
(2001) 01 KAR CK 0087

In the Karnataka High Court

Case No : Writ Petition No's. 7753 and 12389 of 1993

Chartered Housing and Bhoruka Finance Corporation

APPELLANT

Vs

Appropriate Authority and Others

RESPONDENT

Date of Decision : 16-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 269 UD (1)
Transfer of Property Act, 1882 — Section 53 A

Citation : (2001) 167 CTR 248 : (2001) 250 ITR 1 : (2001) 2 KCCR 69 SN :
(2001) 116 TAXMAN 331

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : K.R. Prasad, for R.V. Prasad, G. Sarangan, for S. Parthasarathy, K. Hemakumar, M.V. Seshachala, Ramabhadran and Vani, for the Appellant;

Judgement

Hari Nath Tilhari, J.—Heard Sri G. Sarangan, learned senior advocate, assisted by Sri S. Parthasarathy, and Sri K. R. Prasad, learned counsel for the petitioners in the two writ petitions and Sri M. V. Seshachala, learned standing counsel for the Income Tax Department. It may be mentioned here that counsel for the petitioner in Writ Petition No. 7753 of 1993 has also put in appearance as counsel for the respondent in Writ Petition No. 12389 of 1993.

2. These two petitions, namely. Writ Petition No. 7753 of 1993 filed by the intending purchaser (purchaser) and Writ Petition No. 12389 of 1993 filed by the alleged transferor or the transferor, arise from the same order and the order challenged in these two petitions is the same. These petitions raise a common question of law for decision of the writ petitions. As such, both these writ petitions are being disposed of by a common order judgment.

3. The facts of the case in brief are that according to the petitioners' case, there had been an agreement for transfer of vacant land bearing No. 7 H.A.L. III Stage, Indiranagar, Bangalore, measuring 120 ft. East to West and 90 ft. North

to South whereby the petitioner agreed that the petitioner--Bhoruka Finance Corporation, i.e., the petitioner in Writ Petition No. 12389 of 1993, agreed to sell the above land in favour of the present respondent No. 3 in Writ Petition No. 12389 of 1993 i.e., in favour of Chartered Housing, No. 6, S. J. P. Road, Bangalore, who is petitioner in Writ Petition No. 7753 of 1993 for a sale consideration-as mentioned in the agreement of sale of Rs. 12,96,000. According to the case of the petitioner, the agreement for sale was executed between the parties on July 29, 1987. The petitioner's further case is that in pursuance of the aforesaid agreement, the seller, i.e., Bhoruka Finance Corporation, received a sum of Rs. 5,000 as advance by cheque bearing No. 170155 dated July 29, 1987, from the third respondent, i.e., Chartered Housing, namely, the petitioner in Writ Petition No. 7753 of 1993, and that cheque was drawn on Vijaya Bank, Bangalore. According to the petitioner's case and the terms of the agreement, as mentioned in the petition, the balance of the sale consideration was to be paid by the purchaser to the vendor within four months from the date of the agreement. The petitioner's further case is that after the agreement was entered into, the petitioner was trying to obtain various certificates and in the meantime, Chapter XX-C had been extended to Bangalore and an application u/s 269UC of the Income Tax Act read with Rule 48L of the Income Tax Rules, 1962, in the prescribed Form No. 37-I, duly verified by the petitioner and the third respondent-vendor and the purchaser was filed before the Appropriate Authority along with a covering letter dated October 29, 1987, on October 30, 1987. The petitioner further alleges that the transferee had already obtained possession of the property and started submitting plans for sanction and permission for construction. It is the case of the petitioner that allotment of flats have already been made in favour of different purchasers and various subcontracts have already been entered into. The petitioner states that this fact was also brought to the notice of the Appropriate Authority. That order u/s 269UD(1) of the Income Tax Act of pre-emptive purchase was passed by the appropriate authority on December 16, 1987. That order dated December 16, 1987, was challenged by the petitioner by Writ Petition No. 465 of 1988 Bhoruka Finance Corporation Vs. Union of India and others, . In addition to Writ Petition No. 465 of 1988, the purchaser, i.e., the third respondent in the petition, namely, Chartered Housing, also filed another writ petition against the said order, namely, Writ Petition No. 793 of 1988, and during the pendency of the writ petition, their Lordships of the Supreme Court disposed of a transferred petition namely, Transfer Case No. 26 of 1987 by judgment dated November 17, 1992, in the case of C.B. Gautam Vs. Union of India and Others, . The petitioner states that following the decision of the Supreme Court in C.B. Gautam Vs. Union of India and Others, , the writ petitions filed before the High Court were allowed by this court by order dated December 18, 1992 (see Bhoruka Finance Corporation Vs. Union of India and others, . This court while disposing of the said writ petitions, made the following observations (page 727) :

"Hence, the order u/s 269UD impugned herein shall stand quashed. The

statement in Form No. 37-I filed by the petitioner and respondent No. 4 on October 30, 1987, shall be treated as if it were filed today and the Appropriate Authority shall proceed to consider the same in the light of the order made in Transferred Case No. 26 of 1987 (see C.B. Gautam Vs. Union of India and Others, by the Supreme Court referred to earlier and in accordance with law. Rule made absolute accordingly."

4. The decision of this court in the two writ petitions, it may be mentioned, is reported in *Bhoruka Finance Corporation Vs. Union of India and others*, . According to the case of the petitioner, a show-cause notice was issued and thereunder it was stated that the value of the property would not be less than Rs. 200 per square foot as per the contents and the basis indicated in that notice and the petitioners were called upon to show as to why the property in dispute should not be compulsorily purchased by the Appropriate Authority and the Government, Notice, as mentioned earlier, was also issued to the purchaser, i.e., the third respondent in Writ Petition No. 12389 of 1993, namely, the petitioner in Writ Petition No. 7753 of 1993. According to the petitioner's case, they filed objections to the show-cause notice taking various lease as indicated therein. The petitioner's objections to the show-cause notice have been annexed as annexure E to Writ Petition No. 7753 of 1993 and as annexure H to Writ Petition No. 12389 of 1993. The petitioner's case in both the cases is that the Appropriate Authority--respondent No. 1, passed the order for compulsorily purchasing the property referred to above and details of which have been mentioned in the earlier part of the judgment. The copy of the order dated February 25, 1993, passed by the Appropriate Authority u/s 269UD(1) of the Income Tax Act has been annexed by the petitioner in Writ Petition No. 12389 of 1993 as annexure J along with the copy of the letter dated February 25, 1993, as annexure K. With reference to Writ Petition No. 7753 of 1993, the order dated February 25, 1995, is referred to as annexure G to the writ petition and the covering letter is annexure H. The petitioners having felt aggrieved by the order dated February 25, 1993, have come up before this court by these petitions under Article 226 of the Constitution of India.

5. I have heard learned counsel for the parties, as has been mentioned in the very first paragraph of this judgment.

6. On behalf of the petitioners, learned counsel for the petitioners vehemently contended that the agreement in this case had been entered into between the parties on July 29, 1987, at a time when Chapter XX-C was not in operation and had not been enforced with reference to Bangalore Metropolitan City. Learned counsel for the petitioners submitted that the provisions of Chapter-XX-C of the Income Tax Act were enforced in the Bangalore metropolitan area with effect from October 1, 1987. Learned counsel for the petitioners very vehemently contended that under the agreement, as per Clause (6) of the agreement, possession had been handed over to respondent No. 3 Chartered Housing, who is the petitioner in Writ Petition No. 7753 of 1993, by the petitioner in Writ Petition

No. 12389 of 1993, i.e., Bhoruka Finance Corporation, much earlier to Chapter XX-C coming into operation in the Bangalore metropolitan area. According to the petitioners, possession was handed over on the date of agreement itself after the advance amount of Rs. 5,000 had been paid. Sri Sarangan and Sri Prasad therefore vehemently contended that the transaction of transfer, as per the definition of transfer given in Section 269UA(f), had been completed before this Chapter was given operation and was extended to this area. Learned counsel contended that when the transaction of transfer had been completed by itself by entering into an agreement for sale and delivery of possession by the transferor to the transferee on July 29, 1987, the provisions of Chapter XX-C could not be applied and did not apply to the present case and the order passed by the authorities on February 25, 1993, is without jurisdiction, illegal, null and void. It may be mentioned here before I proceed any further that this plea was sought to be raised by a written application which this court allowed by an oral order as the point is primarily one going to the root of the matter. So, the first contention of the petitioner in a nutshell is that the order impugned is illegal, null and void and without jurisdiction as according to the petitioners, the provisions of Chapter XX-C did not apply to the transaction in question on account of the transaction of transfer having been completed on July 29, 1987. To a query made by the court if the authorities could proceed under Chapter XX-A, learned counsel for the petitioners submitted that in view of Section 269RR, the provisions of Chapter XX-A could not be applied because the transfer is one made after September 30, 1986. Learned counsel contended that the provisions of Section 269RR provided that the provisions of that Chapter XX-A shall not apply to or in relation to the transfer of any immovable property made after September 30, 1986. Learned counsel for the petitioners contended that a completed transaction was entered into between September 30, 1986, and October 1, 1987, namely, the dates on which the provisions of Chapter XX-C, were enacted and the date when Chapter XX-C was extended and enforced in the Bangalore metropolitan area, would neither be affected by the provisions of Chapter XX-A nor by the provisions of Chapter XX-C. Learned counsel for the petitioners further contended, no doubt not with much vehemence but contended, that the finding of the Appropriate Authority is that the sale consideration, as mentioned in the agreement, is lesser by more than 15 per cent. of the market value and contended that the above finding of the Appropriate Authority is erroneous and no proper opportunity was given to produce their evidence and it is based on a mistaken notion taking the development method into consideration.

7. These contentions raised by learned counsel for the petitioners have been very hotly and strenuously contested by Sri M. V. Seshachala, learned standing counsel for the Department. Sri Seshachala contended that the agreement referred to under the provisions of Chapter XX-C means an agreement entered into in the prescribed Form No. 37-I and in pursuance of such an agreement if possession had been transferred, it could have been said to be a case where transfer had taken place. Sri Seshachala further contended that the expression

"transfer" when has been used in Section 269UA(f)(i) refers to transfer of immovable property in the sense of complete in title or rights including" the right to take possession and enjoyment. Learned counsel contended that from a perusal of the agreement as well as Form No. 37-I, it can itself be said that the petitioners" case that possession had been delivered earlier to the coming into force of Chapter XX-C and it does not prima facie show or establish that possession had been delivered. He contended that the petitioners themselves have filed a statement. They did not raise any objection nor did they press that the transaction had been completed before the coming into force of Chapter XX-C in the area, namely, the Bangalore metropolitan area. Therefore, the provisions of Chapter XX-C did apply. Sri Seshachala further contended that as the agreement which is alleged by the petitioner did allege to have taken place before the coming into force of this Chapter, it has to be taken as per the context of law of transfer existing earlier to October 1, 1987, as to whether transfer would amount to a transfer or a completed transfer because the definition will apply to a case to which the provisions do apply or to the transaction which has taken place after the coming into force of the Act. Learned counsel contended that a perusal of the definition of transfer given u/s 6 and read with Section 8 of the Transfer of Property Act connotes an idea of conveying the property with all rights in the property which originally vested in the transferor and for testing on that yardstick even if the possession had been handed over before the coming into force or before the enforcement of Chapter XX-C, that would not amount to a transfer under the general law of transfer. Learned counsel contended that Section 269UA(f) when defines the expression "transfer", the definition clause uses the expression "In this chapter unless the context otherwise requires" "transfer" will mean as defined in Clause (f). Learned counsel contended that a definition given by itself is not conclusive and is subject to the qualification indicated in the main part of Section 269UA of Chapter XX-C. Learned counsel contended that if the context otherwise requires the term to be interpreted, then it may not be interpreted in the same terms as given in the definition. But if the context otherwise does not require then definitely the definition clause will prevail and will be operative. As such, Sri Seshachala contended that in the context of the facts of the present case and the transfer alleged, we have to see the general law of the Transfer of Property Act and learned standing counsel for the Income Tax Department, Sri Seshachala, contended that in the sense of term, the transfer cannot be said to have been completed apart from what is indicated by the terms of the agreement itself. Learned standing counsel, as such, submitted that it cannot be said that the provisions of Chapter XX-C will not be applicable. Sri Seshachala also made a reference to Rule 48L(2)(a) as well. He submitted that if the transaction had not been completed as required by the law of transfer particularly in respect of immovable property worth more than Rs. 100 which is required by a registered document and in the meanwhile Chapter XX-C was enforced the transfer in this general sense of law could not be completed because there is a bar against registration unless a no objection certificate is filed as per Section 269UL of the Act. Learned counsel contended

that Sub-section (3) of Section 269UI, provides for the passing of an order of no-objection and the issuing of a no-objection certificate in cases where the Appropriate Authority or the State does not intend to purchase the property, He further contended that in view of these provisions of Section 269UL, the petitioners had to file the agreement in Form No. 37-I, as unless a statement of agreement in Form No. 37-I is filed, the authority cannot proceed to consider the matter of either opting to purchase or making a compulsory purchase and to pass an order in this regard nor can it pass an order issuing a no-objection certificate. Learned standing counsel very emphatically contended that the agreement to purchase or the agreement for transfer here means the agreement arrived at and recorded in the form of a statement in the prescribed form as per Section 269UC and read with Rule 48L that prescribes the form and learned counsel contended that the agreement relied on not having been so entered into and further could not have been entered into in Form No. 37-I as per requirement as at the time of entering into of said agreement. Chapter XX-C had not been extended and had not been made applicable to areas of Bangalore Metropolitan City. Sri Seshachala urged that to amount to a transfer, i.e., an agreement to sell under which possession is alleged to have been handed over should be one entered into in the prescribed form, i.e., Form No. 37-I. Learned standing counsel further contested the contentions of the petitioner's counsel with reference to the finding recorded by the Appropriate Authority on the question as to whether the apparent sale consideration or price mentioned in the agreement is less than the market value by more than 15 per cent. Learned standing counsel contended that this finding has been given by the authority after giving notice and after giving full opportunity to the petitioners to place their case. The notice indicated the material and illustrations on the basis of which it tentatively arrived at the conclusion that the value of the property could not be less than Rs. 200 per sq. ft., and called upon the present petitioners to show cause why the property should not be compulsorily purchased. Learned counsel contended that under this notice, admittedly, it was required that the petitioners should place their case about the proposal or tentative opinion of the authority that the value could not be less than Rs. 200 per sq. ft. and to furnish evidence with illustrations. Learned counsel contended that the petitioners no doubt filed objections and furnished a list based on certain auctions made by the Bangalore Development Authority which have been considered by the authority and that the case can be said to be one concluded by a finding of fact in this regard. Learned counsel contended that the difference of price has to be considered not in the light of the subsequent development of law or in the context of the decision of this court subsequently given, but in the context of the period when the agreement to sell was entered into originally, i.e., with reference to the period July or say October, 1987. Learned standing counsel Sri Seshachala contended that, therefore, it is a finding of fact and it does not call for any interference under Article 226 of the Constitution of India. Learned standing counsel contended, as such, that the petitions may be dismissed.

8. I may mention here that no other contentions have been raised by learned counsel for the parties.

9. I have applied my mind to the contentions raised by learned counsel for the parties.

10. As regards the first question, it is an undisputed fact that no doubt on July 29, 1987, the provisions of Chapter XX-C did not operate in nor applied to the area known as the Bangalore metropolitan area. No doubt, Chapter XX-C had been enacted and brought on the statute book with effect from October 1, 1986. Section 269U contained in Chapter XX-C provides for commencement and operation of this Chapter and it reads as under:

"269U. Commencement of Chapter.--The provisions of this Chapter shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different areas."

11. The language of Section 269U is very clear and is free from vagueness. It does not suffer from any vagueness. It provides that the provisions contained in Chapter XX-C will be operative and will come into force only from such date which the Central Government appoints and it has been given power to appoint different dates for the coming into force of this Chapter with reference to different areas. As such, for different areas the Central Government has been required to notify the dates for the operation or coming into force of Chapter XX-C. Till the Government has notified a date for the coming into force of the Act in the area, the provisions of Chapter XX-C could not be applied. Different notifications have been issued by the Central Government with regard to different areas. In respect of Delhi and some other areas, notification was issued no doubt on October 1, 1986, but so far as the Bangalore metropolitan area is concerned, the Central Government issued notification on October 1, 1987, for the provisions of Chapter XX-C to come into force and therefore there is no doubt that the provisions of this Chapter came into operation with effect from October 1, 1987. There can also be no dispute as regards the proposition of law that in view of the provisions of Chapter XX-C and in particular in view of the provisions of Section 269RR, the provisions of Chapter XX-A ceased to apply and the said provisions were provided not to apply in relation to transfer of any immovable property made after September 30, 1986. The position that comes out as per the circumstances is that neither Chapter XX-A did apply at the time when the agreement was entered into on which the petitioners placed reliance, namely, on July 29, 1987, or the interim period from September 30, 1986, to October 1, 1987. Chapter XX-C also did not apply during the interim period. Now the question to be considered is what is its effect ? When Chapter XX-C did not apply on that date, what meaning is to be given to the expression "transfer" ? In my view, the expression "transfer" has to be interpreted as per law operating during this period, namely, under the general law of the Transfer of Property Act and with reference to a transaction to determine whether a transaction had been a

completed transaction of transfer, the yardstick to be applied is not the one prescribed by Section 269UA(f), but by the general law of transfer. When I so observe, I find support for my view from the language used in Section 269UA. Section 269UA(a) and (f) of the Income tax Act reads as under :

"269UA. In this Chapter, unless the context otherwise requires,--

(a) "agreement for transfer" means an agreement, whether registered under the Registration Act, 1908 (16 of 1908) or not, for the transfer of any immovable property ; . . .

(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 term 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 a cooperative 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."

12. The above quoted Section 269UA starts with the expression, "In this Chapter, unless the context otherwise requires". I am of the view that if the context otherwise requires, then the definition given in Section 269UA cannot be said to be conclusive. The term or the expression may be interpreted as the circumstances otherwise indicate. But unless the context otherwise requires, a definition given in the definition clause is to be taken to apply and control the meaning of the expression defined in the Act. When I so observe, I find support for my view from the following decisions of their Lordships of the Supreme Court in the case of K. Balakrishna Rao and Others Vs. Haji Abdulla Sait and Others, . Their Lordships, in paragraph No. 24 (page 224), observe as under :

"24. A definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. The opening clause of Section 2 of the principal Act itself suggests that any expression defined in that section should be given the meaning assigned to it therein unless the context otherwise requires."

13. It will also be appropriate at this juncture to make a reference to two leading and latest decisions of their Lordships of the Supreme Court in this regard. In the case of K.V. Muthu Vs. Angamuthu Ammal, , their Lordships laid it down in paragraphs 10 to 13 as under (page 631) :

"Section 2 of the Act in which various terms have been defined open with the words "in this Act, unless the context otherwise requires" which indicates that the definitions, as for example, that of "Family", which are indicated to be conclusive may not be treated to be conclusive if it was otherwise required by the context. This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the Legislature.

11. While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.

12. Where the definition or expression, as in the instant case, is preceded by the words "unless the context otherwise requires", the said definition set out in the section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied.

13. This court in K. Balakrishna Rao and Others Vs. Haji Abdulla Sait and Others, , while considering the definition clause of this Act which is under our consideration, held (at page 224 of AIR) :

"A definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. The opening clause of Section 2 of the Principal Act itself suggests that any expression defined in that section should be given the meaning assigned to it therein unless the context otherwise requires", "

14. In this case, their Lordships made a reference to the decision and interpretation given in K. Balakrishna Rao and Others Vs. Haji Abdulla Sait and Others, . The same has been reiterated in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, . Mr. Justice S. Saghir Ahmad, as he then was, while delivering the judgment on behalf of the Bench, observes as under (page 28) :

"28. Now, the principle is that all statutory definitions have to be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or context. That is why all definitions in statutes generally begin with the

qualifying words, similar to the words used in the present case, namely, "unless there is any- thing repugnant in the subject or context". Thus there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word had been used and that will be giving effect to the opening sentence in the definition section, namely, "unless there is anything repugnant in the subject or context". In view of this qualification, the court has not only to look at the words but also, to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under those circumstances, (see *The Vanguard Fire and General Insurance Co. Ltd., Madras Vs. Fraser and Ross and Another, .*)

15. Thus it is very clear that the definitions given in the definition clause no doubt ordinarily have to be given their weight, but if the context otherwise requires the expression to be interpreted, then in the context of those facts and circumstances of the case and the provisions, it is permissible to interpret the expression defined in a different way. Keeping this basic principle in view, I proceed further.

16. No doubt Chapter XX-C was enforced or extended with effect from October 1, 1987. The question is whether the alleged agreement for sale even if it has been--without conceding for the present--a fact that possession had been delivered of the property, subject-matter of the agreement, on the very date after receiving the part of the consideration would amount to a transfer. In the context of such a transaction--which had taken place, as I have mentioned earlier on July 29, 1987, i.e., earlier to the coming into force of this Act in the Bangalore metropolitan area--the meaning given in Section 269UA may not be applicable and it has to be interpreted in the context of the general law of transfer, to determine whether there had been a completed transaction of transfer. Even if the Chapter had applied, then also the question in such a case would be to consider whether there had been a transfer in the completed sense of transfer, and what would have been the meaning of the expression "transfer" in the context of an agreement would have been simply arrived at but which would not have been in the prescribed form. It could be said that the expression "transfer" in that context could be said to mean transfer completed as per the requirements of and in accordance with the requirement of law relating to transfer. It would be appropriate at this stage to refer to the provisions of Sections 5, 7 and 8 of the Transfer of Property Act. Section 5 defines "transfer".

"5. "Transfer of property" defined.--In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons ; and "to transfer property" is to perform such act.

In this section "living person" includes a company or association or body of individuals, whether incorporated or not but nothing herein contained shall affect

any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

17. Section 6 is not very material for our purpose. Section 7 reads as under :

"7. Persons competent to transfer.--Every person competent to contract and entitled to transferable property, or authorised, to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in (he manner, allowed and prescribed by any law for the time being in force."

Section 8 indicates the operation of transfer. It reads as under :

"8. Operation of transfer.--Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the, property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto the rents and profits thereof accruing after the transfer, and all things attached to the earth ;

and, where the property is machinery attached to the earth, the movable parts thereof ;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith ;

and, where the property is a debt or other actionable claim, the securities therefore (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer ;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect."

18. At this stage, it is appropriate to quote Section 54 of the Transfer of Property Act. It reads as under :

"54. "Sale" defined.--"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.--Such a 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.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.--A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property."

19. The transfer may be by way of sale, by way of exchange or there may be transfer of certain rights to enjoy the property as a lease and the various sections of the Transfer of Property Act provide how transfer of that nature had to be made. The sale has been defined that sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. It further provides how it is to be made. It provides that such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in case of a reversion or other intangible thing, can be made only by a registered instrument. It means transfer by way of sale of tangible immovable, property worth more than one hundred rupees cannot be made except by registered instrument of transfer, because this section excludes any other mode of transfer by way of sale of property worth one hundred rupees or more. The language of Section 54 in this regard is very clear when the Legislature uses the expression "can be made, only by a registered instrument." It excludes the possibility of transfer being made by simple delivery of possession under an agreement to sell and the effect of which is that unless a transfer by sale of immovable property worth more than one hundred rupees is made by a registered instrument, the transfer will be ineffective to convey property and title in the property to the transferee. It is also a well settled principle of law that when a right is given and the mode is prescribed for doing that thing or exercise of that right, then by necessary implication no other mode can be applied. Section 54 very clearly excludes all other modes if any, of transfer by sale by using the expression "made only."

20. The present is a case where it is urged that the transfer had been made of immovable property for consideration of Rs. 12,00,000 or more. If we take the lease, about the lease also it is provided that a lease of an immovable property from year to year or for any term exceeding one year or reserving a yearly rent can be made only by a registered instrument. Section 107 of the Transfer of Property Act provides that a lease of an immovable property from year to year or for any term exceeding one year or reserving a yearly rent can be made only by a registered instrument. The expression used "can be made only by a registered instrument", signifies that a lease from year to year or for a period more than one year or reserving a yearly rent cannot be made otherwise than by a registered deed of lease or by registered document. When a party relies on an agreement otherwise than mentioned u/s 269UC, then in that case, the provisions of the Transfer of Property Act will have to be taken into consideration, whether it be a case of sale or otherwise. The possession taken under an agreement of sale or an agreement to sell cannot be taken ordinarily to amount

to be a transfer a sale-no doubt under the Transfer of Property Act, but for the purpose of Chapter XX-C, it may amount to a transfer, but in that case, the agreement has to be in the form as prescribed u/s 269UC. Section 269UC, Sub-sections (1), (2) and (3), read as under : "269UC. Restrictions on transfer of immovable property.--(1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), or in any other law for the time being in force, no transfer of any immovable property in such area and of such value exceeding five lakh rupees, as may be prescribed, shall be effected except after an agreement for transfer is entered into between the person who intends transferring the immovable property (hereinafter referred to as the transferor) and the person to whom it is proposed to be transferred (hereinafter referred to as the transferee) in accordance with the provisions of Sub-sections (2) at least four months before the intended date of transfer.

(2) The agreement referred to in Sub-section (1) shall be reduced to writing in the form of a statement by each of the parties to such transfer or by any of the parties to such transfer acting on behalf of himself and on behalf of the other parties.

(3) Every statement referred to in Sub-section (2) shall,--

(i) be in the prescribed form ;

(ii) set forth such particulars as may be prescribed ; and

(iii) be verified in the prescribed manner,

and shall be furnished to the appropriate authority in such manner and within such time as may be prescribed, by each of the parties to such transaction or by any of the parties to such transaction acting on behalf of himself and on behalf of the other parties."

21. Section 269UC requires and provides that no transfer of any immovable property--notwithstanding anything contained in the Transfer of Property Act--in such area and in cases where the value of such property is exceeding five lakh rupees, as may be prescribed, shall be effected except after an agreement of transfer is entered into between the parties, i.e., the vendor and the vendee, in accordance with Sub-section (2) and it should have been entered at least, i.e., minimum four months earlier to the intending date of transfer. Sub-section (2) requires that agreement to be in writing in the form of a statement by each of the parties to such transfer or on behalf of the other parties. Sub-section (3) requires that every statement, i.e., the agreement as referred to in Sub-section (2) and Sub-section (1) shall be in the prescribed form and set forth the particulars as may be prescribed under the rules.

22. A reading of this section per se reveals that no agreement in respect of cases covered by Section 269UC can be made otherwise than as provided under Sub-sections (2) and (3) thereof. This Sub-section (3) further requires such an agreement to be furnished to the appropriate authority within the time as

prescribed and it shall be furnished provided as above. So a reading of this section and the definition of agreement to transfer as given in Clause (a) has to be read along with the requirements as prescribed. So in order that it may be covered by Chapter XX-C and Section 269UC, the requirement is that the agreement referred to shall be in the specified form and it shall fulfil the requirements of the provisions of Section 269UC and clauses (2) and (3). Thus, when the expression "transfer" has been used in this section and is defined and when it provides that it includes allowing of possession of such property to be taken or retained in part performance of the contract, the nature thereof as referred to therein it refers to the agreement entered into in the prescribed form by cases covered by Section 269UC and does not refer to any other.

23. Section 269UC prima facie appears to refer to transfer of property in such areas to which Chapter XX-C applies and to cases where the value exceeds Rs. 5,00,000 or as may be prescribed and it provides that no transfer shall be effected except after an agreement for transfer is entered into between the transferor and the transferee at least three months before the intended transfer.

24. Learned counsel for the petitioners submitted that the agreement is distinct from the statement which is required to be submitted u/s 269UC read with Sub-sections (2) and (3) thereof.

25. If I accept that contention, that there are two agreements, and that the agreement to transfer is different from the one or the statement under Form No. 37-I and if we accept the contention that if possession--is transferred, under that agreement--which is not in the prescribed form, nor in part performance thereof, yet it will amount to be a transfer, then it will lead to an anomaly, anomaly in the sense, that a person may say, that I have entered into agreement to sell, I have handed over the possession and transfer has taken place. Such an interpretation may have a tendency to render the provision of Section 269UC(1) otiose and nugatory.

26. It is a well settled principle of law of interpretation of statutes that when two interpretations are possible, the interpretation which may render a provision otiose or ultra vires should be avoided and that interpretation has to be preferred which saves the provision from being rendered otiose or ineffective or ultra vires. That when there is a bar and prohibition against the transfer of any immovable property and interest, title or right therein or possession thereof by the transferor to the transferee, whether it be by registered sale deed or even under an agreement for sale entered into otherwise than in the prescribed form as required by Sub-sections (2) and (3) of Section 269UC to be submitted or furnished to the appropriate authority, then even the transfer of possession under such an agreement takes place, it cannot be said to be amounting to a transfer, even within the framework of Section 269UA(f) ; this interpretation appears to be in consonance also with the interpretation of the expression "transfer of property" under Sections 6 and 54 of the Transfer of Property Act, that an agreement under general law for sale, will confer no title or interest and

will not amount to be a transfer, as defined in Section 6 read with Section 8 of the Transfer of Property Act.

27. That, Section 269UK clearly puts a restriction on the revocation or alteration of the agreement for transfer of property or alteration or revocation of transfer of such property in respect of which the agreement in Form No. 37-I had been entered into and furnished to the Appropriate Authority. The revocation is only permissible under clauses (a) or (b) of Section 269UK. If we read Section 269UC along with Sub-section (2) of Section 269UK it will per se, show that any transfer of property made in contravention of these provisions is void ; Sub-section (2) of Section 269UK very clearly says any transfer of any immovable property made in contravention of the provisions of Sub-section (1) shall be void. It means it can be made only in accordance with the terms and conditions of the agreement, read with Section 269UC, otherwise it is void. There cannot be two agreements, there can only one agreement and the agreement can come into existence when it has been reduced in writing in the form of statement of parties, that is, transferor and transferee, as prescribed under Sub-section (3) of Section 269UC and that may form the basis for and confer a jurisdiction on the Appropriate Authority to decide the question : Whether the sale consideration mentioned in the agreement is lower by 15 per cent. than the market price, and, if yes, then it is for the authority to determine whether to make compulsory purchase of the property. So even if we include delivery of possession under the agreement, it refers to delivery of possession prior to the execution of a registered sale deed, but under an agreement, as arrived at in the form specified and referred to in Section 269UC when the agreement is furnished which has been arrived at in the prescribed form, and when it is in the form of statement as prescribed that the agreement will automatically be deemed to be integral part of the agreement u/s 269UC, Sub-sections (2) and (3), to be an effective agreement and is to be furnished to the Appropriate Authority. Section 269UC reveals, that it is on such an agreement in the form prescribed containing statements, as prescribed in Sub-sections (2) and (3) of Section 269UC being furnished, then in such cases, the authority concerned has to pass an order u/s 269UD for purchase of the immovable property by the Central Government. That in cases where the authority concerned does not pass an order u/s 269UD(5) within the period prescribed in cases or the order had been made under Sub-section (1) of Section 269UD stands abrogated, u/s 269UH, then the appropriate Authority is required u/s 269UL(3) to issue a no-objection certificate. So looking to the scheme of this Chapter, any agreement to be effective to operate, as transfer by virtue of delivery of possession thereunder, has to be in consonance with the requirements of Sub-sections (2) and (3) of Section 269UC and any possession delivered under any other agreement may not be effective as a transfer either of possession or of title will not be of any effect to confer any right or title or interest or protection in such cases, not only under the Transfer of Property Act, but also under other Acts. When I so observe I find support for my view from the decision of their Lordships of the Supreme Court in the case of DLF Universal Ltd. Vs. Appropriate

Authority and Another, , in which it has been laid and observed as under (page 741) :

" "Transfer" in relation thereto means the doing of anything including by way of an agreement or arrangement which has the effect of transferring or enabling the enjoyment of such immovable property. No transfer of immovable property shall be effected except after an agreement for transfer as defined in Clause (a) of Section 269UA is entered into between the parties, i.e., the transferor and the transferee at least four months before the intended date of transfer. This is so notwithstanding anything contained in the Transfer of Property Act, 1882, or in any other law. This agreement for transfer is now required to be reduced in writing in the form of a statement by both the parties. The statement is to be in Form No. 37-I and is to be furnished to the appropriate authority within 15 days from the date on which the agreement for transfer is entered into ... After an order is made, immovable property vests in the Central Government in terms of the agreement for transfer referred to under Sub-section (1) of Section 269UC. When the order is made u/s 269UD(1) in respect of an immovable property being rights of the nature referred to in Sub-clause (ii) of Clause (d) of Section 269UA, the order shall have the effect of vesting such right in the Central Government and 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. After the statement in Form No. 37-I has been filed u/s 269UC the terms of agreement for transfer cannot be altered unless of course no order has been made by the appropriate authority for purchase of the immovable property by the Central Government or the order if any made stands abrogated under Sub-section (1) of Section 269UH. Any transfer of immovable property made in contravention thereof shall be void . . .

There is no dispute that the agreement for transfer, which has been reduced into writing in Form No. 37-I, pertains to immovable property and amounts to transfer of immovable property within the meaning of clauses (d) and (f) of Section 269UA . . .

An "agreement for transfer" is inter parts and that can always be changed. That the term "agreement for transfer" infact means statement in Form No. 37-I, we can yet clue from Section 269UK which says that no person shall revoke or alter an agreement for the transfer of an immovable property or transfer such property in respect of which a statement has been furnished u/s 269UC. Reference to this statement is certainly to Form No. 37-I. It would mean that the agreement for transfer can be changed by the parties but they have been forbidden from doing so after statement in Form No. 37-I has been furnished . . .

It has, therefore, to be held that this term "agreement for transfer" in Clause (c) of Sub-rule (2) of Rule 48L has reference to the statement in Form No. 37-I."

28. In the present case, as mentioned earlier, the agreement was entered into, on July 29, 1987 ; it was an agreement, no doubt but, not in the form

prescribed, and at that time it could not be in that prescribed form, as at that time, the provisions of Chapter XX-C, were not in operation and were not. in force, in the area of Bangalore Metropolitan City. Then just in the context of the law, as operating then, i.e., the general law, delivery of possession under the agreement of sale could not amount to be a transfer, as, transfer by sale had to be completed as per the requirements of Section 54 of the Transfer of Property Act, by a registered document, and so, the title remained vested with the transferor. No doubt, the transferor and transferee filed that agreement, along with the statement and agreement in the form, as, required by Section 269UC, Sub-section (3) in Form No. 37-I read with Rule 48L. This was furnished and submitted before the appropriate authority on October 30, 1987, it means agreement in the form required, and as per requirement of law, was furnished on October 30, 1987.

29. As I have mentioned earlier, the transaction of sale had not been completed, as per the requirement of law, as it was in operation in July, 1987, that is, under the general law of transfer. So, it could not be said to be a completed transfer under the general law, as then applicable. The agreement had been entered into, no doubt but the transaction could not be completed, because sale is a transfer of ownership and of rights involved therein of the transferor in favour of the transferee for consideration paid or partly paid or partly promised, and law requires the transaction of sale to be completed only by a registered document. So, the mere agreement to sell and to deliver possession under the general law of transfer, did not amount to a completed transaction of transfer and by the time it could be completed under the general law, the provisions of Chapter XX-C were made applicable and the bar contained in Section 269UC did come into operation. So, he had to apply for the no-objection certificate and the no-objection certificate order could be granted with reference to the agreement only on the compliance with the requirement of law u/s 269UC and on furnishing of that agreement and the statement, i.e., the agreement in the prescribed form and when once it has been filed with the agreement in the prescribed form, the authority got jurisdiction to consider the question : Whether the apparent consideration mentioned in the agreement in Form No. 37-I is the proper market value or it is deficient by 15 per cent. or more than the market value, and the authority has therefore, got jurisdiction to enter into that question. When I so observe, I find support for my view from the Division Bench decision of the Gujarat High Court in the case of Shantivan Corporation Vs. Sub-registrar and Others, , where in that case, it has been found no doubt that the possession, in fact, was not transferred prior to June 1, 1989, when the provisions of Chapter XX-C were extended to Surat Urban Development Area to which area the transaction did relate. Apart from that, in that case, the question for consideration had arisen in the context that, the sale deed dated May 29, 1989, was lodged for registration on May 30, 1989, and according to the petitioner, the earnest money had been paid on May 9, 1989, as an advance sum, towards the sale consideration and the remaining money had been paid by various cheques

dated June 15, 1989, June 30, 1989, and July 30, 1989. By that time, the provisions of Chapter XX-C were made applicable. The court in that case opined, that as per terms the possession was not to be transferred prior to or before the last payment of or towards the entire sale consideration was received by the transferor. It further observed (page 591) :

"It will be noticed from the provisions of Section 53A of the Transfer of Property Act that the protection given to the transferee who has taken possession of the property in part performance of the contract is against the transferor or any person claiming under him. Such transferor or any person claiming is debarred from enforcing against such transferee any right in respect of the property of which the transferee has taken possession. Section 53A of the Transfer of Property Act does not provide that, under the circumstances stated therein, a good title passes to the transferee. Rights available under the said provision against the transferor cannot defeat the statutory provisions under which the property can be acquired or statutorily purchased."

30. Their Lordships at page 592, further observed after referring to the provisions of Sections 269UD and 269UE, as under :

"Therefore, since the ownership of the property was not transferred under the said deed before June 1, 1989, there was no sale prior to June 1, 1989, and hence the provisions of Chapter XX-C of the Act applied to this property. Therefore, even if possession was transferred, it would not have affected the provisions of Chapter XX-C enabling the statutory purchase of the property by the Central Government free from all encumbrances in view of the provisions contained in Chapter XX-C of the Act. u/s 269UL of the Act, it is provided that notwithstanding anything contained in any other law for the time being in force, no registering officer appointed under the Registration Act, 1908, shall register any document which purports to transfer immovable property exceeding the value prescribed u/s 269UC unless a certificate from the appropriate authority that it has no objection to the transfer of such property for an amount equal to the apparent consideration therefore as stated in the agreement for transfer of the immovable property in respect of which it has received a statement under Sub-section (3) of Section 269UC is furnished, along with such document, in view of this, the Sub-Registrar was justified in not registering the document which was lodged on May 30, 1989, after June 1. 1989."

31. Their Lordships further observed at page 595, as under :

"We are of the view that the term "transfer" which is defined in Clause (f) of Section 269UA of the Act is to be read in the context of the provisions of Chapter XX-C, the idea being to give full effect to the scheme contained in the said Chapter. The equitable basis of part performance u/s 53A of the Transfer of Property Act is that the transfer, with the transferee having acquired possession of the property in part performance of the contract and having" performed or having been willing to perform part of the contract, cannot be disturbed by the

transferor by claiming any right in respect of the property. The fact that, allowing the possession of such property to be taken or retained in part performance is also included in the expression "transfer" in Clause (f) of Section 269UA so as to prevent even such passing of possession with effect from the date when the Chapter XX-C comes into force would not mean that, where possession is handed over prior to the coming into force of Chapter XX-C by part performance, the provisions of Chapter XX-C should not be applied where the property is being transferred by way of sale. We hold that, having regard to the facts of the case, no transfer of property had taken place prior to June 1, 1989, being the date on which Chapter XX-C of the Act applied to the said area in which the property is situated and, therefore, the appropriate authority has passed the order dated August 26, 1989, in accordance with the provisions of law and the order cannot be assailed on the grounds canvassed on behalf of the petitioner."

32. I further find support for my view from the decision of the Madras High Court in the case of K.K. Anandam Ammal Vs. Union of India and others, as under :

"It is relevant to notice that Sub-section (1) of Section 269UC says that such an agreement should be entered into at least three months prior to the intended date of transfer. The expression "intended date of transfer" used in Sub-section (1) must be read with the earlier portion of the provision "no transfer of any immovable property", which means that the transfer contemplated is the actual transfer by the deed in accordance with law."

33. On behalf of the petitioners much reliance has been placed on the decisions of the Calcutta High Court and the decision of the Delhi High Court. In the case of Multi Rise Towers (P.) Ltd. Vs. Appropriate Authority and Others, relied on by learned counsel for the petitioner, the question before the court whether the provisions of Chapter XX-A of the Income Tax Act, 1961, or of Chapter XX-C, would apply to the transactions entered into between a transferor and a transferee before October 1, 1986, as Chapter XX-C of the Act, was enforced in the area of Calcutta on October 1, 1986. The said agreements were made on September 1, 1986, September 15, 1986 and on September 26, 1986. The statement in Form No. 37EE was registered with the Competent Authority. Chapter XX-C of the Act came into force on October 1, 1986. It is in the context of those facts, the Calcutta High Court, opined that, there could be no doubt, that, the transaction in question is covered by Chapter XX-A. It will appear on the facts, that, not only the agreement was entered into, but the statement in Form No. 37EE was also furnished prior to October 1, 1986 ; so in my opinion, this case is on its own facts, and as such, is not applicable to the present case.

34. The Calcutta High Court in the case of Chandravadan Desai and Others Vs. Appropriate Authority and Others, , which has been referred to by learned counsel for the petitioners appears to have concurred with the Division Bench decision of the Gujarat High Court that, mere agreement of sale would not be arrived at in respect of immovable property, and had opined that, if it were so, Section 269UC would require the parties to enter into a prior agreement in the

form mentioned in sub-section of that section before entering into in the agreement for sale, and such construction would be an absurd construction as the law does not recognise an agreement to agree. In that case, as per the facts of the case the agreement for sale had been entered into in the month in June, 1985, and the said transaction was for acquirement by the petitioner of the full rights of Thirani in respect of the flats to be constructed by the land owner on the real property of estate, and under those agreements for sums mentioned therein, the land owners were to construct flats (four) and to hand over possession thereof to the petitioners in the said case. The court observed that the document and the transactions were sufficiently complete and irrevocable and final for grant of all rights to title and interest of transfer in the four flats, so as to take the transaction out of the description of a mere agreement for sale, and to bring it within the express words of Section 269AB(1)(b). Their Lordships also observed that the agreement of June, 1985, could not be entered into in the form contemplated in Section 269UC of Chapter XX-C, because Chapter XX-C was not in the statute book at all till October 1, 1986. In my opinion, this case is also a decision on its own facts and is of not much help to the petitioner instead it supports my view, if at all that mere agreement of sale would not be a right in respect of immovable property or transfer of right, or title in immovable property. On behalf of the petitioners much reliance has been placed on the decision in the case of Sanjeev Sethi Vs. Union of India and Others, . That case by itself is distinguishable on the facts thereof as it appears from a perusal of paragraph 10 of the decision in Sanjeev Sethi Vs. Union of India and Others, , which reads as under (page 345):

"The main contention of learned counsel for the petitioner is that the provisions of Chapter XX-C of the Income Tax Act are not applicable in the present case. The submission of Mr. Syali is that, in the instant case, a valid agreement had been entered into between the petitioner which expression will include his predecessor in interest, viz., his brother Navneet Sethi, and the other flat-buyers on the one hand and Competent Builders on the other. This agreement was entered into prior to October 1, 1986, with effect from which date Chapter XX-C was incorporated in the Income Tax Act, 1961. It is submitted that the said agreement was covered by the provisions of Chapter XX-A and, according to Section 269RR, the provisions of this Chapter were to be applicable in relation to the transfer of any immovable property made before September 30, 1986. The word "transfer" is defined in Section 269A(h) and the same has to be read along with the definition of the word "immovable property" occurring in Sub-clause (e) which includes any rights of the nature referred to in Clause (b) of Sub-section (1) of Section 269AB. The provisions of Section 269AB, inter alia, refer to a transaction by way of an agreement whereby any person acquires any right in respect of any building which has been constructed or is to be constructed even if that right is not by way of transaction of sale, exchange or lease, etc. In other words, the letters of allotment which were issued by Competent Builders in favour of the petitioner and the other flat buyers would, admittedly, fall within

the ambit of Chapter XX-A of the said Act. This being so, the contention of Shri Rajendra, on behalf of the respondents, was that the original agreement between the buyers and Competent Builders had come to an end and there was a fresh agreement which had been entered into between the buyers and the Ansals when the letters of allotment were issued in 1990. Shri Rajendra further submits that, in the fresh letter of allotment which has been issued, there is no reference to the earlier agreement which had been entered into with competent builders nor were the earlier agreements registered under the provisions of Rule 48L of the Income Tax Rules. He further submitted that, in any case, the petitioner, Sanjeev Sethi, was not a party to the original agreement of 1979 and, therefore, he cannot be regarded as being one of the original allottees"/buyers" and his case, in any case, will be covered by the provisions of Chapter XX-C."

35. Their Lordships further observed at page 347 as :

"It is no doubt true that, in the tripartite agreement, the flat-buyers are not a party but this agreement does recognise the existence of the flat-buyers because it provides that the flat-buyers will be paid back the amount by Smt. Satyawati Dhawan."

36. Thereafter, their Lordships at page 348, observed :

"We are unable to agree with Shri Rajendra that Competent Builders or Ansals were not the agents of Smt. Satyawati Dhawan. The two builders, apart from being financiers, had powers of attorney executed in their favour and a power of attorney is always regarded as an agent of the principal. The attorney is empowered to have dealings with third parties but such dealings are always for and on behalf of the principal. The principal and the third parties, in the present case, never changed and, therefore, the letters of allotment which were issued on October 10, 1990, were merely continuation of the earlier letters. The letters did change some of the terms and conditions of the earlier allotment but it is not possible for us to come, to the conclusion that these letters of allotment of October 10, 1990, amounted to novation of the contract. Novation of contract, in its very nature, postulates the extinguishment of an earlier contract and the coming into existence of a fresh one. This is not the case here. The earlier agreement is being given effect to and merely because there is a change in some of the terms specifically with regard to the rate and the area, it would not result in a new agreement coming into existence. Just as increasing the rent would not bring into existence a new tenancy, similarly increasing the rate would not bring about a new agreement. In fact, the original rate which was agreed to be paid by the flat-buyers was only Rs. 250. In 1988, this was agreed to be increased to Rs. 700. This agreement was with Competent Builders. It is two years thereafter that there was an increase from Rs. 700 per sq. ft. to Rs. 850 per sq. ft.

In our opinion, therefore, the provisions of Chapter XX-C were not applicable to the present case and it is only the provisions of Chapter XX-A which were applicable."

37. That was a case in which the question was only to the effect whether that particular case will be governed by the provisions of Chapter XX-A or XX-C.

38. Learned counsel for the petitioner no doubt, invited my attention to annexure C, and submitted that, in the form submitted under Rule 48L, that is Form No. 37-I, under column 84, it is mentioned, possession taken over as part performance of the agreement. In column No. 3, which is to the effect, person in occupation of the property sought to be transferred as detailed, the name mentioned is Bhoruka Finance Corporation. A question arises when this form had been submitted on October 30, 1987, if possession would have been handed over under the original agreement dated July 29, 1987, then on the date when this form was furnished, the name of the person in occupation should not have been entered as Bhoruka Finance Corporation, instead the name of person in possession would have been Chartered Housing. This another aspect, which creates doubt as to the case of the petitioners' transferors, that the transferor had handed over possession of the property to the transferee. Not only this, in the agreement which is alleged to have been entered into on July 29, 1987, no doubt, there is mention in paragraph 6, that the vendor has placed the purchaser in vacant possession as part performance of the contract and the purchaser acknowledged having received possession. If this allegation had been correct, then there was no question of the name of Bhoruka Finance Corporation, that is, the seller-petitioner having been incorporated in column No. 3, which requires the filling up of the name of the person in possession on the date the statement or agreement in Form No. 37-I was filed. Further, I find from paragraph 9 of the agreement annexure B in Writ Petition No. 12389 of 1993, the clause reads, the vendor shall produce the following power of attorney from all partners, vendors' firm of the scheduled property, even sale or rectification of scheduled property within 15 days from this date. (2) The general power of attorney for sale or construction or management of the property in favour of the purchaser and/or their representatives which shall be handed over on the payment of the balance of sale price. What was the need for seeking general power of attorney if the transfer had been completed, The general power of attorney for construction or management of the property clearly indicated that, even if possession be taken to have been handed over, the possession would be deemed to be on behalf of the vendor and not of the vendee in his own right under an agreement for sale conferring right u/s 53A of the Transfer of Property Act. A person can act on behalf of others and manage the property, on behalf of the owner, no doubt as an agent, taking a general power of attorney. This clause further reveals that possession had not been delivered in pursuance of the agreement. Even clauses 22 and 23, lead me to come to the conclusion that possession of the property had not been delivered, really, to the vendee by the vendor before the coming into force of Chapter XX-C and para. 22 of the agreement reads :

"In the event of default on the part of the vendor to sell the scheduled property after complying with the aforesaid terms, they shall return the advance of Rs. 5,000."

39. Clause 23 reads :

"In the event of default on the part of the purchaser to purchase the scheduled property after complying with the aforesaid terms and conditions they shall forfeit, the advance of Rs, 5,000 to the vendors."

40. These two clauses are silent about possession. If the purchaser fails to purchase, no doubt, he may forfeit the advance made or if the vendor fails to sell the property he may return the sum of Rs. 5,000 which had been paid to him. But, there is nothing in the agreement to indicate whether the vendor will be entitled to get back possession of the property itself and whether the vendee would have to hand over (return) possession to vendor on failure of the agreement for sale. When the precaution was taken about advance either being returned or being forfeited, there is no explanation as to why the agreement is silent as to this aspect, what will be the position about possession in such a case or situation. It appears to me from these circumstances, that had possession really been delivered to the vendee under the agreement annexure B dated July 29, 1987, there definitely would have been a clause for return of possession by the vendee to the vendor, i.e., making the vendee to be liable to give back the possession of property to the vendor. Taking all these circumstances, as I have referred to with reference to annexure C, the particulars of the agreement which indicate the person who is in possession i.e., the vendor Bhoruka Finance Corporation to be in possession and the other circumstances referred to above, it appears to me quite clear that, actually no possession has been handed over or had been handed over to the vendee-respondent No. 3, in Writ Petition No. 12389 of 1993, namely, the petitioner in Writ Petition No. 7753 of 1993. When I come to this conclusion, even otherwise as well, and when possession is not found to have been delivered by the vendor to the vendee in this case, even if it is under the agreement of sale dated July 29, 1987, the benefit of Section 53A of the Transfer of Property Act cannot be available, even if the definition Section 269UA(f) is applied, it cannot be said that this is a case of transfer completed earlier to October 1, 1987. Thus considered, in my opinion, the petitioners have failed to establish their case and the documents filed with the petitions, prima facie do not establish that possession had been granted or delivered by the vendor petitioner of Writ Petition No. 12389 of 1993, to the petitioner of Writ Petition No. 7753 of 1993, namely, to Chartered Housing. This being so, I hold that, the contention raised by the petitioner's counsel that the provisions of Chapter XX-C did not apply to the present case is devoid of merit and has got no substance, and has to be rejected and it is hereby rejected.

41. Learned counsel for the petitioners further contended that the appropriate authority concerned has not properly determined the market value of the property as relevant material has not been taken into account, while irrelevant one has been taken into account.

42. That as regards this second contention, I have perused the judgment and order and I find the authority concerned has considered the relevant material

placed before it and discussed the same in detail and has indicated his basis for having arriving at the finding that the estimated market rate on the relevant date, i.e., the date of agreement would have been Rs. 200 per sq. ft. The authority has also taken into consideration the illustrations given by the petitioners vide annexure I to their reply to the show-cause notice in the course of arriving at the conclusion, if the apparent sale consideration has been lower and less by more than 15 per cent. than the market value on the relevant date, i.e., the date of agreement, i.e., July 29, 1987, when there did not exist any prohibition against construction of multistoried buildings. It has not been shown as to what specific material was not taken into account, or what irrelevant material has been taken into consideration.

43. That the authority has considered the material and illustrations and discussed the question of the valuation shown by the petitioner with reference to auction of the flats by the Corporation and has arrived at a finding on a pure question of fact on the basis of appreciation of evidence. The jurisdiction of this court under Article 226 of the Constitution is not that of a court of fact or of the first appellate court. At this juncture, it will be appropriate to refer to the observations of their Lordships of the Supreme Court in the case of *In the Matter of the Appropriate Authority and Another Vs. Smt. Sudha Patil and Another*, , where their Lordships have laid down as under (page 127) :

"So far as the first question is concerned, the parameters for exercise of supervisory jurisdiction of the High Court under Article 226 of the Constitution, while examining the decision of an inferior Tribunal, has no connection with the question whether an appeal is provided for against the said order of the Tribunal under the statute in question. As has been held in several decisions of this court, the power being supervisory in nature in exercise of such power, a finding/ conclusion of an inferior Tribunal can be interfered with if the High Court comes to the conclusion that in arriving at the conclusion the Tribunal has failed to consider some relevant materials or has considered some extraneous and irrelevant materials or that the finding is based on no evidence or the finding is such that no reasonable man can come to such a conclusion on the basis of which the finding has been arrived at. This being the settled position, it is difficult to sustain a plea that when the order of the Tribunal does not provide for an appeal, the High Court can get its jurisdiction enlarged and exercise an appellate power while examining the correctness of the conclusion arrived at by such Tribunal."

44. Thus considered, in my opinion, both the petitions are devoid of merit, and as such, are hereby dismissed. Parties to bear their own respective costs.