
(1981) 10 BOM CK 0015

In the Bombay High Court

Case No : Miscellaneous Petition No. 952 of 1978

Amarchand J. Agarwal

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 12-10-1981

Acts Referred:

Income Tax Act, 1961 — Section 269A, 269C, 269P

Citation : (1982) 26 CTR 286 : (1983) 142 ITR 402 : (1982) 8 TAXMAN 283

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

Pendse, J.—An interesting question as to the time when the competent Authority can exercise power under s. 269C of the I.T. Act, 1961 (hereinafter referred to as "the Act"), falls for consideration in this petition filed under art. 226 of the Constitution of India.

2. The facts are not in dispute and are required to be stated briefly to appreciate the contention of the petitioner. The respondent No. 4 and his wife were owners of property situate at Santa Cruz and bearing survey No. 46, plot No. 2 and City Survey No. H/106 of Bandra. Taluka Andheri. The property admeasures approximately 1,340 square yards. On October 27, 1970, respondent No. 4 and his wife entered into an agreement of sale in favor of a partnership firm belonging to respondents Nos. 5, 6 and 7. The petitioner is one of the partners of the firm along with respondents Nos. 5 to 7. The original owners executed conveyance dated November 7, 1972, in favor of the firm for a consideration of Rs. 1,41,000. At the time of the agreement of sale the purchasers had paid an amount of Rs. 2,000 as part consideration to the transferor. The document was lodged for registration on November 15, 1972. A certificate under s. 230A of the Act was forwarded to the registering authority on November 29, 1972, and ultimately the document came to be registered on September 21, 1977.

3. By the T.L. (Amend.) Act, 1972, the Income Tax Act was amended and Chap. XX-A consisting of ss. 269A to 269S was inserted with effect from November 15,

1972. The chapter purports to deal with acquisition of immovable properties in certain cases of transfer to counteract the evasion of tax. Section 269P demands that no registering officer appointed under the Registration Act, 1908, shall register any document unless a statement in duplicate in respect of such transfer in the prescribed form and in the prescribed manner is furnished to him along with the instrument of transfer. Section 269C is required to be quoted in detail as the challenge in this petition is in respect of powers exercised by the Competent Authority under the provisions of this section. The said section is as follows :

"(1) Where the Competent Authority has reason to believe that any improvable property of 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 that apparent consideration therefore by more than fifteen per cent. of such apparent consideration.

(2) In any proceedings under this Chapter in respect of any immovable property, -

(a) Where the fair; market value of such property exceeds the apparent consideration therefore by more than twenty-five percent. 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)."

4. The section, *inter alia*, provides that where the Competent Authority has reason to believe that any immovable property of a fair market value exceeding Rs. 25,000 has been transferred for an apparent consideration which is less than the fair market value of the property, the Competent Authority may initiate proceedings for the acquisition of such properties. The powers could be exercised if the instrument does not reflect the true market price with the object of evasion of liability to pay tax or to facilitate the concealment of any income. "Fair market value in relation to an immovable property" means the price which the property would ordinarily fetch on sale in the open market. The expression "Instrument of transfer" has been defined under s. 269A(f) as the instrument of transfer registered under the Registration Act.

5. After the registration of the document on September 21, 1977, the Competent Authority served a show-cause notice dated June 26, 1978, on the petitioner and other persons who were in occupation of the property. The notice, *inter alia*, sets out that the Competent Authority has reason to believe that the fair market value of the property exceeds the apparent consideration by more than 15 per cent. of such apparent consideration and the true consideration for the transfer has not been stated in the instrument of transfer with the object of evasion of liability to pay tax and facilitating the concealment of income. The notice calls upon the petitioner and other interested persons to show cause why the proceedings should not be initiated for the acquisition of the property. The petitioner has approached this court to challenge the legality of this notice.

6. Shri Tijoriwala, the learned counsel appearing in support of the petition, submitted that Chap. XX-A was introduced with effect from November 15, 1972, and could have no application to the transfers executed on an earlier date. The gravamen of the attack is that the Competent Authority can exercise the powers under this chapter provided the transfer was effected subsequent to the enactment of Chap. XX-A of the Act. It was urged that the conveyance in the present case having been executed on November 7, 1972, the Competent Authority had no jurisdiction to initiate the proceedings for the acquisition of the property. The submission urged by the learned counsel raises the question as to what is the relevant date on which the Competent Authority can initiate the proceedings under the provisions of Chap. XX-A of the Act. The submission of Shri Tijoriwala is that though the document of sale was completed on its registration on September 21, 1977, in view of the provisions of s. 47 of the Registration Act, the transfer would operate from the date of execution of the document and, therefore, the Competent Authority had no jurisdiction to initiate the proceedings. Shri Pradhan, the learned counsel appearing on behalf of the Department, on the other hand, urges that the right to initiate proceedings arises on the registration of the document and it is wholly irrelevant that the transfer operates from the date of execution of the document. Shri Pradhan urges that as long as the document is not registered and the transfer is not completed, it is not

open for the Competent Authority to initiate the proceedings.

7. In view of these rival contentions, the short question which requires answer is on what date the property could be treated as transferred. Section 54 of the Transfer of Property Act provides that sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. Shri Tijoriwala wearily rightly did not dispute that the transfer of title is completed on the registration of the document. The entire thrust of the submission was that though the sale was completed on the registration of document, the transfer takes place on the date of execution of the document itself. It would be convenient at this stage to make a reference to the provisions of s. 47 of the Registration Act. Section 47 reads as under :

"A registered document shall operate from the time from which it would have commenced to operate if registration thereof had been required or made, and not from the time of its registration."

8. Shri Tijoriwala submits that, in view of the provision of s. 47 of the Registration Act, it is wholly irrelevant as to when the document is registered, as the transfer operated from the date of execution itself. It was urged that the act of registration is not within the control of the parties and the rights flow from the document of transfer from the date of the transfer itself and is not postponed till the date on which the document is registered. Relying upon these provisions it was submitted that as the transfer operates from the date of execution of the instrument, and in the present case that date being November 7, 1972. it was not open for the Competent Authority to initiate the proceedings. It is not possible to accept this line of reasoning. It is undoubtedly true that s. 47 of the Registration Act provides that the document shall operate from the time of its execution once it is duly registered by the registering authority, but s. 47 does not say when a sale would be deemed to be completed and it only permits a document to operate from a certain date which may be earlier than the date when it was registered.

9. In this connection, it would be convenient to make a reference to the decision of the Supreme Court in the case of Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others, . In that case by an instrument dated January 31, 1946, a property was sold by the Pandeyas in favor of Domini Kuer. The appellant, Ram Saran Lall, claimed the right of pre-emption as his property was contiguous to the property transferred by the Pandeyas. The document of transfer was lodged for registration on the date of its execution and the appellant, having come to know of such transfer, gave a notice claiming the right of pre-emption. The document was subsequently registered on February 9, 1946, and the suit was instituted by Ram Saran Lall for enforcing his right of pre-emption. The suit was dismissed by the High Court on the ground that the sale became complete only

on the date of registration of the document and the appellant was not entitled to enforce the right of pre-emption till the completion of sale. In other words, the High Court held that the notice of enforcement of the right served on the date of the execution of the document was premature. In the appeal before the Supreme Court, the learned Attorney-General claimed that s. 47 of the Registration Act provides that the registered document operated from the time of the execution once a document is registered and, therefore, the date becomes operative on January 31, 1946, itself. The Supreme Court turned down the submission, and it would be appropriate to quote para. 8 of the judgment of the majority delivered by Mr. Justice Sarkar. The said para. 8 is as follows :

"We do not think that the learned Attorney-General's contention is well founded. We will assume that the learned Attorney-General's construction of the instrument of sale that the property was intended to pass under it on the date of the instrument is correct. Section 47 of the Registration Act does not, however, say when a sale would be deemed to be complete. It only permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered. The object of this section is to decide which of two or more registered instruments in respect of the same property is to have effect. The section applies to document only after it has been registered. It has nothing to do with the completion of the registration and, therefore, nothing to do with the completion of a sale when the instrument is one of sale. A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because, by virtue of s. 47, the instrument by which it is effected, after it has been registered, commences to operate from an earlier date. Therefore, we do not think that the sale in this case be said, in view of s. 47, to have been completed on January 31, 1946. The view that we have taken of s. 47 of the Registration Act seems to have been taken in *Tilakdhari Singh v. Gour Narain* AIR 1921 Pat 150 . We believe that same view was expressed in *Naresh Chandra Dutta Vs. Girish Chandra Das and Another*, and *Gobardhan Bar Vs. Gunadhar Bar*,

10. From this decision of the Supreme Court it is crystal clear that the sale, which is admittedly not complete until the registration of the instrument, cannot be stated to have been completed earlier by virtue of s. 47 of the Registration Act. This decision of the Supreme Court was followed in the later decision in the case of *Hiralal Agrawal etc. Vs. Rampadarath Singh and Others*, etc., , and in view of these two decisions of the Supreme Court, the submission of Shri Tijoriwala that the transfer in the present case should be deemed to have been completed on the date of execution of the document cannot be entertained.

11. Shri Tijoriwala relied upon the decision of the Privy Council in the case of AIR 1927 42 (Privy Council) and submitted that a transfer could be completed on the date of execution, though the sale is completed only on the document being registered. It is not possible to accept the interpretation put by the learned counsel on the judgment of the Privy Council. In the case before the privy

Council the donor gifted certain property to the donee and the donee accepted the said gift during the lifetime of the donor. The donee died before the document was lodged for registration, and question arose as to whether the donor had a power to revoke the gift prior to the registration of the instrument. The Privy Council held that the provisions of s. 122 of the Transfer of Property Act makes the gift complete as soon as the donee accepts it during the lifetime of the donor and while the donor is still capable of giving. The Privy Council approved the Full Bench decision of this court in the case of *Atmaram Sakharam Kalkye v. Vaman Janardhan Kashelkar* AIR 1925 Bom 210, where the Full Bench observed (see AIR 1927 44 (Privy Council))

"Where the donor of immovable property has handed over to the donee an instrument of gift duly executed and attested, and the gift has been accepted by the donee, the donor has the power to revoke the gift prior to the registration of the instrument."

12. It is difficult to appreciate how the dictum laid down by the Privy Council would have application to the facts of the present case. In my judgment, it is not possible to hold that the transfer is complete on the date of the execution and the registration only makes the sale complete. There is no distinction between the transfer of a title and the completion of the sale, and in view of the decision of the Supreme Court, the title passes only when the document is registered under the provisions of the Registration Act. The mere fact that such transfer operates from the date of execution is not sufficient to conclude that title itself passes on the date of execution.

13. Shri Pradhan has relied upon the decision of the Andhra Pradesh High Court in the case of *Divvi Suryanarayana Murthy Vs. Competent Authority, Inspecting Assistant Commissioner of Income Tax and Another*, and of the Delhi High Court in the case of *Mahavir Metal Works P. Ltd and Another Vs. Union of India and Another*. Both these decisions have taken the identical view of the provisions of s. 269C of the Act as I am inclined to do. In my judgment, the right of the Competent Authority to initiate the proceeding under s. 269C of the Act accrues on the document being registered by the registering authority. In the present case the document was registered on September 21, 1977, and it is not in dispute that the proceedings have been initiated by the officer within the period of limitation as provided under the section.

14. Shri Tijoriwala desired to urge that the provisions of s. 269C of the Act contravene the fundamental rights guaranteed under arts. 14 and 19 of the Constitution of India, but the learned counsel very correctly stated that this question need not be decided at the present stage, because the petitioners have approached this court against only the issuance of the notice. The learned counsel reserved his right to challenge the validity of the section if in future the Competent Authority decides to acquire the property. In my judgment, the action initiated is in accordance with law and the petitioner is not entitled to any relief.

15. Accordingly, the petition fails and the rule is discharged, but in the circumstances of the case there will be no order as to costs.