

(1986) 03 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Appeal No. 4 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Mela Singh

RESPONDENT

Date of Decision : 11-03-1986

Acts Referred:

Income Tax Act, 1961 — Section 269D(1), 269D(2)

Citation : (1986) 57 CTR 176 : (1986) 161 ITR 78

Hon'ble Judges : S.P. Goyal, J;Pritpal Singh, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant;

Judgement

Pritpal Singh, J.—Having arisen out of the same order of the Income Tax Appellate Tribunal, Amritsar, the present six appeals (income tax Appeals Nos. 4 to 9 of 1978) u/s 269H of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), are being disposed of together.

2. The facts leading to these appeals are that by a registered sale deed dated May 5, 1973, Mela Singh Surjit Singh, Prakash Singh, Smt. Gian Kaur and Smt. Gurcharan Kaur transferred a vacant plot of land measuring 1,865 square yards situated in Krishna Nagar, Amritsar, in favour of Jagdish Chand Bhatia, Gopal Dass and O.P. Mani, for an ostensible consideration of Rs. 52,000. The Competent Authority, who was the Inspecting Assistant Commissioner of Income Tax (Acquisition Range), Amritsar, got the matter investigated in respect of the fair market value of the plot in dispute. The Income Tax Inspector who was deputed to make the investigation reported that the fair market value of the plot was much more than the sale price entered in the sale deed. On receipt of this information, the Competent Authority initiated acquisition proceedings under Chapter XX-A of the Act. The preliminary notice envisaged u/s 269D of the Act was duly published in the Official Gazette dated November 10, 1973. The notice was published well within the period of nine months from the end of the month in which the sale deed was registered, as prescribed in Section 269D(1). However,

there was default in the service of notices to be issued to the parties to the transaction required u/s 269D(2) of the Act. Notice on Smt. Gian Kaur, one of the transferors was not served at all. The notices upon the other parties to the transaction were served after the expiry of the period of nine months. Objections against the proposed acquisition were filed only by one of the transferees, namely, O.P. Mani. Rejecting these objections, the Competent Authority passed an order for acquisition of the disputed plot. Against this order of acquisition, the vendors and the vendees of the plot filed six appeals before the Income Tax Appellate Tribunal. The Tribunal came to the conclusion that due to the non-compliance of the provisions of Section 269D(2) of the Act, the acquisition proceedings initiated by the Competent Authority became null and void. In pursuance of this finding, the Tribunal accepted the appeals and set aside the order of acquisition passed by the Competent Authority. Having accepted the appeals on a preliminary objection regarding the validity of the initiation of the acquisition proceedings, the Tribunal did not enter into the merits of the case. It is against this order of the Appellate Tribunal that the instant six appeals have been filed by the Commissioner of Income Tax, Amritsar.

3. The impugned order of the Income Tax Appellate Tribunal has necessarily to be set aside as it runs counter to a Full Bench judgment of this court in Commissioner of Income Tax Vs. Amrit Sports Industries, . In that case too, in the acquisition proceedings, notice as contemplated by Section 269D(1) of the Act was duly published in the Official Gazette but the provisions of Section 269D(2) had not been complied with. The Full Bench ruled that the plain language of Section 269D of the Act lays down that the Competent Authority shall initiate acquisition proceedings by notice to that effect published in the Official Gazette. Therefore, the conclusive step which in essence amounts to the assumption of jurisdiction for acquisition is spelt out by the law itself. When the language of Section 269D(1) itself declares when and how initiation of the acquisition proceedings is to be done, then, despite this mandate, the initiation cannot be said to be incomplete till the issue of notices to the transferor, the transferee, the occupants and persons interested. It was observed that viewed in the correct perspective, Sub-section (1) of Section 269D is the primary and the main provision for the initiation of acquisition proceedings. Sub-section (2) is a provision subsidiary and supplementary to Sub-section (1). The Full Bench considered it elementary that where public notice by publication in the Official Gazette is provided and added thereto individual notices or other modes of publication are also provided, then the latter are secondary in nature. The notices prescribed under Sub-section (2) were considered merely reflections and copies of the notice originally published in the Official Gazette under Sub-section (1). A view was taken that the law provides primarily for the publication of the notice in the Official Gazette and then a replica thereof is to be served on individuals or published as laid down in Sub-section (2)(b), It was held that an overall analysis of the Section discloses that apart from publication in the Official Gazette, the law also provides for publication in the locality where the property is

situated as also affixing a copy thereof in the office of the Competent Authority. These are in the nature of public notices supplemental to the publication in the Official Gazette which plants presumptive knowledge of the same to every one concerned. Apart from these, a further mode of service of notice is provided on the transferor, the transferee, the occupant and other persons interested in the property if known to the Competent Authority. These are subservient and supplemental provisions and the initiation of proceedings is complete with the publication in the Official Gazette. It was authoritatively ruled that the assumption of jurisdiction by the Competent Authority arises from such publication whereas the proceedings u/s 269D(2) being procedural and supplementary are in no way jurisdictional. Any defect or irregularity therein consequently cannot affect the assumption of jurisdiction by the Competent Authority and, therefore, in no way vitiates the initiation of proceedings, once validly done. Taking this view, the Full Bench held that a default in service on the persons interested or even of publication under Sub-section (2)(b) does not affect the jurisdiction of the Competent Authority but at the very highest pertains to the exercise of the power thereunder. It was considered well-settled that an erroneous exercise of power does not vitiate the proceedings, but merely calls for correction, be it in the appellate, revisional or any other jurisdiction. On the ultimate analysis, it was held that an initiation of the proceedings for acquisition of the immovable property in certain cases of transfers to counteract evasion of tax under Chapter XX-A and the consequent assumption of jurisdiction by the Competent Authority is complete by the publication of the notice in the Official Gazette u/s 269D(1). Any procedural defect in compliance with Sub-section (2) would not affect the jurisdiction of the Competent Authority and would not vitiate the whole of the proceedings under this section.

4. In the face of this Full Bench judgment of this court, the six appeals are allowed, the impugned order of the Income Tax Appellate Tribunal, Amritsar, dated January 24, 1978, is set aside and the case is remitted to the Appellate Tribunal for disposal on merits in accordance with law. No order as to costs.