(1998) 09 MAD CK 0161

In the Madras High Court

Case No : Writ Petition No. 5179 of 1992 and W.M.P. No. 7382 of 1992

Appu Hotels Ltd. APPELLANT

Vs

Appropriate Authority and Others RESPONDENT

Date of Decision : 24-09-1998

Acts Referred:
Income Tax Act, 1961 — Section 269UC(4)

Citation : (2000) 242 ITR 415

Hon'ble Judges : R. Jayasimha Babu, J

Bench : Single Bench

Advocate : V. Ramachandran, for K. Mani, Mallika Srinivasan and N. Rama Krishnan, for the Appellant; Chitra Venkataraman, for the Respondent

Judgement

R. Jayasimha Babu, J.—The petitioner has sought for a direction to the appropriate authority to grant to the petitioner a no-objection certificate u/s 269UL of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), in respect of the property comprising 2374/75000 undivided share of the land situated in No. 8, West Cott Road, Royapettah, Madras, bearing survey No. 904, R. S. 1279 and the office No. 3 in the first floor of the building known as "Gokhale Bhavan" with a sale plinth area of 2,374 square feet pursuant to the agreement of sale entered into by the petitioner and Royapettah Benefit Fund Ltd., the second respondent, dated June 6, 1990.

2. The petitioner filed Form No. 37-1 seeking a no-objection certificate from the authority on June 20, 1990. The petitioner also produced several documents along with that form. The appropriate authority just before the expiry of two months from that date, on August 16, 1990, addressed a long letter to the petitioner stating therein that according to the authority there were several omissions in the form and also pointed out that there is breach of Chapter XX-C of the Act by the proposed vendor of the petitioner. It was asserted in that letter that the vendor of the petitioner had breached Chapter XX-C by having failed to obtain a no-objection certificate for transfer of 50 per cent. of undivided share to

one Sunile Estates on February 29, 1988. The authority, however did not choose to exercise its power of compulsory purchase ; nor did it grant a no objection certificate. It concluded its communication thus :

"The statement is deemed to be returned herewith on account of the above defects."

3. Learned counsel for the petitioner stated at the Bar that the statement in fact was not returned to the petitioner. It is undisputed that the period of two months, within which the authority should have compulsorily purchased if it had wanted to, expired long ago. The authority, by sending a communication in the manner it did clearly misconceived its role and also its power. It acted in a manner which is wholly inconsistent with the statutory provisions which are required to be adhered to, while exercising its jurisdiction. The authority was, under the provision of Section 269UL of the Act, required to consider the statement in Form No. 37-I. If it felt that the power of compulsory purchase was not to be exercised in relation to the property, it was required to give a no objection certificate. If it thought otherwise, it was required to give notice of its intention to effect compulsory purchase, hear the petitioner and thereafter make an order as the appropriate authority. Neither of these things had been done. It appears to have woken up very late and just before the expiry of the period of limitation of two months, sent a long letter neither granting the certificate of no-objection nor proposing compulsory purchase. The principal points made therein being the alleged violation of law by the proposed vendor of the petitioner some two years prior to the date of the agreement pursuant to which the petitioner sought to purchase the property.

4. Learned senior counsel for the petitioner rightly criticised this communication as disclosing a patent failure to exercise the jurisdiction in so far as it declined to grant no objection certificate and also exceeding jurisdiction in so far as it sought to go into the legality and validity of the agreement by holding that the vendor had committed breach of Chapter XX-C of the Act two years earlier and therefore impliedly was not in a position to enter into a valid agreement with the petitioner for the transfer of the property covered by the agreement.

5. The Supreme Court in the case of Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others, , while confirming the decision of the Delhi High Court held that the authority can only grant a no-objection certificate or proceed with the compulsory purchase and observed as under (page 308) :

"We agree that two alternatives are open under the scheme of the legislation : (i) The Union of India through the appropriate authority could buy the property ; or (ii) in the event of its decision not to buy, it has to issue a ''no-objection certificate'' leaving it open to the parties to deal with the property."

6. There was no third alternative available to the authority to return the form on the ground of alleged omissions therein and on account of an alleged want of necessary title on the part of the vendor in seeking to convey the property. The

power to return the form and seek corrections of the defects therein was conferred on the authority for the first time by the Finance Act, 1995, with effect from July 1, 1995. Simultaneously Sub-section (4) was. introduced in Section 269UC of the Act. The Supreme Court considered the effect of these provisions in the case of Jagdish A. Sadarangani Vs. Government of India, , wherein it was held that even after the introduction of that sub-section, the defects regarding the legality and validity of the agreement which render the agreement void and unenforceable cannot be rectified. The appropriate authority, therefore, even after the introduction of Sub-section (4) must necessarily decide as to whether it should proceed with compulsory purchase even after noticing a defect in the title of the proposed transferor. No power is given to the authority to call upon the transferor to rectify the defect in his own title and thereafter file Form No. 37-I so that the authority thereafter could safely proceed to purchase compulsorily with the assumption that the Government will acquire a valid title to the property.

7. The objective of Chapter XX-C is not to enable the Government to acquire properties free of any defect in title. The object is only the limited purpose of ensuring that tax is not evaded. Powers are conferred on the authority to either direct compulsory purchase or to grant a no-objection certificate in cases where compulsory purchase is not warranted or is not thought to be in the interest of the law.

8. In the circumstances of this case, it is clear that the authority could not in law take the decision it did. It had to grant a no-objection certificate if it was unable to make up its mind as to whether it was worthwhile to make a compulsory purchase. Apparently, the authority had grave doubts whether this was a fit case for a compulsory purchase, as in its own view, the transferor had violated Chapter XX-C, at an earlier point of time and the authority apparently thought even the agreement between the transferor and the builder was not a valid agreement. That, however, cannot be a ground for declining the grant of a no-objection certificate. The authority has also adopted the curious mode of "deeming to return the form" without actually returning it. No support for that can be found in any of the provisions of the Act. The writ petition is allowed. The authority shall grant a no-objection certificate within a period of six weeks from the date of receipt of copy of this order. The petitioner is also entitled to costs of Rs. 1,500. Consequently, the connected W. M. P. is closed.

