

---

**(1996) 07 PAT CK 0018**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 1682 of 1995

Ashis Mukerji

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

---

**Date of Decision :** 11-07-1996

**Acts Referred:**

**Citation :** (1996) 07 PAT CK 0018

---

## **Judgement**

D.P. Wadhwa, C.J. 1. By this petition under Articles 226 and 227 of the Constitution, the petitioner, the owner of certain property, seeks to challenge the order dated February 22, 1995, of the appropriate authority passed u/s 269UD(1) of the Income Tax Act, 1961 (for short, "the Act"), under which the property of the petitioner was ordered to be acquired by the Central Government and subsequently possession was taken over.

2. Before we examine the provisions of law and consider the arguments we may briefly note the salient terms of the agreement which led to the passing of the order u/s 269UD of the Act.

3. This agreement is dated January 28, 1994, and is described as a development agreement, The petitioner is the party of the first part and Mahendra Developers Pvt. Ltd., respondent No. 3, of the second part. The petitioner is referred to as the land owner and the second party as the developer. The property which is the subject-matter of acquisition has been described as including "a pucca residential house of the owner with sheds and structures and land appertaining thereto" measuring more or less four kathas and fifteen dhooors of land with buildings and structures constructed thereon as more particularly given in the Schedule to the agreement. It has also been stated that the said property under the agreement also includes residential house and land and garden appertaining thereto belonging to the land owner, i.e., the petitioner. It is then stated that "the developer approached the land owner to develop the said property at costs, risks and responsibility of the developer". For the purpose of development, the owner is to deliver vacant possession of the property to the developer within a period of

one month from the date of sanction of plans by the Patna Regional Development Authority and permission by the Income Tax authorities in Form No. 37-1 as prescribed under Rule 48L of the Income Tax Rules per requirement of Section 269UC of the Act.

4. The agreement runs into numerous details but it would suffice for our purpose if we cull out those terms which are relevant for our purpose. These are :

(1) That the developer shall hand over vacant possession of its flat No. 203 fully described in Schedule II to the agreement in the building named Mahendra Lok near Rajendra Nagar Railway overbridge, Kankarbagh, Patna, to the land owner as security at the time of signing of this agreement. The value of the said flat No. 203 is Rs. 3,00,000 (rupees three lakhs) only. The land owner, meaning the petitioner, will have the right to transfer the said flat No. 203 in any manner he likes and the developer will execute all documents in respect of such transfer as desired by the land owner. The said security of rupees three lakhs shall on the completion of the building complex be returned by the owner to the developer without any interest, In case of non-payment of the said security of Rs. 3,00,000 (rupees three lakhs) only by the owner to the developer, the developer shall be entitled to allot the owner's area of the built up space equivalent to Rs. 3,00,000 (rupees three lakhs) only calculated as such market rate or rates prevailing at the time of completion of the intended building complex.

Besides security the developer shall pay a sum of Rs. 2,500 (rupees two thousand and five hundred) only per month to the land owner as cost of living from the date of handing over of possession of the property in question to the developer till possession of the land owner's share of 40 per cent. of built up area is handed over to the land owner. The aforesaid amount is also a consideration of the said property besides 40 per cent. of the total built up area of the building.

(2) The developer is to demolish the existing structures on the property and is to build thereon a building complex having a covered area of 13,742 sq. feet consisting of dwelling units, flats, shops, car parking spaces and other tenements as per the approved building plan. The developer is to complete the construction within a period of 30 months. The cost and expenses to be incurred by the developer for the construction of built up and constructed area including all structural facilities like, road, water, etc., shall not exceed Rs. 275 per sq. feet and, in any case, this shall not exceed more than 10 per cent. of the estimated cost per sq. ft. on account of escalation, if any.

(3) After the development of the property is complete as aforesaid, then as per the terms, conditions and other stipulations, as may be there in the agreement and the approved plan or otherwise, the developer shall be entitled "to allot from out of the developer's share of sixty per cent. of the saleable built up area subject, however, to the exclusion of forty per cent. of the saleable built up area as earmarked for the owner of the said property, to such party or parties as the

developer in its discretion thinks fit with the consent and approval of the owner and to receive and realise the prices in respect of the allotment and sale of such tenements and to appropriate the same and to transfer, as and when developed, part or part of the said building from time to time, to one or more proposed co-operative societies or bodies corporate of the purchasers of tenements and for the purpose aforesaid the owner hereby authorises the developers to do, if required, all acts, deeds, matters and things at the cost and expenses of the developer.

(4) The developer has been given the right to mortgage its share of the constructed saleable area of the building complex with proportionate right and interest in the said property, the land pertaining to the developer's share of the constructed area, and further to enter into agreements with prospective purchasers in respect of any portion of the 60 per cent. share of the building complex to be constructed on the property in question.

(5) In addition to the right and interest of the owner over the saleable built up area of building being forty per cent. as aforesaid "the owner shall also have and enjoy proportionate right over the super built up area which will include corridors, stair cases, passage ways, lifts, water tanks, reservoirs, generators and generator room open space, car parking places and all other common area and infrastructural facilities".

(6) Within 30 months from the date on which possession of the property for construction of intended building complex is taken by the developer, the developer shall give possession of the owner's share of forty per cent. of the building complex with a view to enable the owner to claim appropriate relief on Income Tax on account of capital gains. In case of default, the developer is not only to pay the capital gains tax on behalf of the owner but shall also be liable to various other liabilities and penalties.

5. A statement in Form No. 37-I in terms of Section 269UC(3) of the Act read with Rule 48L of the Income Tax Rules was filed with the appropriate authority jointly by the petitioner as owner and the third respondent as developer on November 7, 1994, after there were some changes in the agreement. Earlier also, it would appear, one or two such statements were filed, but that we find is not relevant for decision in the present case. The appropriate authority was of the view that the declared apparent consideration for transfer of sixty per cent. share of the petitioner in the property was Rs. 12,47,620 when the fair market value would be Rs. 17,04,511. The appropriate authority also noticed that the Valuation Officer had also given the projected cost of the structure at normal specifications at a deferred cost basis at Rs. 19,93,455. As the difference between the apparent consideration and the fair market value of the land component going to the developer's share was more than 15 per cent., a show-cause notice was issued to both the developer and the owner as to why action be not taken under Chapter XXC of the Act. A copy of the valuation report was also sent to the parties. The appropriate authority by order dated February 22, 1995,

passed u/s 269UD(1) of the Act directed purchase of the property by the Central Government. The operative portion of the order reads as under :

"9. We have considered the replies of the transferor and transferee but are not in a position to allow any further time as limitation shall expire on February 28, 1995. Parties have not disputed on the valuation of land of the instant property. We are, therefore, of the view that the parties have no other grounds to offer on our proposed action under Chapter XX-C of the Income Tax Act. Since there is wide difference between the declared apparent consideration and the F.M.V. of the portion of land going to the developer's share we are of the opinion that this is a fit case where right of pre-emptive purchase should be exercised under Chapter XX-C of the Income Tax Act. We, accordingly, order for purchase of the property at an apparent consideration of Rs. 12,47,620, after the transferor hands over 60 per cent. of the land area to the Department.

10. The Schedule of the property is given below :

Schedule of property.

All that piece and parcel of 60 per cent. of the land and double storeyed-building measuring 11,342 sq. ft. located at Rajendra Path, Patna, which is bounded as under :

North--Passage stair

South--Passage

East - Flat No. 204 (Sri Shashi Sinha)

West--passage.

In the writ application, as noted above, the petitioner has challenged this order of the appropriate authority dated February 22, 1995 passed u/s 269UD(1) of the Act being arbitrary, without authority of law and even violative of the principles of natural justice. The letter dated March 1, 1995, of the Valuation Officer is also sought to be quashed by which letter the petitioner was informed that possession of the property had been taken over by the authority concerned. This letter dated March 1, 1995, is addressed to both, the petitioner and the third respondent, and is with reference to the property in question. Earlier when the impugned order of the appropriate authority was communicated to the parties by covering letter of the same date, then on the following day, i.e., February 23, 1995, the petitioner was informed to surrender or deliver possession of the immovable property to Mr. H. Mitra, Valuation Officer, within 15 days of the service of the order u/s 269UD(1). The Valuation Officer on March 1, 1995, wrote to both the parties telling them that they were requested to surrender or deliver the possession of the immovable property in question immediately to him and that, however, the possession had been taken over by him on March 1, 1995. A copy of the taking over note was also enclosed along with this letter. This taking over note reads as under :

"Taking over possession of the property bearing Municipal Survey Plot No, 807 (Part) and 1200 (Part) Khata No. 230 (Old) and 185/6/12 (New) Tauzi No. 205, Holding No. 579/275 "(Old) 579A Circle 9, Ward No. 10 of Patna Municipal Corporation situated at Rajendra Patha, "Tripti Smriti" Firm Press Lane, P.S. Gandhi Maidan, Sub-Registry Office, Patna.

In compliance of the order of the Appropriate Authority, Income Tax Department, Lucknow, issued under their No. AA/RP-91/94-95, dated February 22, 1995, regarding purchase of the property at Rajendra Path, Patna, by the Central Government in exercise of the power vested with the Appropriate Authority under Sub-section (1) of Section 269UE of the Income Tax Act, 1961, and order issued vide No. AA/RP-91/94-95/1923, dated February 23, 1995, by the Appropriate Authority, Lucknow, the possession of 60 per cent. of the said land and double storeyed-building at Rajendra Path, Patna, has been taken over by the undersigned Shri H. Mitra, Valuation Officer, Unit I, Income Tax Department, Patna, the authorised representative of the Appropriate Authority, Income Tax Department, Lucknow, today the 1st March, 1995.

Taken over

(Sd.) H. Mitra, Valuation Officer, Income Tax Department, Patna, Unit-I, (Authorised representative of Govt. of India)."

6. Section 269UA defines "immovable property"--Clause (d), "transfer"-- Clause (f) and "apparent consideration"--Clause (b). If we refer to these definitions, it would appear to us that Chapter XX-C encompasses in itself all types of immovable properties and their transfers keeping in view the object of inserting this Chapter in the Act. We do not think it is necessary for us to go into the question if the transaction in question involves any unaccounted money. We have only to refer to the provisions of this Chapter to see if the order u/s 269UD is valid with reference to the immovable property, its transfer and the apparent consideration and if other provisions of this Chapter have been complied with. We may set out the definition of "immovable property" and that of "transfer" as under :

"(d) "immovable property" means --

(i) any land or any building or part of a building, and includes, where any land or any building or part of a building is to be transferred together with any machinery, plant, furniture, fittings or other things, such machinery, plant, furniture, fittings or other things also.

Explanation.--For the purposes of this Sub-clause, "land, building, part of a building, machinery, plant, furniture, fittings and other things" include any rights therein ;

(ii) any rights in or with respect to any land or any building or a part of a building (whether or not including any machinery, plant, furniture, fittings or other things, therein) which has been constructed or which is to be constructed, accruing or

arising from any transaction (whether by way of becoming a member of, or acquiring shares in, a cooperative society, company or other association of persons or by way of any agreement or any arrangement of whatever nature), not being a transaction by way of sale, exchange or lease of such land, building or part of a building ;"

"(f) "transfer", -

(i) in relation to any immovable property referred to in Sub- Clause (i) of Clause (d), means transfer of such property by way of sale or exchange or lease for a term of not less than twelve years, and includes allowing the possession of such property to be taken or retained in part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882 (4 of 1882) ;

Explanation.--For the purposes of this Sub-clause, a lease which provides for the extension of the term thereof by a further term or terms shall be deemed to be a lease for a term of not less than twelve years, if the aggregate of the terms for which such lease is to be granted and the further term or terms for which it can be so extended is not less than twelve years ;

(ii) in relation to any immovable property of the nature referred to in Sub-clause (ii) of Clause (d), means the doing of anything (whether by way of admitting as a member of or by way of transfer of shares in co-operative society or company or other association of persons or by way of any agreement or arrangement or in any other manner whatsoever) which has the effect of transferring or enabling the enjoyment of such property."

7. It may not be necessary to refer to the definition of apparent consideration when the argument before us revolved round the question "if there was transfer of immovable property" involved in the case.

8. Chapter XXC does not appear to be a complete code in itself as reference has been made to Section 53A of the Transfer of Property Act. The provisions of the Partition Act are also relevant as we will presently see. However, for the purpose of definitions of "immovable property" and "transfer" of property we need not refer to the provisions of the Transfer of Property Act.

9. To understand the rival contentions we may also usefully refer to Clause (c) of Sub-section (3) of Section 14 of the Specific Relief Act which is as under :

"14. Contracts not specifically enforceable.--. . .

(3) Notwithstanding anything contained in Clause (a) or Clause (c) or Clause (d) of Sub-section (1), the court may enforce specific performance in the following cases ;--. . .

(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land :

Provided that the following conditions are fulfilled, namely :--

- (i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work ;
- (ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief ; and
- (iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed."

10. It would appear that the agreement called a development agreement in the present case can be specifically enforced if the conditions as envisaged in the proviso above are satisfied.

11. Mr. Jain, learned counsel for the petitioner, submitted that Chapter XXC was not applicable to the development agreement. He said that even if it was so, then what could be acquired would be the property which was the subject-matter of transfer and further that before action could be taken it had to be found that the apparent consideration was less than 15 per cent. of the market value. Mr. Jain's further submission was that no proper opportunity was given to the parties and the impugned order was made in haste, and lastly he said that the provisions of Chapter XXC had also been violated inasmuch as the amount of consideration payable in accordance with the provisions of Section 269UG has neither been paid or tendered to the petitioner and thus the impugned order u/s 269UD(1) stands abrogated in view of Section 269UH and property revested in the petitioner being the owner.

12. The term "transfer of immovable property for consideration" has been expanded by giving an extended meaning to the terms "transfer", "immovable property" and "consideration" (now described as the apparent consideration).

13. The authorities have considered the transaction as sale ; the immovable property being the 60 per cent. share in the land and the house already constructed thereon. It does not appear to be a simple case of sale. The consideration is 40 per cent. constructed area of the complex with right of the common areas of the complex yet to be constructed. The authorities have valued 40 per cent. in such area as given in the agreement plus other benefits mentioned therein, but they have not considered the right to use the common areas. That apart, one can look to the transaction from the eyes of the petitioner as owner as well as the third respondent, the developer.

14. The owner says that he has a plot of land on which there exists an old dilapidated building. He wants to construct a building thereon after demolition of the old structure but he has no money. He talks to the developer who agrees to construct the building on behalf of the owner and in the name of the owner. The developer agrees to invest the money but does not want the money back as the owner has no such money to pay back to the developer for the investment made

by him. So the arrangement is that after the construction is complete the developer will get 60 per cent. of the constructed area and also interest in the land underneath with right to use common areas. The owner will execute the sale deed in that respect either in the name of the developer or any of his nominees only after construction is complete. Now, the developer also does not have all the money for investment. So it is also agreed between the parties that the developer shall be able to get money after mortgaging his 60 per cent. share in the property or may, perhaps, agree to get money from the prospective buyer of that portion of his 60 per cent. share in the property. The owner thus without making investment gets 40 per cent. of the constructed area plus the right to use common areas and other vacant portion of the land in which a complex is to come up.

15. Now, look to the transaction from the angle of the developer.

16. He says that he has money to invest for construction of certain building but he has no land. He enters into the transaction with the owner who has land on which an old dilapidated building exists and the arrangement is that the existing building would be demolished and in that place as per plan a multistoreyed complex would come up. The whole investment would be made by the developer, property built in the name of the owner, limit of expenditure to be incurred also mentioned, the developer also does not want his money back but he wants rights and interest in 60 per cent. of the undivided portion of the land and constructed area and with right to use common passage leaving the balance constructed area and other common rights to the owner.

17. It is difficult to see how such an arrangement can be termed as sale of 60 per cent. of the land of the owner as well as in the existing constructed portion of the building as held by the appropriate authority. At the same time, it is also difficult to see how the transfer of property to the developer in these circumstances would be immovable property falling within the definition as given in Section 269UA(d)(i) of the Act. No doubt, in an ultimate analysis the agreement has the effect of transferring or enabling enjoyment of the property in question to the developer.

18. In the present case we find that the transaction in question is not a straightaway sale of 60 per cent. interest of the petitioner in the land/ property to the developer. What the petitioner has bargained in forgoing his right in the land to the extent of 60 per cent. interest, is to get 40 per cent. of the earmarked constructed area together with right of common passages, amenities available in the building complex to come up in terms of the agreement and also something more by way of consideration. Apart from this, the petitioner also retains 40 per cent. of his interest in the land underneath. It is not quite material for the transferor to see if the cost of construction incurred by the developer exceeds that stipulated in the agreement. It could be that such a Clause (Clause 26) did not exist. The cost of construction as mentioned in the agreement, therefore, could not be made a base to arrive at the fair market value of the 60

per. cent, interest of the petitioner in the land underneath the property. Under the agreement, therefore, the petitioner had a right to acquire 40 per cent. interest in the building complex to come up apart from his retaining that much interest in the land. In these circumstances, it is difficult to see as to how there is a transfer of immovable property falling under Sub-clause (i) of Clause (f).

19. Now, if we may analyse the definition of immovable property as falling in Clause (d)(ii) of Section 269UA of the Act, what the agreement envisages is (i) the right in or with respect to the plot ; (ii) a part of the building which is to be constructed ; and (iii) the transaction is not by way of sale, exchange or lease. Then under Clause (f) which defines transfer, the transaction in question would fall within Sub-clause (ii) as in relation to immovable property as defined above to mean the doing of anything which had the effect of transferring or enabling the enjoyment of such property. If we consider these definitions of "immovable property" and "transfer", the agreement will squarely fall under Clause (d)(ii) and Clause (f)(ii) of Section 269UA of the Act. At this stage, we may also refer to subsection (6) of Section 269UE which provides as to how the rights in the immovable property of the nature referred to in Clause (d)(ii) of Section 269UA could be conferred on the Central Government on an order u/s 269UD of the Act. This Sub-section is as under :

"(6) Where an order under Sub-section (1) of Section 269UD is made in respect of an immovable property, being rights of the nature referred to in Sub-clause (ii) of Clause (d) of Section 269UA, such order shall have the effect of -

(a) vesting such right in the Central Government ; and

(b) placing the Central Government in the same position in relation to such rights as the person in whom such a right would have continued to vest if such order had not been made."

20. Shorn of all embellishment and details it may appear in the first flush, and as held by the appropriate authority, that this development agreement is for transfer of 60 per cent. share in the land in the property in question for a consideration which we have mentioned above. Even if that is so, does the act of acquisition, taking over of possession, payment of consideration by the Central Government come within the purview of law as contained in Chapter XXC. The impugned order is "for purchase of the property at an apparent consideration of Rs. 12,47,620 after transferor (i.e., the petitioner) hands over 60 per cent. of the land area to the Department". Now, if this 60 per cent. is the undivided share, which it is so, in the land, it is not possible for the owner to hand over 60 per cent. of the land area. Perhaps, at this stage one may have to refer to the provisions of the Partition Act. Different considerations may again arise whether the municipal laws permit bifurcation of the plot of land if ultimately 60 per cent. undivided share in the land is to be sold by the Department, the purchaser will have to ask for partition of the plot of land which may not be permissible under the law and he would be saddled with that interest in the land which he cannot

procure unless he joins hands with the owner holding another 40 per cent. undivided interest in the land. One may ask if such a situation is envisaged under Chapter XXC. This Chapter is not concerned with a situation like the present one. There is no bar to the acquisition of an undivided share in a property. If the property cannot be partitioned it will be sold as provided in the Partition Act. As a matter of fact, the order is not only for handing over 60 per cent. of the land area but also 60 per cent. of the double-storey-building measuring 11,342 sq. ft. which is already standing there. The owner under the agreement did not agree to sell any portion of the built up area presently existing on the property. As a matter of fact, under the agreement the developer is to demolish the existing structures and buildings and on demolition such of articles and things at the choice of the owner shall be delivered to him. The cost of demolition is also to be borne by the owner, i.e., the petitioner.

21. Now, in pursuance of the impugned order, the Valuation Officer as per his report dated March 1, 1995, of taking over possession recorded that he had taken over "the possession of 60 per cent. of the said land and double-storey-building at Rajendra Path, Patna". Which portion of the land and the building possession has been taken over has not been specified. This is all wrong inasmuch as we have mentioned above that at best it could be said that 60 per cent. of the undivided share in the land was agreed to be transferred under the agreement and no more.

22. u/s 269UF, the Central Government shall pay by way of consideration for such purchase an amount equal to the amount of the apparent consideration. u/s 269UG, the amount of consideration so payable is to be tendered to the person entitled thereto within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government. It is not disputed that as per the provisions of this section, the amount of consideration was to be tendered to the petitioner on or before March 31, 1995. The amount was, however, not tendered to the owner but under Sub-section (3) of Section 269UG, was deposited with the appropriate authority. This subsection (3) reads as under :

"(3) Notwithstanding anything contained in Sub-section (1), if the person entitled to the amount of consideration does not consent to receive it, or if there is any dispute as to the title to receive the amount of consideration, the Central Government shall deposit with the appropriate authority the amount of consideration required to be tendered under Subsection (1) within the period specified therein :

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of the amount of consideration for any immovable property vested in the Central Government under this Chapter to pay the same to the person lawfully entitled thereto."

23. It is not that the petitioner did not consent to receive the consideration or

that there was any dispute as to the title to receive the amount of consideration. The ground why the amount was deposited with the appropriate authority instead of being tendered to the petitioner, was that the petitioner had filed the present writ petition on March 6, 1995, and as such there was no requirement to tender the amount under Sub-section (1) of Section 269UG in view of the provisions of Sub-section (3) of Section 269UG of the Act. We think this approach of the respondent is all wrong. It is not stated that there was any bona fide or genuine doubt as to the title of the petitioner and how could his title become doubtful merely on filing the present writ petition. Mr. Rastogi, in support of this submission of his, referred to the decision of the Andhra Pradesh High Court in *Sooni Rustam Mehta and Others Vs. Appropriate Authority, Income Tax Department*, , and to the following observation (at page 301):

"Therefore, in our view, even a dispute as to the validity of the provisions of the Act relating to compulsory acquisition or a challenge to the vesting order could raise a dispute as to the "entitlement" of the person to receive consideration within the period mentioned in Sub-section (1) of Section 269UG and, therefore, the authorities will be justified in not tendering the amount but in depositing the same under Sub-section (3) of Section 269UG, before the appropriate authority. The view we have taken is similar to the view taken by a Division Bench of the Madras High Court in *R. Padma and Others Vs. Appropriate Authority, Income Tax Department, Madras and Others*, .

For all the aforesaid reasons, we hold that as long as the writ petition filed by the petitioners challenging the provisions of the Act is kept pending and is not withdrawn or disposed of, it must be said that there is a dispute as to the entitlement of the petitioners to receive the amount of compensation and, therefore, the authorities are justified in making the deposit before the appropriate authority."

24. That the provisions of Chapter XXC are valid has been upheld by the Supreme Court in *C.B. Gautam Vs. Union of India and Others*, . We do not think that since there is challenge to the order under Sub-section (1) of Section 269UD that would be a ground not to comply with the provisions of Subsection (1) of Section 269UG and to resort to Sub-section (3) of Section 269UG. To us it is quite apparent that the provisions of Section 269UG(1) are mandatory and since the amount of consideration has not been tendered in terms of Sub-section (1) of Section 269UG to the petitioner, the impugned order passed u/s 269UD(1) stands abrogated and the property reverts in the owner. We are, therefore, unable to subscribe to the view taken by the Andhra Pradesh High Court in the case of *Sooni Rustam Mehta and Others Vs. Appropriate Authority, Income Tax Department*, .

25. Under Sub-section (1) of Section 269UE the property in respect of which an order has been made u/s 269UD vests in the Central Government on the date of such order. Under Sub-section (2), the transferor or any other person who may be in possession of the immovable property in question shall surrender or deliver

possession thereof to the appropriate authority or any other person duly authorised by it within fifteen days of the service of such order on him. Though the petitioner was asked to surrender or deliver possession by letter dated February 23, 1995, within 15 days of the service of the order u/s 269UD(1), the possession was taken over on March 1, 1995, before the expiry of the 15 day period which act is violative of Sub-section (3) of Section 269UE.

26. u/s 269UH, the property reverts in the transferor on failure of payment or deposit of consideration. In the present case we have found that the payment has not been tendered in terms of Sub-section (1) of Section 269UG. The property, therefore, which had been vested in the Central Government by virtue of order made u/s 269UD(1), that order stands abrogated and the property now reverts in the transferor, i.e., the petitioner. Other provisions of Section 269UH are not relevant for our purpose and we need not refer to them.

27. The order u/s 269UD(1) has to be made within three months of the receipt of the statement referred to u/s 269UC of the Act.

28. This is another mandatory provision. Considering the proceedings before the appropriate authority and the time limit under which order is to be made, we do not think the petitioner, the land owner or even the third respondent, the developer, was not granted sufficient opportunity objecting to the proposed acquisition of the property. Rules of natural justice, it has been repeatedly said, cannot be put in a straight-jacket. There is no violation of the rules of natural justice in the present case.

29. Thus, though we hold that the provisions of Chapter XXC would apply to the nature of the agreement for transfer of immovable property called the development agreement in the present case, there has been violation of the provisions of Section 269UE(3) and 269UG(1) of the Act falling under this Chapter. The order u/s 269UD(1) is itself bad as it purports to acquire property which is not exactly the subject-matter of the agreement and then that property is sought to be vested in the Central Government u/s 269UE(6) of the Act.

30. We would, therefore, allow the petition and quash the order dated February 22, 1995, of the appropriate authority passed u/s 269UD of the Act. Consequently, the communication of the Valuation Officer dated March 1, 1995, taking over possession of the property in question is also set aside. The property shall revert in the petitioner. In the circumstances of the case, there shall be no order as to costs. Rule is made absolute.

S.J. Mukhopadhaya, J.

31. I agree.