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**(1996) 09 PAT CK 0041**

**In the Patna High Court**

**Case No :** Appeal from Appellate Order (M.A. Nos.) 279, 280, 281, 282, 283, 284, 285, 286, 287 and 288 of 1980

Competent Authority (Acquisition)

APPELLANT

Vs

Smt. Lalita Todi and Others

RESPONDENT

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**Date of Decision :** 30-09-1996

**Acts Referred:**

**Citation :** (1996) 09 PAT CK 0041

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## **Judgement**

D.P. Wadhwa, C.J.—This and connected appeals are directed against the order dated September 26, 1980, of the Appellate Tribunal passed u/s 269G of the Income Tax Act, 1961 (for short, "the Act"), setting aside the order, passed by the competent authority u/s 269F of the Act by which order the competent authority directed acquisition of property consisting of 17.85 kathas of land and building bearing house No. 567/409 (new)/316 (old), Circle No. 6, Ward No. 2 at Exhibition Road, Patna, which was transferred to the appellants in all these appeals in small plots by Vijay Kumar and others. The order of the competent authority is dated November 11, 1974, and passed after obtaining the approval of the Commissioner of Income Tax, Bihar I, Patna, as required under Sub-section (6) of Section 269F of the Act.

2. Earlier when the order of acquisition had been passed by the competent authority, the transferee filed appeals before the Appellate Tribunal u/s 269G of the Act which were all dismissed and against that the transferees filed appeals in this court u/s 269H of the Act which were allowed by judgment dated September 25, 1978, by a Bench of this court and is in Smt. Lalita Todi and Others Vs. Commissioner of Income Tax, . By this judgment, the decision of the Appellate Tribunal was set aside and the matter remanded back to the Appellate Tribunal to pass fresh orders in accordance with law keeping in view the observations made in the judgment. After the remand, the Appellate Tribunal passed the impugned order dated September 26, 1980, setting aside the acquisition proceeding. This time the competent authority is aggrieved and has filed these appeals in this court u/s 269H of the Act. This section authorises the Commissioner of Income

Tax or any person aggrieved by an order of the Appellate Tribunal u/s 269G to prefer an appeal to the High Court on any question of law. It appears to us that these appeals filed by the competent authority are incompetent. The appeal could be filed only by the Commissioner or any person aggrieved. It cannot be said that the competent authority is an aggrieved person. The person aggrieved here will be the transferor or the transferee or any other person claiming interest in the property. Since we have heard arguments on the merits of the case as well we will not pass any final order on the maintainability of the appeal.

3. These acquisition proceedings have arisen under Chapter XX-A of the Act which Chapter was inserted in the Act by the Taxation Laws (Amendment) Act, 1972, with effect from November 15, 1972. This Chapter has now ceased to operate in respect of transfer of immovable property made after September 30, 1986, when simultaneously a new Chapter XX-C was inserted. At this stage, we may refer to Circular No. 455 (see Emerald Paints and Colour Products (P.) Ltd. Vs. Commissioner of Income Tax, , dated May 16, 1986, issued by the Central Board of Direct Taxes which is as under :

" Circular No. 455 dated 16th May, 1986.

Subject : Acquisition of immovable properties under Chapter XX-A of Income Tax Act, 1961--Guidelines--Regarding.

The Finance Bill, 1986, has proposed that no proceedings shall be initiated u/s 269C of the Income Tax Act, 1961, in respect of a property transferred after the 30th day of September, 1986. The Bill also proposes to insert Chapter XX-C providing for purchase by Central Government of immovable properties in certain cases of transfer.

With a view to achieve early finalisation of proceedings under the existing Chapter XX-A of the Income Tax Act, 1961, the Board has decided that with effect from 1st April, 1986, acquisition proceedings u/s 269C will not be initiated in respect of an immovable property for which the apparent consideration is Rs. 5 lakhs or less and that where acquisition proceedings have been initiated by issue of notice u/s 269D, the proceedings will be dropped if the apparent consideration of the immovable property is below Rs. 5 lakhs.

Yours faithfully, (Sd.) (A. K. Singh), Under Secretary, Central Board of Direct Taxes.

(F. No. 316/38/85-WT)."

This circular was noticed by the Delhi High Court in Commissioner of Income Tax Vs. Rattan Chand Sood and other, .

4. Considering the value of the apparent consideration in this case, Mr. Rastogi, learned counsel for the appellant, submitted that the aforesaid circular would apply and the Revenue could not press the appeal.

5. To know if the circular does apply we may briefly refer to some salient facts of

the case. The property in question was transferred to various persons under 13 different sale deeds executed on August 30, 1973, for an aggregate consideration of Rs. 1,85,000. These sale deeds were registered on September 5, 1973. However, according to the valuation report, the value of the property was estimated to be Rs. 6,58,000. In this connection, we may refer to the definition of "fair market value" as contained in Clause (d) of Section 269A of the Act falling in Chapter XX-A. It means the price that the immovable property would ordinarily fetch on sale in the open market on the date of execution of the instrument of transfer of such property. Notices u/s 269D of the Act were issued on January 31, 1974, under which the transferors and the transferees were called upon to show cause as to why the immovable property transferred be not acquired by the Revenue authorities. The transferees contended that there were various encumbrances and that the title of the transferors was in dispute in a civil suit and the property was also fetching low rent and protected by eviction and rent restriction laws. One Champa Devi also claimed to be the second wife of Srinivas Ram, the original owner, who was dead. The sale deeds had been executed by the children from the other wife of Srinivas Ram. It was during the course of litigation that the property was transferred. It was then submitted that the entire holding fell under the Patna Development Extension Scheme which would result in reduction of the area of the holding by 20 per cent. The transferees also did not get vacant physical possession of the property. The competent authority did not agree with the various contentions raised before it and was of the view that the consideration reflected in the instruments of transfer was not true and concluded that the fair market value of the property exceeded the apparent consideration mentioned therein and passed order for acquisition of the property. That suit between the heirs of Srinivas Ram was ultimately compromised and a decree dated June 10, 1975, passed. The transferees claimed that in order to buy peace they got sale deeds executed from Champa Devi and her children as well for this very property and paid consideration of Rs. 1,01,000 to them. Since the compromise decree was passed after the order dated November 11, 1974, of the Competent Authority, the Appellate Tribunal in its first order had refused to take into consideration subsequent events and had dismissed the appeals by order dated September 21, 1976.

6. Various contentions were raised before the Bench challenging the acquisition proceedings and the order dated September 21, 1976, of the Appellate Tribunal. The Bench, as noted above, set aside the order of the Appellate Tribunal and remanded the matter.

7. Mr. Justice S.K. Jha, who wrote the leading judgment, was of the opinion that considerations germane to the ascertainment of fair market value had not been taken into account either by the competent authority or by the Appellate Tribunal. The Tribunal was, therefore, directed to rehear the parties afresh after giving them a reasonable opportunity to adduce such evidence or such relevant materials as the parties might produce before it and decide the cases in

accordance with law keeping in view the observations made in the judgment. The main contention that weighed with the Bench was on the definition of fair market value. On this S.K. Jha J., observed as under (at page 47 of 123 ITR) :

"The price which an immovable property may fetch if sold in the open market would be the price that a prudent purchaser would be willing to pay necessarily taking into account the extent and the quality of title as well as all the factors which tend to push up the value or depress it. The material elements which ought to be taken into consideration in transfers of immovable property of the instant nature must inevitably embrace within them the considerations of a reasonable purchaser. Some of such elements in the instant case are that the property in question is in a damaged condition in the occupation of a tenant at Rs. 116 per month as rental, the fact that in the State of Bihar a tenant is in many cases protected against eviction and enhancement of rent under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, the depressing effect of the imminent risk of acquisition of about 4,000 square feet of the property in question for road development by the Patna Improvement Trust on its price, the protracted litigation against the tenant for having him evicted from the house, cost of hypothetically demolishing the house, developing the property for commercial purposes and so on and so forth. These are factors which, in my view, are germane to the determination of fair market value, the price that a prudent purchaser would be willing to pay for the property in question.

It goes without saying that the estimate of the competent authority must not be arbitrary or capricious. The fair market value is the best price which a vendor can reasonably obtain in the circumstances of a particular case. What is required to be done for the ascertainment of such market value is to ascertain the price which a willing, reasonable and prudent purchaser would pay for the property. In ascertaining that, all factors having any depressing or appreciating effect on the value of the property have to be taken into account. If considerations germane for such ascertainment have not been taken into account or if irrelevant considerations have entered the inquiry, the finding becomes vitiated in law. This is the error luminous in the orders of the competent authority as well as of the Tribunal. The impugned judgments are, therefore, vitiated."

B.P. Jha J., in his concurring judgment, observed that it was necessary for the competent authority to enquire in respect of the extent of share passed on by the transferor to the transferee. If this enquiry was not made, then it would be difficult for the competent authority to acquire the property. He gave the following example (at page 53 of 123 ITR) :

"Suppose A has transferred 1/3rd share in a house, the competent authority shall acquire only 1/3rd share in the house and only such share shall vest in the Central Government. If the competent authority does not make any enquiry as to the extent of the share held by the transferee, then an anomalous position will arise and the competent authority will have difficulty in acquiring the property. The competent authority will also find difficulty in taking possession of the

property. Hence, in order to check these difficulties, it is mandatory on the part of the competent authority to decide the extent of share held by the transferee in the property which is proposed to be acquired by the competent authority. Hence, I direct the competent authority and the Appellate Tribunal to keep this view in mind before deciding the case. "

In K.V. Kishore and another Vs. Appropriate Authority and others OVERRULED, , which is a judgment under Chapter XX-C of the Act, one A. Srinivasan, who had been allotted a certain piece of land by the City Improvement Trust Board, Bangalore, died leaving behind five heirs. A family arrangement was arrived at giving varying unspecified shares in the land to different heirs. All the heirs joined together and sold the land. The agreement of sale recited that the vendors had agreed to the execution of a single deed as a matter of convenience and the share of each of the vendors was less than Rs. 10 lakhs but the total value of the consideration was Rs. 20 lakhs. Acquisition proceedings were initiated u/s 269UD of the Act. These were challenged in the Madras High Court by filing a writ petition. The court held that the heirs were individual owners of definite shares in the property and each one could deal with only his respective share and he could not deal with the share of another. The property which so fell to the share of each individual would come definitely within the definition of the words "immovable property". Such a sharer was entitled to transfer his immovable property to a third person. The court held that merely because a plurality of such individual owners joined together to enter into one single agreement to transfer their respective shares in favour of one or more persons, that would not make any difference to the main issue that what each transferred was his definite share of the property. The court further observed that it was not in dispute that the value of each such share was less than Rs. 10 lakhs and, therefore, Section 269UD was inapplicable. The learned single judge of the High Court quashed the order of acquisition.

8. After the remand by the High Court, the Appellate Tribunal by a detailed judgment held the order of the competent authority dated November 11, 1974, to be illegal. It noted that the property was encumbered on account of various factors which were not taken into account while arriving at the fair market value by the Government valuer. The Tribunal rejected the contention of the Revenue that the compromise decree was a collusive one. It noted that despite all opportunities having been granted to counsel for the Revenue no evidence was brought on record in support of the contention that the compromise decree was a collusive one. Under the compromise decree, Champa Devi and her children were given 70 per cent. share in the property and Vijay Kumar, son of Srinivas Ram, his wife and two children were held to be owner of 30 per cent. share in the property. The Appellate Tribunal, therefore, observed that Vijay Kumar, his wife and two sons could transfer only 30 per cent. share in the property and assuming that the fair market value of the property was Rs. 6,58,000 this 30 per cent. on a total consideration of Rs. 1,85,000 could not be held to be not the fair market value of the property. The Appellate Tribunal also noticed that there were

as many as 12 sale deeds transferring various areas of the land, surrounding bungalow and outhouses of the property and that no proceedings were initiated for acquisition of the share in the land sold under three sale deeds while bungalow and outhouses were sold jointly to all the purchasers under a sale deed. Seventy per cent. share of Champa Devi and her children was subsequently purchased by the transferees by sale deed dated November 22, 1973, for a consideration of Rs. 1,01,000, No proceeding under Chapter XX-A was also initiated on the basis of this sale deed. The Appellate Tribunal also took note of the fact that except for one sale deed, property under which was not the subject-matter of acquisition proceedings, all the sale deeds were for a consideration of less than Rs. 25,000 each. Therefore, it was also of the view that proceedings for acquisition under Chapter XX-A could not have been initiated as these could be initiated only where the competent authority had reason to believe that any immovable property of a fair market value exceeding Rs. 25,000 had been transferred.

9. Mr. Rastogi, learned counsel for the appellant, supported the order of the competent authority, but we think it was hard for him to do that. It could not be said that considerations which prevailed with the Appellate Tribunal in setting aside the order of the competent authority were not in accordance with the provisions contained in Chapter XX-A of the Act. To avoid proceedings for acquisition under Chapter XX-A the fair market value of the immovable property transferred by way of sale has to be the same as the apparent consideration mentioned in the instrument of transfer subject of course that the proceedings under the Chapter would not be initiated unless the fair market value exceeded the apparent consideration by more than 15 per cent. of such apparent consideration. Before starting proceedings under this Chapter the other factor which the competent authority has to consider is that the fair market value was not reflected in the instrument of transfer with the object of facilitating the reduction or evasion of the liability of the transferor to pay tax under the Act in respect of any income arising from the transfer or facilitating the concealment of any income or any moneys or other assets which have not been or which ought to be disclosed by the transferee for the purposes of the Act. Under Sub-section (2) of Section 269C certain presumptions are to be raised. This Sub-section (2) is as under :

"(2) In any proceedings under this Chapter in respect of any immovable property, --

(a) where the fair market value of such property exceeds the apparent consideration therefore by more than twenty-five per cent. of such apparent consideration, it shall be conclusive proof that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer ;

(b) Where the property has been transferred for an apparent consideration which is less than its fair market value, it shall be presumed, unless the contrary is

proved, that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with such object as is referred to in Clause (a) or Clause (b) of Sub-section (1)."

We are of the opinion that the Appellate Tribunal rightly came to the conclusion that it was not a case where acquisition proceedings could have been initiated under Chapter XX-A of the Act. The fact that the property was encumbered has not been given due consideration by the competent authority. There was an old tenant for more than 25 years who was paying a rent of Rs. 116 per month which was a nominal rent by all standards and he was protected by rent restriction laws. Vacant possession of the property was not given to the transferees. Certain portions of the property fell under the Patna Development Scheme. There was litigation between two families of Srinivas Ram, the original owner, which, as noted above, ended in a compromise, the validity of which compromise was upheld. Then various sale deeds were for a consideration of less than Rs. 25,000 and one of the three sale deeds which was not the subject-matter of acquisition proceedings was for a value of Rs. 40,000. We, however, do not subscribe to the view that if the consideration in a sale deed is shown to be less than Rs. 25,000, the competent authority could not initiate proceedings. In that case also if the fair market value is over and above 15 per cent. of Rs. 25,000, proceedings for acquisition could be taken. Proceedings for acquisition could also be taken if various sale deeds respecting one property are executed in order to evade or avoid the rigours of law as contained in Chapter XX-A and the competent authority can treat all the sale deeds as one transaction if different parts of one property are transferred, by various sale deeds with apparent consideration of less than Rs. 25,000 in each sale deed. We do not, therefore, find anything wrong when the competent authority initiated acquisition proceedings treating various sale deeds as one transaction, but then it fell into error in leaving three of the sale deeds. The decision of the Madras High Court in K.V. Kishore and another Vs. Appropriate Authority and others OVERRULED, is clearly distinguishable as in that case five owners having separate shares though unspecified joined hands to execute one sale deed. Here it is like one owner executing different sale deeds of one property. Further, on what basis could the competent authority take possession of the property covered under ten sale deeds out of thirteen executed in respect of whole of the property ? This error is further compounded when it is held that under all these sale deeds only the 30 per cent. share of Vijay Kumar and others in the property was transferred and no action has been taken for the remaining 70 per cent. share in the property. In this connection, we may refer to a decision of this court in Ashis Mukerji Vs. Union of India (UOI) and Others .

10. Thus, apart from the fact that the Central Board of Direct Taxes Circular, quoted above, applied as the value of the property transferred under all the sale deeds even if taken as one was Rs. 1,85,000, the appeal would abate. We are also of the opinion that the competent authority while taking decision in acquiring the property did not take into consideration all the relevant factors

particularly the fact that the property was encumbered on various counts. The immovable property transferred did not fall within the provisions of Section 269C of the Act. It could not be said that there was any difference between the apparent consideration and the fair market value or the consideration was not truly stated in the instruments of transfer. No presumption could be raised against the transferor as contained in Section 269C. However, before initiating proceeding u/s 269C, the competent authority must record valid grounds for its proposed action as the term "has reason to believe" in Section 269C would show. The provision of acquisition of immovable property cannot become an instrument of oppression or harassment for either the transferor or the transferee.

11. These appeals are, therefore, dismissed, but we will leave the parties to bear their own costs.

S.J. Mukhopadhaya, J.

12. I agree.