it is possible to consider in the present case that individual notices contemplated u/s 269C(2) would be possible to be given, that would in any way improve the matters. We have already pointed out that the reasons for the order have not been disclosed. The inspection has also not been allowed. The prescribed period for making an objection on the basis of the notices already served has expired. We do not know whether the site notices have been issued. The defect or impairment in the notice is incapable of cure and the period for commencement of action, namely, nine months from the date of transfer, has already expired. That defect is incapable of cure now, inasmuch as the Gazette notice printed on November 10, 1974, carries the ambivalence and indefiniteness expressed in the joint use of the conjunction "and/or". Consequently, we do not think that it is possible for the Income Tax Department to take any action on the basis of the transaction dated May 14, 1973.

34. The result of the aforesaid discussion is that the petitions must be allowed and the rule made absolute. We do not, however, think that the petitioner in each case is entitled to any costs.