(2002) 05 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 1711 of 2002

Daljit Singh Ahluwalia — APPELLANT

Vs

Union of India (UOI) and Another — RESPONDENT

Date of Decision : 31-05-2002

Acts Referred:

Income Tax Act, 1961 — Section 269UD, 269UD(1), 269UE(2), 269UL(3), 276AB
Transfer of Property Act, 1882 — Section 53A

Citation : (2002) 256 ITR 545

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : P.S. Patwalia, for the Appellant; R.P. Sawhney and Salil Bali, for the Respondent

Judgement

N.K. Sud, J.—The petitioner is aggrieved by the order dated January 15, 2002 (annexure P-15), passed by respondent No. 2, whereby his application for permission in Form No. 37-I filed under Chapter XX-C of the Income Tax Act, 1961 (for short "the Act"), has been rejected by treating it as non-maintainable. He prays that a writ in the nature of certiorari be issued quashing the order, annexure P-15. He further prays for a direction to respondent No. 2 to either pass an order u/s 269UD of the Act for purchasing the property or issue a no objection certificate for transfer of property as per the agreement (annexure P-1).

2. The petitioner along with his wife, Smt. Sarla Ahluwalia, and two sons, Punit Ahluwalia and Amit Walia, entered into an agreement for purchase of SCO No. 143-144, Sector 9C, Chandigarh, with one Shri Nirankar Singh, son of Shri Karam Singh, resident of House No. 632, Phase VI, S. A. S. Nagar (Mohali), (Punjab). A copy of the agreement is attached as annexure P-1 with the writ petition.

3. Shri Nirankar Singh had purchased this property in an open auction held on January 2, 1998, from the Municipal Corporation, Chandigarh. The allotment was made on lease hold basis for 99 years vide allotment letter dated March 10,

1998. As per the terms of the allotment, 25 per cent, of the amount being Rs. 44.75 lakhs was deposited by him and the balance was to be deposited in instalments payable over the next three years. He, however, did not deposit the instalments on the ground that the Municipal Corporation, Chandigarh, had failed to provide the requisite amenities. The Municipal Corporation initiated resumption proceedings against him on account of nonpayment of instalments along with interest due thereon. Shri Nirankar Singh maintained that neither the instalments nor the interest was payable by him as no amenities had been provided by the Municipal Corporation. For this purpose, he along with some other persons filed C. W. P. No. 959 of 1999 in this court which was disposed of vide order dated February 2, 2001. It was held that the Municipal Corporation, Chandigarh, was not entitled to recover interest and ground rent until the necessary amenities have been provided by it. The High Court further directed that the amenities be provided within three months from the date of the judgment whereupon the petitioners would make further payment of all the dues within three months thereafter. The necessary amenities were provided by the Chandigarh Administration by June 13, 2001, and intimation to this effect was sent to the allottees by the Municipal Corporation vide memorandum of the same date. As a result, the entire outstanding payment against the said property became payable by Shri Nirankar Singh by September 12, 2001.

4. During the pendency of the writ petition, the Municipal Corporation had passed the order of resumption against which Shri Nirankar Singh had filed an appeal. However, consequent upon the order of the High Court, the appeal was allowed. The order of resumption was set aside and the allottee was directed to deposit the entire amount within the stipulated period as ordered by the High Court.

5. It was in this background that Shri Nirankar Singh entered into the agreement to sell dated September 5, 2001. As on that date, he had deposited Rs. 44.75 lakhs with the Municipal Corporation and had further spent a sum of Rs. 20 lakhs approximately for raising construction thereon which was incomplete. As per the agreement, the petitioner agreed to give Shri Nirankar Singh Rs. 65 lakhs invested by him and also undertook to discharge the liability of the Chandigarh Administration directly before the due date, i.e., September 12, 2001. On the date of the agreement, the SLP of the Municipal Corporation against the judgment of this court dated February 2, 2001, was pending before the Supreme Court. The petitioner, therefore, also agreed to meet any future liability which might be determined against the said property in the event of the SLP being allowed. Since the petitioner was paying the entire amount invested by the vendor and had also undertaken to bear all the payments falling due in respect of the subject property in future, the possession of the property was handed over to him. However, Clause 5 of the agreement clearly mentioned that the handing over of the possession would ultimately be subject to the permission of the Income Tax Department which was necessary to complete the transaction.

6. As a result of the agreement, the petitioner paid a sum of Rs. 65 lakhs to Shri

Nirankar Singh. He also deposited an amount of Rs. 1,34,25,000 with the Municipal Corporation, Chandigarh, by demand draft dated September 10, 2001.

7. Chapter XX-C of the Act provides that sale of immovable property cannot be effected except by first making an application before the appropriate authority u/s 269UC seeking permission for transfer of the said property. This application has to be made on Form No. 37-I, the prescribed format for this purpose. Upon receipt of such an application, the appropriate authority, which consists of three persons, has the power to either make an order for purchase of the said property at an amount equal to the amount of consideration mentioned in the agreement to sell or to grant a certificate of "no objection". In other words, if the authority comes to the conclusion that the sale price mentioned in the agreement to sell is not a genuine sale price reflecting the real market value of the property, then, the Central Government has been given the power to purchase the property at that price. Otherwise, it has to grant the necessary permission/certificate u/s 269UL(3).

8. The petitioner and Shri Nirankar Singh, the transferor, filed the application on Form No. 37-I on September 5, 2001. A copy of the agreement to sell and other relevant documents were also enclosed with the application. After the submission of the application, the petitioner received a notice dated on October 29/31,2001, whereby certain defects in Form No. 37-I were pointed out. He was required to remove these defects within 15 days. The petitioner did the needful vide letter dated November 5, 2001, and submitted rectified application on Form No. 37-I. Thereafter, the petitioner received a notice dated November 2, 2001, from the District Valuation Officer, Chandigarh, requiring him to furnish certain documents and also informing him that the property will be inspected by the Valuation Officer on November 23, 2001. The necessary information was furnished by the petitioner vide letter dated November 19/23, 2001. The inspection was also carried out by the District Valuation Officer on November 23, 2001, the date fixed by him. The petitioner received yet another notice dated November 20/26, 2001, pointing out some more defects in the rectified Form No. 37-I filed by him. The petitioner furnished the necessary reply vide letter dated December 4, 2001. The points raised by respondent No. 2 were clarified and it was explained that there was no need to file a fresh Form No. 37-I. Respondent No. 2 issued yet another letter dated December 13, 2001, intimating the petitioner that the property was proposed to be inspected by its member on December 24, 2001. However, the date of inspection was telephonically changed to December 26, 2001, on which date the inspection was actually conducted. Ultimately, vide the impugned order dated January 15, 2002, respondent No. 2 held that the statement in Form No. 37-I was not maintainable in the eyes of law as the parties had not filed rectified Form No. 37-I and as the possession of the subject property had been handed over to the transferee along with title documents.

9. Meanwhile, respondent No. 2 had also issued a show-cause notice dated December 7, 2001, to Shri Nirankar Singh as also to the petitioner requiring

them to show cause as to why proceedings u/s 276AB be not initiated against them for violation of Section 269UL(2). It was pointed out that Clause 5 of the agreement to sell indicated that the possession of the property had already been given to the transferee which could not have been done without first obtaining the "no objection certificate". The charge was denied vide letter dated December 15, 2001, and it was explained that no transfer of immovable property had taken place merely because possession was handed over to the transferee under Clause 5 of the agreement.

10. Mr. P. S. Patwalia, learned counsel for the petitioner, submits that the order, annexure P-15, holding that the statement in Form No. 37-I was not maintainable was contrary to the provisions of the Act. According to him, once an application under Sub-section (3) of Section 269UC was filed, only two options were open to the appropriate authority, i.e., either to buy the property or in the event of its decision not to buy it, to issue a "no objection certificate" leaving t open to the parties to deal with the property. According to him, Section 269UD speaks only of one type of order which can be passed by the appropriate authority and that is an order of purchase. If the appropriate authority chooses not to purchase the property in question, then, Section 269UD does not contemplate the passing of any order similar to the impugned order passed by respondent No. 2 in the present case. He, then, referred to the provisions of Section 269UL to submit that it refers to a "no objection certificate" being granted by the appropriate authority to the transfer of property for an amount equal to the apparent consideration. This pre-supposes that when a statement is filed in Form No. 37-I and if a decision is taken not to purchase the property, then a specified certificate to this effect can be issued. He, therefore, contends that since in the present case no order of purchase had been passed u/s 269UD(1) of the Act within the stipulated period of three months, respondent No. 2 was under an obligation to issue a "no objection certificate". For this purpose, he placed reliance on the decision of the Supreme Court in Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others, , wherein the decision of the Delhi High Court in Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, has been affirmed.

11. Mr. Patwalia also disputed the finding of the appropriate authority that the handing over of possession of the property to the transferee as per Clause 5 of the agreement had the effect of "transfer of any immovable property" as referred to in Section 269UL(2). According to him, it has clearly been mentioned in Clause 5 that "transfer of this property would be subject to the permission u/s 269UC of the Income Tax Act, 1961, to be obtained from the Income Tax authorities". This clearly shows that the possession handed over was merely permissive possession and could not be equated with handing over the possession in part performance of the contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882. From Clause 5, it was evident that the possession of the petitioner was conditional on the grant of a "no objection certificate" by the Income Tax Department. In case the appropriate authority had decided to make

a pre-emptive purchase, the petitioner could claim no right of possession in the said property.

12. Mr. R. P. Sawhney, appearing on behalf of the Revenue, on the other hand, supports the impugned order. He submits that Clause 5 of the agreement clearly shows that the possession had been handed over to the petitioner in part performance of the agreement to sell. This, according to him, tantamounted to the transfer of property before filing the statement in Form No. 37-I in violation of the provisions of Section 269UL(2). He, therefore, contends that, under such circumstances, it cannot be said that the appropriate authority had to exercise only one of the two options, viz., to purchase the property or to issue a no objection certificate. There was a third option available with it, i.e., not to act upon the invalid statement in Form No. 37-I. For this purpose, he placed strong reliance on a decision of the Rajasthan High Court in RAJASTHAN PATRIKA LTD. Vs. UNION OF INDIA AND OTHERS., which was followed by the Calcutta High Court in Digvijay Cement Co. Ltd. Vs. Appropriate Authority and Others, .

13. We have heard counsel for the parties and perused the relevant provisions of law. Chapter XX-C contains provisions with regard to purchase by the Central Government of immovable property in certain cases of transfer. According to Section 269UC, no transfer of any immovable property in excess of the value of Rs. 10 lakhs can be effected without, inter alia, the agreement being reduced into writing and a statement being furnished to the appropriate authority. Sub-section (3) of Section 269UC prescribes as to what the statement should contain. Once such a statement is received, the provisions of Section 269UD come into play. The said section reads as under :

"269UD. (1) Subject to the provisions of Sub-sections (1A) and (1B), the appropriate authority, after the receipt of the statement under Sub-section (3) of Section 269UC in respect of any immovable property, may, notwithstanding anything contained in any other law or any instrument or any agreement for the time being in force, make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration :

Provided that no such order shall be made in respect of any immovable property after the expiration of a period of two months from the end of the month in which the statement referred to in Section 269UC in respect of such property is received by the appropriate authority :

Provided further that where the statement referred to in Section 269UC in respect of any immovable property is received by the appropriate authority on or after the 1st day of June, 1993, the provisions of the first proviso shall have effect as if for the words ''two months'', the words ''three months'' had been substituted :

Provided also that the period of limitation referred to in the second proviso shall be reckoned, where any defect as referred to in Sub-section (4) of Section

269UC has been intimated, with reference to the date of receipt of the rectified statement by the appropriate authority ;

Provided also that in a case where the statement referred to in Section 269UC in respect of the immovable property concerned is given to an appropriate authority, other than the appropriate authority having jurisdiction in accordance with the provisions of Section 269UB to make the order referred to in this sub-section in relation to the immovable property concerned, the period of limitation referred to in the first and second provisos shall be reckoned with reference to the date of receipt of the statement by the appropriate authority having jurisdiction to make the order under this sub-section :

Provided also that the period of limitation referred to in the second proviso shall be reckoned, where any stay has been granted by any court against the passing of an order for the purchase of the immovable property under this Chapter, with reference to the date of vacation of the said stay.

(1A) Before making an order under Sub-section (1), the appropriate authority shall give a reasonable opportunity of being heard to the transferor, the person in occupation of the immovable property if the transferor is not in occupation of the property, the transferee and to every other person whom the appropriate authority knows to be interested in the property.

(1B) Every order made by the appropriate authority under Sub-section (1) shall specify the grounds on which it is made.

(2) The appropriate authority shall cause a copy of its order under Subsection(1) in respect of any immovable property to be served on the transferor, the person in occupation of the immovable property if the transferor is not in occupation thereof, the transferee, and on every other person whom the appropriate authority knows to be interested in the property."

14. From a perusal of the above, it is clear that the only right which it confers upon the appropriate authority is to enable it to make an order for purchase of the immovable property at an amount equal to the amount of the apparent consideration. The first proviso stipulates the time within which such an order can be passed. The section, therefore, contains the pre-emptive right of purchase by the Central Government. It does not, however, give jurisdiction to the appropriate authority to adjudicate upon the legality of the transaction which is proposed to be entered into by the applicant. It has to be kept in view that Chapter XX-C was incorporated in an effort to curb sales of immovable properties for apparent consideration which would be less than the actual consideration. In other words, the effort was to see that immovable property was not transferred by taking sale consideration in "black money". Section 269UD was not concerned with the validity of the sale. If there was any violation of any law in the proposed transaction of sale, the same was to be of no consideration to the appropriate authority except that it could take all such factors into consideration while making up its mind whether to exercise the pre-emptive right of purchase or not.

It cannot, on grounds of alleged infringement of law, not exercise its right of purchase and, at the same time, refuse to grant the certificate sought by the seller.

15. An authority constituted under the Act can exercise only those powers which are, expressly or by necessary implication, conferred on it. The only power which is conferred on the appropriate authority u/s 269UD is the power to decide whether to purchase the property or not. However, in exercise of this power, the authority will have other implied powers which will make such a power effective. The authority would be entitled to see material and documents like documents of title, agreements, etc., in order to satisfy itself whether the apparent consideration is proper or not in order to come to the conclusion whether to purchase the property or not. The investigation undertaken by the appropriate authority can only be with a view to determine whether the pre-emptive right of purchase should be exercised or not.

16. If the appropriate authority has reservations or doubts with regard to the legality of the proposed sale, it is open to the authority not to exercise its right to purchase. Section 269UD, however, does not contemplate the rejection of any statement by the appropriate authority. Section 269UD speaks of only one type of order which can be passed by the appropriate authority and that is an order of purchase. If it decides not to purchase the property in question, Section 269UD does not contemplate the passing of any order similar to the order which has been passed by respondent No. 2 in the present case. In fact, the provision of Section 269UD clearly provides that if no order for purchase is passed and the period within which such an order can be passed has expired, then no order for purchase can at all be passed. When no order of purchase is passed, then the provisions of Section 269UL come into operation. This section reads as follows :

"269UL. (1) Notwithstanding anything contained in any other law for the time being in force, no registering officer appointed under the Registration Act, 1908 (16 of 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.

(2) Notwithstanding anything contained in any other law for the time being in force, no person shall do anything or omit to do anything which, will have the effect of transfer of any immovable property unless the appropriate authority certifies 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.

(3) In a case where the appropriate authority does not make an order under Sub-section (1) of Section 269UD for the purchase by the Central Government of an immovable property, or where the order made under Subsection (1) of Section 269UD stands abrogated under Sub-section (1) of Section 269UH, the appropriate authority shall issue a certificate of no objection referred to in Sub-section (1) or, as the case may be, Sub-section (2) and deliver copies thereof to the transferor and the transferee."

17. Section 269UL(1) refers to a no objection certificate being granted by the appropriate authority to the transfer of the property for an amount equal to the apparent consideration. This pre-supposes that when a statement in Form No. 37-I is filed and a decision is taken not to purchase the subject property, then a specified certificate to this effect can be issued. When no order at all is passed u/s 269UD(1), then the provisions of Sub-section (3) of Section 269UL come into play. This sub-section, inter alia, provides that where no order for purchase has been passed, then the appropriate authority shall issue a certificate of no objection referred to in Sub-section (1) of Section 269UL. The language of Section 269UL(3) is mandatory and this also shows that the only order which can be passed u/s 269UD is an order of purchase and no other order. If an order of purchase is not passed, then, it is imperative and obligatory on the appropriate authority to issue the certificate u/s 269UL(3). We do not find any provision in this Chapter which can enable the appropriate authority to create a situation whereby neither the Government decides to purchase nor does it issue a certificate u/s 269UL(3). The view that we are taking is fully supported by the decision of the Delhi High Court in the case of Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, , which was affirmed by the Supreme Court.

18. In fact, an identical matter had come up for consideration before the Delhi High Court in Megsons Exports Vs. Union of India and others, In that case also, the appropriate authority on an application on Form No. 37-I had neither passed an order exercising the right of pre-emptive purchase nor granted the no objection certificate. According to the appropriate authority, possession of the property had already been handed over to the transferee in part performance of the contract and, as such, the letter and intent of the provisions of Chapter XX-C of the Act had been violated. The High Court, following its earlier decision in the case of Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, , quashed the order of the appropriate authority declining the grant of permission to the petitioner which had been sought by an application on Form No. 37-I and directed the authority to issue the "no objection certificate" in terms of Section 269UC(3).

19. The Rajasthan High Court has indeed taken a contrary view in the case of RAJASTHAN PATRIKA LTD. Vs. UNION OF INDIA AND OTHERS., . The High Court duly considered the decision of the Delhi High Court in the case of Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, , and

distinguished it by observing as under (page 460) :

"In the case of Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, , there is no violation of the provisions of the Income Tax Act as such before the filing of the statement in Form No. 37-I and it was observed by the Delhi High Court that it was not certain as to which portion of the land would be surrendered to the State Government in view of the orders having been passed under the Urban Land Ceiling Act and that the agreement to sell was not capable of being made certain and was void as per Section 29 of the Indian Contract Act, the appropriate authority had found that the agreement to sell was a contingent contract depending upon the orders of the competent authority under the Urban Land Ceiling Act and thus the appropriate authority took objections with regard to the legality of the transaction, which had nothing to do with violation of any of the provisions of the Income Tax Act and, therefore, the Supreme Court agreed that two alternatives were open under the scheme of the legislation, i.e., either to buy the property or to issue a no objection certificate. Such is not the fact situation in the case at hand. We have come to a positive finding that the parties had effected the transfer before filing the statement in Form No. 37-I and thus the parties in the present case had violated the relevant provisions of the Income Tax Act itself and had made it well nigh impossible for the appropriate authority to pass an order for purchase of such a property u/s 269UD(1), even if it wanted to pass such an order because the petitioner and respondent No. 4 in this case had acted in a manner so as to pre-empt a situation in their favour in which the appropriate authority could ill afford to pass an order of purchase by the Central Government and we agree with Shri G. S. Bafna that in this case when possession of part of the property had already been taken over by the petitioner before filing the statement in Form No. 37-I, had the appropriate authority still ordered for the purchase of the property by the Central Government, the Central Government could not have stopped the limit of making the payment to respondent No. 4 and it would have done so only to its detriment and then to fight for possession with the petitioner and go on litigating the matter for years after years after blocking a huge sum without the advantage of the property so purchased. Therefore, in the facts of the present case, in addition to the two options which have been mentioned by the Supreme Court in Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others, , we agree with Shri G. S. Bafna that the third option was also available to the appropriate authority, i.e., not to act upon the invalid statement in Form No. 37-I filed by the parties after effecting the transfer and violating Section 269UC(1) and the parties had thus rendered themselves liable to action for violating the provisions of the Income Tax Act. We are of the considered opinion that when the parties have violated the provisions of the Income Tax Act and have acted in a manner so as to thwart the very purpose of the provisions relating to the restrictions on transfer of immovable property and to thwart the Central Government''s pre-emptive right of purchase, besides the alternatives of either purchasing or issuing a no objection certificate, the option is also available not to act upon the statement in Form No. 37-I which is found to be violative of the provisions of the Income Tax Act and to prosecute the concerned parties by taking resort to the machinery under the Act."

20. With respect, we are not inclined to subscribe to the view expressed by the Rajasthan High Court. The consideration which weighed with the High Court was that the possession of a part of the property had already been handed over by the seller to the buyer before the filing of the statement in Form No. 37-I and if under these circumstances, the appropriate authority had still ordered for purchase of the property, it would have been to the detriment of the Central Government. The Central Government would have had to fight for possession from the petitioner and go on litigating the matter for years and that too after blocking huge sum without the advantage of the property so purchased. This apprehension, in our view, is misplaced. The Act itself provides safeguards against such a situation. Section 269UE reads as under :

"269UE. (1) Where an order under Sub-section (1) of Section 269UD is made by the appropriate authority in respect of an immovable property referred to in Sub-clause (i) of Clause (d) of Section 269UA, such property shall, on the date of such order, vest in the Central Government in terms of the agreement for transfer referred to in Sub-section (1) of Section 269UC :

Provided that where the appropriate authority, after giving an opportunity of being heard to the transferor, the transferee or other persons interested in the said property, under Sub-section (1A) of Section 269UD, is of the opinion that any encumbrance on the property or leasehold interest specified in the aforesaid agreement for transfer is so specified with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or leasehold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrance or leasehold interest.

(2) The transferor or any other person who may be in possession of the immovable property in respect of which an order under Sub-section (1) of Section 269UD is made, shall surrender or deliver possession thereof to the appropriate authority or any other person duly authorised by the appropriate authority in this behalf within fifteen days of the service of such order on him:

Provided that the provisions of this sub-section and Sub-sections (3) and (4) shall not apply where the person in possession of the immovable property, in respect of which an order under Sub-section (1) of Section 269UD is made, is a bona fide holder of any encumbrance on such property or a bona fide lessee of such property, if the said encumbrance or lease has not been declared void under the proviso to Sub-section (1) and such person is eligible to continue in possession of such property even after the transfer in terms of the aforesaid agreement for transfer.

(3) If any person refuses or fails to comply with the provisions of Sub-section (2), the appropriate authority or other person duly authorised by it under that

sub-section may take possession of the immovable property and may, for that purpose, use such force as may be necessary.

(4). Notwithstanding anything contained in Sub-section (2), the appropriate authority may, for the purpose of taking possession of any property referred to in Sub-section (1), requisition the services of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

(5) For the removal of doubts, it is hereby declared that nothing in this section shall operate to discharge the transferor or any other person (not being the Central Government) from liability in respect of any encumbrances on the property and, notwithstanding anything contained in any other law for the time being in force, such liability may be enforced against the transferor or such other person.

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

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

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

(7) Where any rights in respect of any immovable property, being rights in, or with respect to, any land or any building or part of a building which has been constructed or which is to be constructed, have been vested in the Central Government under Sub-section (6), the provisions of Sub-sections (1), (2), (3) and (4) shall, so far as may be, have effect as if the references to immovable property therein were references to such land or building or part thereof, as the case may be."

21. From a perusal of the above, it is clear that the proviso to Sub-section (1) clearly empowers the appropriate authority to pass an order declaring any encumbrance on the property specified in the agreement for transfer with a view to defeat the provisions of Chapter XX-C, as void. Sub-section (2) also requires the transferor or "any other person who may be in possession of the immovable property in respect of which an order under Sub-section (1) of Section 269UD is made" to surrender or deliver possession of the property to the appropriate person. The provision of this sub-section makes it further clear that the possession of a bona fide holder of the encumbrance is protected and that too if the same has not been declared void under Sub-section (1) of Section 269UD. Sub-sections (3) and (4) also empower the Central Government to use force or to seek police help for taking possession of the property. The matter does not rest here only. If a person in possession of the property does not surrender or deliver its possession to the appropriate authority as envisaged under Sub-section (2) of Section 269UE, the violation would attract Section 276AB which

provides for rigorous imprisonment up to two years and also payment of fine. Similarly Section 269UL(2) debars a person from doing anything which will have the effect of transfer of any immovable property unless the appropriate authority has issued a no objection certificate. The consequence of any violation of this provision as mentioned in Section 269UE are imprisonment and fine. There is, however, no provision empowering the appropriate authority to file the application in Form No. 37-I as non-maintainable. In case there was the third option available with the appropriate authority not to act on Form No. 37-I at all, then, in our opinion, there was no need to provide for penal consequences for violation of Sections 269UE(2) or 269UL(2) of the Act.

22. Accordingly, we concur with the view taken by the Delhi High Court in Megsons Exports Vs. Union of India and others, , in preference to the view expressed by the Rajasthan High Court in RAJASTHAN PATRIKA LTD. Vs. UNION OF INDIA AND OTHERS., . We also dissent from the view taken by the Calcutta High Court in Digvijay Cement Co. Ltd. Vs. Appropriate Authority and Others, , which has been decided on the basis of the ratio in RAJASTHAN PATRIKA LTD. Vs. UNION OF INDIA AND OTHERS., In fact, in N. Karuna and Another Vs. Appropriate Authority and Others, , the Andhra Pradesh High Court has mentioned that the decision of the single judge in Digvijay Cement Co. Ltd. Vs. Appropriate Authority and Others, was the subject-matter of a writ appeal before a Division Bench in which the claim of the parties to the transaction had been accepted.

23. Accordingly, we hold that when a statement in Form No. 37-I is filed under Sub-section (3) of Section 269UC, then the appropriate authority has either to pass an order for purchasing the property for the Central Government at the consideration mentioned in the agreement or to issue a no objection certificate , for transfer of property as per the agreement. In view of this, the impugned order dated January 15, 2002 (annexure P-15), cannot be sustained on this basis alone.

24. We are also in agreement with the contention of learned, counsel for the petitioner that the possession handed over to the transferee by the transferor under Clause 5 of the agreement did not have the effect of transfer of any immovable property. The clause clearly stipulates that the transfer of the property would be subject to the permission from the Income Tax Department. Thus, the clause would only be effective on the grant of permission by the Income Tax authorities. The possession, therefore, was merely permissible and not in pursuance of part performance of sale u/s 53A of the Transfer of Property Act. Thus, the impugned order cannot be sustained on this score as well.

25. A perusal of para. 4 of the impugned order shows that another reason has been mentioned for holding that the statement in Form No. 37-I is not maintainable. It has been stated that the parties have not filed the rectified Form No. 37-I. However, from a perusal of the documents attached with the writ petition, it is evident that vide letter dated November 25/26, 2001 (annexure

P-9), the appropriate authority had pointed out certain defects and required the petitioner to file a rectified Form No. 37-I. However, the petitioner had furnished a reply dated December 4, 2001, explaining the so-called defects and further pointing out that in view of the explanation, no fresh Form No. 37-I was required to be filed. This position does not appear to have been disputed in a subsequent correspondence. Learned counsel for the Revenue has also not been able to justify this observation in the impugned order.

26. In view of the above, we set aside the impugned order (annexure P-15) and direct respondent No. 2 to dispose of Form No. 37-I in accordance with law keeping in view the observations made above. The needful shall be done within one month from the date on which a certified copy of this order is made available to the respondents. However, in the circumstances of the case, there shall be no order as to costs.

