(2001) 12 DEL CK 0038

In the Delhi High Court

Case No : Civil Misc. No. 11664 in Civil Writ Petition No. 5613 of 1993 13 December 2001

Chiranji Estates (P) Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 13-12-2001

Acts Referred:

Citation : (2002) 173 CTR 449 : (2002) 123 TAXMAN 287

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Full Bench

Advocate : Yogesh R. Jain and Sudhir Makkar, for the assessed R.D. Jolly and Ajay Jha, for the Revenu, for the Appellant;

Judgement

By the Court

The petitioner filed this petition being aggrieved by the order dated 26-11-1993, passed by the respondent No. 2 whereby the necessary permission for sale of property bearing plot No. 3, Block-A, East of Kailash, New Delhi, under the provisions of section 269UD of the Income Tax Act was declined to the petitioner and an order of pre-emptive purchase was made by the respondents.

2. The petitioner entered into an agreement of sale dated 28-8-1993, with the respondent No. 3, the petitioner being the vendee and the respondent No. 3 being the vendor. The petitioner and the respondent No. 3 applied for issuance of ''No objection certificate'' in respect of the above-mentioned property from the respondent No, 2, The respondent No. 2 vide its order dated 26-11-1993, while declining to grant permission for sale, passed preemptory purchase order in respect of the property,

3. The petitioner filed the present petition which was allowed vide order dated 17-12-1997 (reported as 1. Mrs. Kailash Suneja (C.W. NO. 5220 of 1993 AND C.M. No. 1988 of 1994) 2. Shatabdi Trading and Investments Pvt. Ltd. and others. (C.W. NO. 4153 of 1993 and C.M. No. 3199 of 1994) 3. Chauhan Builders

and Constructions Pvt. Ltd. (C.W. NO. 4589 of 1994) 4. Shashi Sehgal (C.W. No. 3726 of 1994) 5. R. C. Chawla and Another (C.W. No. 3884 of 1994) Vs. Appropriate Authority and Others. DR. A. K. Garg and Another (C.W. No. 3139 of 1993) v. Kailash Nath and Associates and Others. Chiranji Estates Pvt. Ltd. (C.W. No. 5613 of 1993) v. Union of India and Others. Express Towers Pvt. Ltd. and Another (C.W. No. 4357 and C.M.S. Nos. 7857 of 1993, 2043 of 1994 and 1811 of 1995) v. Deputy Commissioner of Income Tax and Others. Mahesh Chandra Agarwal and Another (C.W. No. 3594 of 1990 and C.M. No. 6632 of 1993) v. Union of India and Others., whereby order of preemptory purchase dated 26-11-1993, was quashed by the court and the respondents were directed to issue ''No objection certificate''. As the respondents failed to issue ''No objection certificate'', the petitioner filed Civil Misc. 3570/98 with the payer to direct respondent No. 2 to issue ''No objection certificate''. However, at the time of arguments respondents submitted that the department had filed a Special Leave to Appeal in the Supreme Court and the case was adjourned sine die with liberty to revive on decision of the Supreme Court. The appeal of the respondents was dismissed by the Supreme Court by judgment dt 7-8-2001 (reported as Union of India and Another Vs. M/s. Chiranji Estate (P) Ltd., without any observation to the effect that the respondent could charge interest on the amount paid by it as a condition precedent of issuing ''No objection certificate'' and as directed by this court in its judgment dated 17-12-1997.

4. After dismissal of the appeal by the Supreme Court, the petitioner again sought ''No objection certificate'' from the respondents vide its letter dated 22-8-2001. Instead of issuing the same, the respondents vide its letter dated 18-9-2001 asked the transferor, i.e., respondent No. 3 and the transferee, i.e., the petitioner to deposit the apparent consideration along with interest @ 18 per cent per annum in the account from the date of receipt of the money till the money was deposited back In the Central Government Account as a condition precedent for issuing of ''No objection certificate'', On receipt of this letter, the petitioner vide its letter dated 5-10-2001, submitted that during the pendency of the writ petition, the respondent No. 2 paid the total sale consideration of Rs. 70 lakhs to the transferor and the transferee and took possession of the property in question. It is the case of the petitioner that the officers of the respondent No. 2 are residing there and enjoying the said property and demand of interest is made only to delay the issuance of ''No objection certificate''. Since the writ petition has been allowed by this court and the appeal filed by the respondents before the Supreme Court stand dismissed and as the petitioner herein is ready and willing to pay the sale consideration of Rs. 70 lakhs, by this application the petitioner prays that respondent No. 2 be directed to issue ''No objection certificate'' on payment of Rs. 70 lakhs and no interest be charged,

5. The point at issue is squarely covered by decision of the Division Bench of this court in the case of Jaspal Kaur Ors. Vs. Union of India, . The relevant portion of this case reads as follows :

"The amount of balance consideration paid by the Appropriate Authority to the vendee was in accordance with their statutory liability on account of having passed an order of preemptory purchase of the property. At best it can be said that the purchasers did not have to part with the amount of Rs. 13.6 lakhs which was the balance sale consideration and this money remained with them. In our view deprivation of the use and fruits of the property to the purchasers, i.e., the petitioners herein was a greater loss to them as compared to the meagre amount of interest whirly assembly they could have earned on that amount. The purchasers had to keep the amount always ready and available and they could not have utilised the amount for other investments. We feel it would be inequitable to ask the purchasers to pay any interest whatsoever on this amount. As already noted the amount of Rs. 13.5 lakhs has already been deposited by the petitioners with respondent No. 2 on 23-4-1999. The prayer of the respondent No. 2 for award of interest on the amount of Rs. 13,50,000 is accordingly rejected. Respondent No. 2 is directed to issue the "No objection certificate" in terms of section 269UL(3) of the Income Tax Act forthwith, not later than four weeks from the date of this order and simultaneously deliver the possession of the property to the vendee."

6. The aforesaid decision is binding on this Bench. In that view of the matter we allow this writ petition and direct and dispose of the same and direct the petitioner to deposit a sum of Rs. 70,00,000 within a period of three weeks from today with the Appropriate Authority whereupon ''No objection certificate'' in terms of section 269UL(3) and possession of the property along with title deeds as well as other papers, if any shall be handed over within two weeks thereafter.

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