(1994) 09 DEL CK 0066

In the Delhi High Court

Case No : Civil Writ Petition No. 3489 of 1989

Durga Dass Uppal APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 02-09-1994

Acts Referred:

Income Tax Act, 1961 — Section 269 UC
Land Acquisition Act, 1894 — Section 3
Transfer of Property Act, 1882 — Section 54

Citation : (1994) 30 DRJ 692 : (1994) 76 TAXMAN 526

Hon'ble Judges : K. Shivshankar Bhat, J

Bench : Single Bench

Advocate : S.N. Narayanan, I.C. Kumar, Rajendra and D.N. Malhotra, for the Appellant;

Judgement

K. Shivshankar Bhat, J.

(1) Whether the person who has entered into an agreement with the owner to purchase the property having paid some amount as earnest money and advance. is a person entitled to be paid a part of the apparent consideration by the Central Government under Chapter XX-C of the Income Tax Act. on the property vesting in the Central Government, has to be considered in this writ petition. This. order has three parts as follows: (i) Facts (paras 1 to 12); (ii) Differing views of two learned Judges on the question (paras 13 to 15); (iii) Discussion (paras 16 onwards)

(2) The relevant facts are:- Petitioner is the person who agreed to purchase the property in question from the 4th respondent (referred as the owner) as per an agreement dated 10.9.1988. The petitioner (referred also as ''transferee'' and sometimes as ''the agreement holder'') agreed to purchase the property for a sum of Rs.28,19,178.00 and as part of the consideration, he paid a sum of Rs-10 lakhs as advance to the owner. As per Section 269UC of the Income Tax Act, a statement was filed before the appropriate authority in form 37-1. The statement

gave all the particulars including the factum of the payment of Rs.10 lakhs by the transferee to the owner. On 7.11.1988, appropriate authority made an order, the relevant part of which reads as follows:-

"AFTER considering all the relevant facts and for the reasons recorded as required it is decided that the said property more fully described in the Schedule appearing below is fit for purchase by the Central Government at an amount equal to the amount of apparent consideration. Therefore, in exercise of powers vested in the appropriate authority under sub-section (1) of Section 269UD of the Income Tax Act, we order the purchase of the said property by the Central Government at an amount equal to the apparent consideration for the transfer of the said property."

The appropriate authority did not hear the parties, because, at the relevant time of making the order, the appropriate authority considered it unnecessary to hear the parties to the agreement. The above part of the order does not even reveal the basis for the order; there is not even an indication that the apparent consideration for the transfer of the property was far below the market value; the order, on the face of it, looks to be an order based purely on subjective satisfaction.

(3) The above order was challenged by the transferee by filing a writ petition (C.W.P. 2640/1988) on 19.11.1988 (hereinafter referred as the earlier writ petition). On 22.11.1988 Rule was issued and an interim order was made by the Division Bench that "the consideration shall not be paid by respondents 1 to 3 till further orders"; 1st respondent was the Union of India; the 2nd respondent was the appropriate authority and the 3rd was the Central Board of Direct Taxes. The owner was the 4th respondent (all are similarly arrayed in the present writ petition also).

(4) The earlier writ petition was accompanied by an interlocutory application (C.M.P. No. 5297.00 1988) seeking stay of the operation of the impugned order made by the appropriate authority. Subsequently, the owner filed C.M.P. 5535/1988 seeking the modification of the interim order, seeking the payment of the balance consideration amount of Rs.l8,19,178.00 on the ground that, he was not concerned as to whether the petitioner was to purchase the property or the Central Government, so long as he gets the consideration amount for the property in question. Though this application initially came up before the court on 8.12.1988, it was heard only on 9.3.1989 and order thereon came to be passed on 11.5.1989. By the same order, the C.M. 5297/1988 of the petitioner/ transferee was also disposed of.

(5) Under this order, the Division Bench issued certain directions. The relevant part of the order reads as under:

"IN the circumstances of the present case, we are of the opinion that we should direct the petitioner to make payment of balance of the sale consideration to the transferor, the 4th respondent/subject to certain terms and: conditions and further orders of the court. In that case, if the petitioner succeeds in the writ petition nothing more is required except for the seller to execute and register the sale deed. If, however, the petitioner fails, he can be compensated with interest by the .Central Government. It is a matter of common knowledge that there is always appreciation in prices of immovable properties and in fact, in Delhi there has been astronomical rise in prices of land in the recent past. We, Therefore, direct as under- (i) The balance sale consideration amounting to Rs.l8,19,178.00 and any other amount as may be due to the seller; shall be paid by the petitioner to the seller, the 4th respondent within two months from today: (ii) The 4th respondent shall invest the sale consideration liable to capital gains tax under Ss. 54D, 54E or 54F of the Act as the case may be or any other capital gains tax avoidance scheme and shall not be entitled to use that money during the pendency of ''the writ petition or without further orders of the court and he shall file an undertaking to that effect within two weeks with the Registrar of this court. In the event, the petitioner succeeds in the writ petition, the 4th respondent shall execute the sale deed and get it registered in terms of the agreement for transfer between the parties. (iii) In case the petitioner commits default in making payment of the balance consideration as aforesaid, the interim orders made earlier shall stand vacated and necessary consequences as contained in Chapter XX- C of the Act shall follow as from the date when the stay stands vacated. (iv) The property in question shall be in custodia legis and the concerned Commissioner of Income Tax is appointed Receiver of the same. This is necessary in order to preserve the property so that there are no squatters or unauthorised occupants. The 4th respondent shall file an undertaking to that effect with the Registrar of this court that there are presently no such squatters or unauthorised occupants. The property shall be secured by fixing barbed wire fencing all around by the Income Tax Department and the costs so incurred by it shall be subject to the orders of this court at the time of the decision of the writ petition. (v) On petitioner failing in the writ petition, the Central Government shall pay to the petitioner the amount of the ''apparent consideration'' and also interest thereon at such rate and for such period as may be determined at the time of division of the writ petition. This we are so directing as otherwise the Central Government would have to make payment of the ''apparent consideration'' to the purchaser."

(6) On 22.8.1989, petitioner filed another application (C.M.P. No. 3575/1989) stating that he did not get possession, of the property, nor any right to interest from the owner on the advance amount of Rs.10 lakhs and -that he was not even getting any share in the income that may be earned by the owner out of the said amount of Rs.10 lakhs. In the circumstances, the transferee could not pay the balance amount of Rs.l8,19,178.00 in terms of the order of this court, to the owner, because, even on such payment, he was not to get possession of the property nor a share in the income that may be earned by the owner from the said amount. The petitioner pointed out that the earlier interim order staying the operation of the impugned order of the appropriate authority stood vacated, by

virtue of direction No. (iii) contained in the order dated 11.5.1989; Therefore, the necessary consequences under Chapter XX-C, permitted by this Court shall have to be clarified as to whether the statutory consequences would include auctioning of the property by the Central Government after it pays the apparent consideration. The petitioner averred that the owner is not affected because, "he would receive the full apparent consideration under the aforesaid order of 11.5.1989". Thereafter the petitioner pointed out that as per the agreement dated 10.9.1988. he was entitled to receive the refund of Rs. lO lakhs, representing the refund of his paid up amount, directly from the concerned authority, in case the appropriate authority orders to purchase the property by the Central Government u/s 269UD. The petitioner stated that the order of this court dated 11.5.1989 did not provide ''specifically for the payment of this Rs. lO lakhs to the petitioner by the Revenue, following the vacation of the interim order dated 22.11.1988. On such vacation, the provisions of Charter XX-C stand revived, authorising the Department to pay the apparent consideration for the plot to the seller and take possession of the same.'''' Hence the petitioner sought certain clarifications. It is necessary to quote in extenso the averments made by the petitioner as under:-

"the petitioner, Therefore, most respectfully prays that this Hon''ble Court be pleased to clarify whether auction also would follow as a ''necessary'' consequence of Chapter XX-C of the Act being revived as per direction No.(iii) supra of this Hon''ble Court. The petitioner submits that if ''auction'' is clarified as not covered by the phrase ''necessary consequences'' respondent No.4 would not be prejudicially affected as he would receive the full apparent consideration under the aforesaid order of 11.5.1989. It would also not affect the Department. It would stand to gain (if the petitioner''s writ petition fails) because of the steep inflation in urban land values year after year. Under the Agreement for Sale of 10.9.1988 aforesaid (in terms of clause 12 thereof) if the appropriate authority (respondent No.2 here) exercises its power under the Act and ''acquires'' the impugned property the petitioner would be entitled to receive Rs.10 lakhs representing ''the refund of his paid up amount directly from the concerned authority and that the first party shall have no objection for the same''. However, it is submitted most respectfully that the order of the Hon''ble Court dated 11.5.1989 has not provided specifically for the payment of this Rs. lO lakhs to the petitioner by the Revenue Department following the vacation of the interim stay orders of 22.11.1988. On such vacation, the provisions of Chapter XX-C stand revived, authorising the Department to pay out the apparent consideration for the plot to the seller and take possession of the same. The petitioner respectfully prays that this Hon''ble Court be pleased to clarify as to what would be the consequences in law in the light of direction No.(iii) supra, in terms of clause 12.12 of the Agreement for sale of 10.9.1988 i.e., should respondent No.4 refund the sum of Rs.10 lakh to the petitioner on the Department paying respondent No.4 the full consideration of Rs.28,19.178.00 ? Or should the Department pay the petitioner Rs. lO lakhs and pay the balance of

Rs.l8,19,178.00 to respondent No.4? Or should the amount of Rs. lO lakh be deposited with the Hon''ble Court pending the disposal of the writ petition subject to payment of such interest thereof as the Hon''ble Court may be pleased to order? If this is not clarified, it would act harshly on the petitioner who is in fact the injured party and who has come to this Hon''ble Court seeking justice. On the other hand it would merely benefit respondent No.4 who has been earning income out of the aforesaid deposit of Rs. lO lakhs; and on which deposit he is not liable to pay any interest to the petitioner."

Again he said:

"IT is, Therefore, most respectfully reiterated by the petitioner that this Hon''ble Court be pleased to clarify whether the Central Government should pay the said sum of Rs. lO lakhs to the petitioner directly in terms of clause 12 of his agreement for sale with respondent No.4 or it should be so paid by respondent No.4 on the Department paying him the full apparent consideration; or it should be deposited with this Hon''ble Court pending disposal of the writ petition subject to interest thereon as this Hon''ble Court may be pleased to order. Prayer It is, Therefore, prayed that this Hon''ble Court be pleased to: (a) Issue a clarification as per submissions in paragraph VII. A.6 supra on the scope of the expression necessary consequences'' referred to therein; (b) Issue a clarification on the payment of Rs. lO lakh to the petitioner as prayed for in paragraph Vii B.1 and Vii B.4."

(7) On 15.12.1989, petitioner withdrew this application and accordingly C.M.3575/1989 was dismissed Along with C.M.P. 4656/1989. (C.M.P 4656/ 89 filed by the petitioner sought stay of the auctioning of the property by the Revenue). In this C.M.P. 4656/1989, petitioner had asserted that the owner was '' not willing to refund the sum of Rs. lO lakhs to him, even though he had received the entire apparent consideration from the Central Government. However, in para 8 of the application, petitioner had pointed out that the payment of entire amount to the owner by the Central Government was in violation of Section 269UG(1) because the respondents were fully aware of the advance paid by the petitioner to the owner. Petitioner also averred that, he came to know of the entire payment of consideration by the Central Government to the owner, only through the letter dated 22.8.1989 written by the owner from Chandigarh. In this letter the owner asserted that he had to incur substantial expenses on legal charges, travel expenses etc. in view of the writ petition filed by the petitioner and Therefore, petitioner should go to Chandigarh to discuss the matter within him. On 28.8.1989, petitioner wrote back to the owner that he had already filed an application for clarification and that 4th respondent had a moral duty to refund the sum of Rs.10 lakhs to him.

(8) It is undisputed that the agreement dated 11.9.1988 entered into between the petitioner (transferee) and the owner had a clause :-

"THAT in case of appropriate authority exercises his powers under the Income

Tax Act and acquires the said property, the second party shall be entitled to receive a sum of Rs.10,00,000.00 (Rupees ten lakhs only) representing the refund of his paid up amount directly from the concerned authority and that the first party shall have no objection for the sale."

(9) Present writ petition was filed on 12.12.1989 on the ground that the non-payment of a part of the consideration amount to the petitioner, resulted in the abrogation of the order of the appropriate authority, for the purchase of the property by the Central Government and the property stood re-vested in the owner as per Section 269UH of the Act, on 31.8.1989. As per the interim order dated 11.5.1989 made in the earlier writ petition, on the failure of the petitioner to pay Rs.l8,19,178.00 to the owner within two months of the date of the order, statutory consequences under Chapter XX-C of the Act were- to follow as a result of the purchase order of the appropriate authority; the statute started operating from 11.7.1989 and the property vested with the Central Government on the said date. As per Section 269UG(1) the Central Government had to pay the consideration amount within a period of one month from the end of the month in which the property stood vested in the Central Government; in the instant case, before the end of August 1989. the consideration amount had to be paid. Petitioner was unaware of the payment of the entire consideration by the Central Government to the owner, and Therefore, he had filed C.M.P. 3575/ 1989 in the earlier writ petition on 22.8.1989, for clarification etc. Actually, this C.M.P. became infructuous after 31.8.1989 in view of the statutory consequences that flowed out of the Central Government''s failure to pay the part of the consideration to the petitioner before 31.8.1989. In these circumstances, the petitioner, contends that the said C.M.P. was withdrawn.

(10) According to the learned counsel for the petitioner, a fresh cause of action of an entirely different nature arose in favor of the petitioner on 31.8.1989 (or 1.9.1989) by virtue of the statutory abrogation of the purchase order and re-vest- ing of the property in the owner. In these circumstances, the petitioner has sought the following reliefs in the present writ petition, to:- A. Pass an order directing respondent No.2 to declare the aforesaid order passed u/s 269UD(1) of the Act on 7.11.1988 as abrogated. B. Issue a writ of mandamus or any other appropriate writ, direction or order for having the aforesaid order of 7.11.1988 declared by respondent No.2 as abrogated and for service of a copy of such declaration on the petitioner and respondent No.4 as laid down in Section 269UH(2) of the Act. C. Issue a writ of prohibition or any other writ or direction or order prohibiting respondents 1,2,3 & 4 from taking any further action in pursuance of the impugned order of 7.11.1988 passed u/s 269UD(l) of the Act.

(11) No argument was addressed before me as to the maintainability of this writ petition, independent of the earlier writ petition. In other words, no objection was raised that the petitioner should have (if at all) sought the reliefs by amending the earlier writ petition. Therefore, it is unnecessary to probe into the said question which arose in mind, on its own. I have my doubts on this aspect,

because, the continuation of the proceedings under Chapter XX-C was permitted by this court through an interim order made in the earlier writ petition. The alleged statutory consequences relied upon by the petitioner, arc the consequences resulting from the said order and Therefore, it is possible to take the view that the scope and effect of these circumstances should be agitated only in the said writ petition and not independently.

(12) Present writ petition was heard by the Division Bench, but the two learned Judges differed with each other. Hence the matter came up before me, as the third Judge. D.P. Wadhwa, J. held that the writ petition should be allowed, while R.L. Gupta, J. ordered its dismissal.

(13) D.P. Wadhwa, J. proceeded, after posing the following question:

"THE questions which need determination are: if the petitioner, the ''transferee'', is a person interested, and if so, is he the one entitled to any part of the apparent consideration, and if the Central Government failed to tender any part of the amount of consideration required to be tendered or deposited, will it result in abrogation of the order made u/s 269UD(1) of the Act and re-vesting of the property in the ''transferor''?"

Thereafter reference was made to a few decisions explaining the term ''person interested''. Proceeding further, the anomalous position resulting from paying the entire consideration to the owner (without deducting the advance received by him from the transferee) was pointed out and the learned Judge held :-

"IT leads to results which are incongruous. The proposition that full payment of apparent consideration should be tendered only to the transferor is not acceptable as it has the effect of very adversely affecting the interest of the transferee of no fault of his". The transferor wanted only Rs.l8,19,178.00 and not the entire apparent consideration of Rs. 28,19,l78.00 . The law of compulsory acquisition of immovable property as contained in Chapter XX-C makes serious inroads in to the law of Contract and Therefore, the provisions have to be construed in their ''proper perspective''. The transferee is a ''person interested'' within the meaning of Section 269UA(e) of the Act and out of the entire consideration, transferee is entitled to a sum of Rs.10 lakhs. To say that a person may be a ''person interested'' but not a ''person entitled'' there to will be contradictory to each other. Revenue was aware of the advance paid by the transferee. Transferee is "part of the whole scenario".

When the property vests in the Central Government, both the transferor and the transferee should be relegated to their original position. If the transferor receives the entire amount and becomes recalcitrant, transferee shall have to sue both the transferor and the Central Government and the Legislature would not have intended such a result. The transferee is also served with a copy of the order of purchase and if he is an aggrieved person he can challenge the order; if follows that he has an interest in the consideration and Therefore, he is a person entitled to it. The word ''entitled to'' and ''title to'' are two separate things. Section

269UM protects the transferor against any claim that may be raised by the transferee for breach Of agreement for transfer where the Central Government purchases the property under Chapter XX-C. Consequently, D.P. Wadhwa, J. held that the petitioner should be granted the reliefs sought in the writ petition.

(14) R.L.GUPTA J. did not agree with the conclusion reached as above. The substance of what the learned Judge held is as follows:-

"THE appropriate authority not being a party to the agreement between the owner and the transferee, was not bound to pay the earnest money and the advance amount paid by the transferee under the agreement. Petitioner should have approached the appropriate authority seeking refund of this amount. The interim order dated 11.5.1989 in the earlier writ petition issued five directions. Petitioner did not comply with the direction directing him to pay the balance consideration to the owner. Petitioner, thereafter sought some clarification and this application was dismissed as withdrawn on 15.12.1989; on which date the owner had agreed to pay the sum of Rs.10 lakhs to the petitioner. "Person or persons entitle thereto" would be only those persons who held an interest in the property. A person interested in the consideration cannot be equated to a person who has an interest in the property. Petitioner is trying to ''take advantage of a technical default in not tendering Rs.10 lakhs to him, by the Central Government. In view of Section 269UG(3), even now the petitioner can get the said amount from the owner. Having regard to the object behind the introduction of Chapter XX-C, its provisions cannot be considered as imposing unreasonable restrictions upon the rights of the parties vis-a-vis the agreement of transfer. The interim order dated 11.5.1989 made in the earlier writ petition, itself indicated in clause (v) that the ''Central Government had to pay the consideration to the 4th respondent''. The payment made to the owner by the Central Government is in accordance with the directions contained in the said order. The petitioner made a false statement that the owner was not willing to pay him the sum of Rs.10 lakhs, which is found to be false having regard to the statement made on behalf of the owner and recorded in the order dated 15.12.1989 (in the earlier writ petition). The position was clarified, when the scope of the relevant provision was referred by the Central Board of Direct Taxes to the Ministry of Law; the latter opined that the ''person entitled to'' meant a person having title to the property. The advice of Ministry would be in the nature of contemporanea expositio. The writ petition is to be dismissed".

(15) Mr. Narayanan and Mr. Rajendra addressed elaborate arguments before me on, behalf of the petitioner arid the Revenue, respectively.

(16) Section 269UF(1) directs the Central Government to pay, by way of consideration for the purchase, an amount equal to the amount of the apparent consideration. What is payable by the Central Government is the consideration for the purchase. Section is silent as to whom it should be paid. Section 269UG(1) says that the amount of consideration payable shall be tendered to the person or persons "entitled thereto". Normally, consideration for the purchase of

a property is payable to the owner of the property in whom vests the title to the property.

(17) A person could be stated to be ''entitled to'' a thing, when he has a right to it. The dictionary meaning of the word ''entitled'' is "to give (someone a right) like - ''this ticket entitles you to a seat'' or ''his position entitles him to be heard". It conveys the idea of ''to give a title to...(vide: The New Lexicon Webster''s Dictionary (1988 Edn.) page 315). Therefore, the literal meaning of the words ''person entitled to the consideration payable" for the purchase of a property, is to say that, the consideration shall be paid to the person who has ''title'' to the said consideration. Section 54 of the Transfer of Property Act makes the position clear. ''Sale'' is a transfer of ownership in exchange for a price paid or promised, etc. Therefore, the price paid or payable gets substituted for the ownership of the property sold. This substituted price, Therefore, should vest, as ''the price'' in the person or persons in whom the ownership right vested prior to the sale.

(18) While interpreting the relevant provisions, approach ought to be to see whether the Parliament intended to depart from the normal meaning of the words used in the Statute. To find out the intention, one may examine the several provisions and as to how the Parliament used other similar words. The object of the legislation, certainly shall have to be borne in mind. It is only when the literal meaning leads to absurd results or in manifest injustice, court may modify the language. In The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd., , the Supreme Court observed at page 195 as under:

"THERE is no doubt that the acceptance of one or the other interpretation sought to be placed on Section 271(1)(a)(i) by the parties would, lead to some inconvenient result, but the duty of the court is to read the section, understand its language and give effect to the same. If the language is plain, the fact that the consequence of giving effect to it may lead to some absurd result is not a factor to be taken into account in interpreting a provision. It is for the legislature to step in and remove the absurdity. On the other hand, if two reasonable constructions of a taxing provision are possible, that construction which favors the asses- see must be adopted. This is a well accepted rule of construction recognised by this court in several of its decisions. Hence, all that we have to see is, what is the true effect of the language employed in Section 271(1)(a)(i). If we find that language to be ambiguous or capable of more meanings than one, then we have to adopt that interpretation which favors the assesses ,more particularly so because the provision relates to imposition of penalty."

Chapter XX-C has its own definitions as seen from Section 269UA. Sub-section (2)(e) of Section 269UA defines the term ''person interested'' in an inclusive manner, as in the Land Acquisition Act. Even a person ''claiming an interest'' in the consideration payable on account of the vesting of the property in the Central Government is brought into this term. Sub-clause (f) defines the word ''transfer'' very widely. These two definitions indicate that wherever, a wider meaning to a term has to be given, the Act itself defined the term accordingly. Section 269UD(2) which requires service of notice of the order, covers a large number of persons including any person whom the appropriate authority knows to be interested in the property. This phrase naturally would include "a person interested in relation to the immovable property " referred in the definition provision.

(19) Section 269UG has four sub-sections. Sub-section (1) refer to the ''person or persons entitled to''. Sub-section (2) refers to the ''persons claiming to be entitled to''. In view of any claim, if there is a dispute as to the apportionment of the amount of consideration, consideration shall have to be deposited with the appropriate authority. Sub-section (3) again refers to the "person entitled to"; the meaning of the entitlement is made clear when it further says, ''if there is any dispute as to title to receive the amount of consideration.....". In contrast, the words used in sub-section. (4) are different. This sub-section provides for investing the consideration amount deposited with the appropriate authority by the Central Government under sub- section (2) or (3). Sub-section (4) refers to ''any person interested or claiming to be interested'' in such amount.

(20) A literal reading of relevant provisions shows that, the phrase ''person interested'' is of wider import and the term ''person entitled to'' also would be covered by it. There can be no doubt that a ''person entitled to'' the consideration is also a ''person interested'' in it. But, can it be said that ''a person interested'' is also a ''person entitled to'' the consideration amount? If so, (I think), the Parliament would have taken care to define the said term, ''person entitled to'', as including a person interested in''.

(21) A person may be interested in the immovable property or in the amount of consideration for several reasons. He may be a creditor who advanced the loan to the owner finding him to be the owner of the property in question. Another person may be a maintenance holder, who could enforce his claim through attaching the property. In these cases, the interest of the creditor or the maintenance holder, in the property, is not because he has a title to the property, but, because by the attachment or sale of the property, amounts due to him could be realised. His interest in the consideration payable by the Central Government on the property vesting in it is not because he has a title to the said consideration; but, because amount due to him as a debt could be realised from it. His interest is not because the money payable by the Central Government has the character of the ''consideration'' and bears the quality of a sale price (or consideration); his interest is strictly confined to a creditor''s interest to recover the money due to him from the debtor, out of the fund belonging to the debtor. The creditor''s right to enforce his claim against this consideration payable by the Central Government for the vesting of the property in it, is only after and because of, the title to the consideration vests in the debtor (to whom the property belonged prior to the vesting). Creditor does not get a simultaneous title to any part of the said consideration Along with the owner of the property.

Same reasoning would equally govern the case of a person who has a claim against the owner, for any sum, for whatever reason.

(22) I find considerable support for the above view in the decision of the-supreme Court in Sunder Lal Vs. Paramsukhdas, . The relevant facts were:- Sunderlal was the owner of the property which was acquired under Land Acquisition Act. He had a tenant Khushal Singh. The question of apportionment of compensation between them was referred to the Civil Court. In the meanwhile Paramsukhdas had obtained a money decree against Khushal Singh and got attached the amount of compensation which had been ordered to be paid to Khushal Singh; he filed an application to be imp leaded in the Land Acquisition reference, as an attaching creditor. The question arose whether Paramsukhdas was a ''person interested'' so as to entitle him to be made a party to the said proceedings. The term ''person interested'' as defined in Section 3(b) of the Land Acquisition Act included ''all persons claiming an interest in compensation to be made on account of the acquisition of land'', etc. At page 369 the Supreme Court held:

"IT is not necessary that in order to fall within the definition a person should claim an interest in land, which has been acquired. A person be- comes a person interested if he claims an interest in compensation to be awarded. It seems to us that Paramsukhdas is a ''person interested'' within section 3(b) of the Act because he claims an interest in compensation .But before he can be made a party in a reference it has to be seen whether he comes within section 20(b) and Section 21 of the Act."

Thereafter at page 370 the Court held as follows:-

"Under Section 18 any person interested can claim a reference. A person claiming an interest in compensation would also be entitled to claim a reference. After a reference is made the Court is enjoined u/s 20 to determine the objections, and serve, among others, all persons interested in the objection. A person claiming an interest in compensation would, it seems to us, be a person interested in the objection if the objection is to the amount of compensation or the apportionment of compensation, and if his claim is likely to be affected by the decision on the objection. Section 21 restricts the scope of enquiry to a consideration of the interests of the persons affected by the objection. But it does not follow from Section 21 that there is any restriction on the grounds which can be raised by a person affected by the objection to protect his interest. The restriction that is laid is not to consider the interests of a person who is not affected by the objection. Section 29 deals with apportionment of compensation, if there is agreement, and Section 30 enables the Collector to refer disputes as to apportionment to the Court. From the above discussion it follows that a person claiming an interest in compensation is entitled to be heard under Sections 20 and 21 of the Act. The provisions of the Act, including Ss. 20 and 21, do not prescribe that his claim to an interest in compensation should be ''as compensation'', as urged by Mr. Desai. This is really a contradictory statement.

For, a fortiori, he has no interest in land, and compensation is given for interests in land. He can never claim compensation qua compensation for what he claims is an interest in the compensation to be awarded. This is not to say that a person claiming an interest in compensation may not claim that the compensation awarded for the acquired land is low, if it affects his interests."

The above observation brings out clearly the distinction between a claim to an interest in the compensation ''as compensation'' and a claim to an interest in the compensation because the claimant is a creditor .A person having no interest in the land cannot claim interest in the compensation ''qua compensation''; still he may be a person interested in the compensation, because, the compensation awarded may affect his interest, such as an award of a low compensation.

(23) Compensation is given for interest in land. Similarly, consideration is payable for the vesting of the property under Chapter XX-C of the Act, for interests in the said property. It is he who has an interest in the property, can be said to be ''entitled to'' the compensation. Any other person, who will be affected by the payment of compensation to the said person having title to the land, will be a ''person interested'' in the consideration. Such a ''person interested'' may have to take other legal steps to realise the dues to him out of this consideration payable to the ''person entitled'' to it.

(24) Before proceeding further, it is necessary to clarify that I am not considering the effect of the words added to Section 269UG(1) by the Finance Act, 1993. As per this addition on the purchase order being made by the appropriate authority, the property shall, on the date of the order, vest in the Central Government in terms of the agreement for transfer referred to in sub-section (1) of Section 269UC. I am confining the section as reading: "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- section (i) of clause (d) of Section 269UA, such property shall, on the date of such order, vest in the Central Government". (I have omitted the subsequent words found at the relevant time i.e. ''free from all encumbrances", because these words were struck down in C.B. Gautam''s case; 199 Itr 530).

(25) The right of the transferee (i.e. the petitioner) to receive back the sum of Rs.10 lakhs paid by him as earnest money and advance, in no way can be considered as an encumbrance on the property. It is a personal right. Said right cannot be placed on a higher pedestal than an encumbrance.

(26) A decision of Andhra Pradesh High Court in Mrs. Sooni Rustam Mehta and others Vs. Appropriate Authority, income Tax Department; 190 Itr 290, was cited by Mr. Narayanan. At page 300, the Bench held :

"IN our view, the word ''title'' in sub-section (3) of section 269UG should be considered not merely as relating to the ''ownership'' of the part or whole of the consideration but as referable to the ''entitlement'' of the persons to receive the consideration. The word ''entitlement'' would necessarily give a wider meaning to the word ''title'', thereby taking in even a dispute as to the entitlement of the person challenging the provisions of the Act or the order of vesting earlier passed by the authorities. The position is that when a person challenging the virus of the provisions relating to compulsory acquisition under the Income Tax Act, is consequentially challenging the validity of the order of vesting, or is independently challenging the order of vesting, it would, in our view, be not unreasonable for the Income Tax Department to say that such a person is not unconditionally entitled to receive the apparent consideration within the period specified in Section 269UG(1) and that there is a dispute as to the entitlement of the person to receive the consideration. In such an event, it would be open to the Department not to tender the apparent consideration u/s 269UG(1) but to deposit the same before the appropriate authority under sub-section (3). If a person is questioning the validity of the provisions relating to compulsory acquisition or the order of vesting, he could not claim to receive the apparent consideration as a matter of right or unconditionally even before a decision is rendered as to the virus of the provisions or as to the validity of the order of vesting. If a deposit could, Therefore, be made Section 269UG(3), the provisions relating to reverting in tin'' apparent manner u/s 269UH would not be attracted."

Above observation was made in the context of a dispute having been raised as to the title of the petitioner to receive the consideration. There the petitioner had entered into an agreement to sell the property. But the appropriate authority made an order of purchase by the Central Government. This order was challenged by another person by filing a writ petition; main contention in the earlier writ petition was that the petitioner could not enter into an agreement of sale. In view of the pendency of this writ petition by the third party, the apparent consideration was deposited u/s 269UG(3) of the Act. Petitioner contended that the consideration was not tendered to her within the prescribed period and Therefore purchase order stood abrogated and sought a direction to the appropriate authority to make a declaration accordingly. The court did not accept this contention of the petitioner. The court posed the relevant question at page 295 (and at page 299) "Whether there is any dispute as to the title to receive the amount of consideration", and later, answered it in the Affirmative, even though there were no rival claimant to the title. The observations at page 300 (quoted above) indicate that there is a difference between the ownership of the property and ''entitlement'' to receive the consideration and this dispute as to entitlement would include the dispute raised regarding the validity of the Act or of the purchase order. The court proceeded to say that, if the Income Tax Department infers that there is a dispute as to the entitlement of the person to receive the consideration, in view of the writ petition challenging the provisions of the Act or of the order, such an inference cannot be considered as unreasonable and it is ''open'' to the Central Government to deposit the amount u/s 269UG(3). The Bench did not say that in every case of a writ petition challenging the virus of the Act or the validity of the purchase order, the Revenue should treat it as raising a dispute covered by Section 269UG(3), irrespective of the nature of the dispute raised in the writ petition. Court was actually considering the correctness of the action taken by the Revenue u/s 269UG(3) in the particular facts of the said case and held the particular action to be not unreasonable.

(27) The ratio of the above decision is, that the correctness of the action taken by the Revenue, either in making the payment u/s 269UG(1) or depositing it u/s 269UG(3), has to be examined with reference to the particular set of facts and the person filing the writ petition cannot claim to receive the apparent consideration as a matter of right. The owner has not filed any writ petition in the instant case.

(28) In the instant case, the court by its order dated 11.5.1989 (in the earlier writ petition) had permitted the statutory consequences to follow, if the petitioner failed to make the payment to the owner by 11.7. 1989.

(29) If, in the instant case, the Revenue had considered it a proper course to adopt, to deposit the amount u/s 269UG(3), and made the deposit, in all probability, the course adopted would have been upheld. In this type of cases, where two or more alternative courses could have been adopted, and one such course was ultimately followed, it cannot be said that the statutory mandate was contravened.

(30) Mr. Narayanan relied on the decision of the Supreme Court in Bai Dosabai Vs. Mathurdas Govinddas and Others, . in support of his contention that petitioner is entitled to a part of the sale consideration. There the, court was considering the right of a person who entered into an agreement of sale with the owner. The said person was already a lessee of the property. Under the lease deed the owner had agreed to sell the land to the lessee within the stipulated period for a price which was also given in the lease deed. One fourth of the sale price was paid on the very date of the agreement, by the lessee to the owner. The lease deed further provided that on failure of the lessee to purchase the land, Lesser may sell it by public auction and in case price fetched is less than the price of the land agreed to in the lease deed, difference shall have to be paid by the lessee. However, if the price fetched is more, the excess realised shall have to be paid to the lessee, by the Lesser; (other terms need not be referred). In this connection, the effect of the terms of this agreement was considered by the Supreme Court. Having held that concept of equitable estate is foreign to Indian Law, the court, observed at page 1337: "The concept and creation of duality of ownership, legal and equitable, on the execution of an agreement to convey immovable property, as understood in England is alien to Indian Law which recognises one owner i.e. the legal owner: Vide Rambaran Prosad Vs. Ram Mohit Hazra and Others, and Narandas Karsondas Vs. S.A. Kamtam and Another, . The ultimate paragraph of Section 54 of the Transfer of Property Act expressly enunciates that a contract for the sale of immovable property does not, of itself, create any interest in or charge on such property. But the ultimate and penultimate paragraphs of Section 40 of the Transfer of Property Act make it clear that such a contract creates an obligation .annexed to the ownership of

immovable property, not amount to an interest in the property, but which obligation may be enforced against a transferee with notice of the contract or a gratuitous transferee of the property. Thus, the Equitable ownership of property, not amounting to an interest in the property, but an obligation which may be enforced against a transferee with notice or a gratuitous transferee." Thereafter the court held on facts:

"THE lesser is under an obligation to pay the excess price, if any, realised by the sale by public auction to the lessee. To sell, the property by public auction is thus both a right and an obligation. The obligation of the lessee is to pay on fourth of the stipulated price in advance and to pay the balance if he desires to purchase the property or to pay the deficit, if any, if the Lesser is obliged to sell the property consequent on his failure to purchase. His right is to obtain a sale deed by paying the balance price or to get any excess amount realised at the public auction. Whatever happens, he is not entitled to get a refund of the advance of one-fourth of the purchase price paid by him, and whatever happens, the Lesser is bound to sell the property either to the lessee or by public auction. We do not have any doubt, on a consideration of the terms of the deed and the relevant statutory provisions earlier referred, that the obligation of the Lesser to sell the land by public auction and pay the excess price to the lessee is an obligation annexed to the ownership of the property, not amounting to an interest in the property, that it is an obligation in the nature of a trust, and, Therefore, an obligation which may be specifically enforced."

The last sub-para was relied upon to contend that a subsequent purchaser, who purchases the property with full knowledge of an earlier agreement of sale in favor of another (agreement holder) has an obligation towards the said agreement holder to pay a part of the consideration to the said agreement holder, as a prior condition for the vesting of the property in the subsequent purchaser. I do not think the observations of the Supreme Court can lead to such a result. No doubt, the subsequent purchaser steps into the shoes of the owner, to the extent of the obligations of the earlier owner, towards the agreement holder. The right thus created statutorily, in favor of the agreement holder, is not a right in the property. The said right is enforceable against the subsequent purchaser, because the ownership in the property stood transferred to him. The obligation which is personal, arises only after the vesting which has nothing to do with any interest in the property. The subsequent purchaser does not hold the "sale price" in trust for the prior agreement holder; the trust created is limited only to the extent necessary to give effect to the contract, (underlined words are found in Section 91 of the Trusts Act). When the contract is destroyed by operation of law, question of giving effect to the contract, to any extent can not arise. In the aforesaid decision of the Supreme Court, under the contract, the Lesser was obliged to sell the land and pay the excess price to the lessee. The giving effect to the said contract Therefore, involved atleast two acts (1) sale by public auction; and (2) payment to the lessee, of the excess price. The Supreme Court clearly laid down that these obligations annexed to the ownership of the property did not amount to an interest in the property, but, the owner was obliged to honour these terms and the excess sale price received by the owner after the sale, was held by him in the nature of a ''trustee'', for the benefit of the agreement holder.

(31) I do not think, the right of an agreement holder (as the petitioner herein) can be placed on a higher pedestal than that of a secured creditor, or any person in whose favor the property is encumbered.

(32) The petitioner is partly responsible for the agreement which facilitated the Central Government to purchase the property. The argument seems to be that the Central Government derived a benefit because of the agreement executed by the petitioner and the owner; Therefore, it is equitable to constitute the relevant provisions liberally to provide for the payment of a part of the consideration to the petitioner equal to the amount of advance amount paid already by the petitioner under the agreement.

(33) Petitioner is entitled to the refund of the earnest money and advance paid by him. This entitlement is by way of restitution or compensation. Any other interpretation would result in equating a personal right (or a bare right) to sue for specific performance of an agreement for sale of property, to an interest in the property.

(34) Petitioner is a person ''interested'' in the property. But I do not think, he has any ''interest'' in the property.

(35) Whenever a person enters into an agreement to purchase a property and pays a substantial sum as advance, he runs the risk of litigation. He falls into the trap of the vendor''s mercy. This risk is inevitable, and now there is an additional risk of losing the right to purchase in view of the provisions of Chapter XX-C.

(36) A close reading of the observations made by the Supreme Court in C.B. Gautam Vs. Union of India and Others, indicates that, the Central Government shall have to tender or pay the consideration to the owner of the property. One of the contentions before the Supreme Court was that Section 269UE(1) was arbitrary because it declared the vesting of the property ''free of all encumbrances'', thereby adversely affecting, the right of innocent third parties. Supreme Court upheld this plea and struck down the offending words. In that context, the court had to point out the persons to whom the Central Government has to pay or tender the consideration when the property vests in it, as per the purchase order. At page 556, the court observed: "Under the provisions of sub-section (1) of Section 269UD on an order for purchase by the Central Government of an immovable property, the Government would be liable to pay as compensation to the owner of the property an amount equal to the amount of apparent consideration". Thus according to the Supreme Court the apparent consideration payable is to the owner of the property.

(37) However, regarding the remedy available for the loss of encumbrances or

leasehold rights, the holder of these interests shall have to obtain their compensation from the amount awarded as the purchase price to the owner; at page 559 (of C.B. Gautam''s case) the court held:

"AS we have stated earlier, where an agreement for sale provides that the property is intended to be sold free of all encumbrances or leasehold rights, the order for purchase of such property u/s 269UD Q) in the said Chapter would result in the said property vesting in (hi Central Government free of such encumbrances or leasehold interests. In such a case, the holders of the encumbrances or leasehold interests would have to obtain their compensation from the amount awarded as the purchase price to the owner of the property. This appears to be a fair construction because, in such a case, the apparent consideration can be expected to include the value of such leasehold interests or encumbrances. The holders of the encumbrances or leasehold interests which would be destroyed in this manner can be said to be persons interested as contemplated in clause (e) of Section 269UA. In this connection, we may refer to sub-section (5) of Section 269UE which declares that nothing in the said section which deals with the vesting of property in the Central Government 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. This provision makes it amply clear that, in the case we have just referred to, the encumbrance holder or the holder of the leasehold rights could claim the fair value of his encumbrance or the leasehold interest out of the amount paid on account of purchase price to the owner of the immovable property acquired by the Central Government u/s 269UD."

The following principles emerge from the above observations: (i) The holders of the encumbrances or leasehold interest are to seek compensation from the owner. (ii) The apparent consideration would normally, include the value of the above said interests. From this it also follows that apparent consideration would always include the earnest money and advance paid by the transferee (the prior agreement holder). Just as the holder of encumbrances or leasehold interests are persons interested, agreement holder also will be a person interested. (iii) The last clause in the sentence quoted once again refers to the amount paid ''on account of the purchase price to the owner of the immovable property....''. Again at page 562, the Supreme Court referred to the payment of the apparent consideration by the Central Government to the seller and in another place as "to the owner". These observations indicate that, the Supreme Court considered only the owner of the property as the person entitled to receive the consideration from the Central Government.

(38) While considering this writ petition court has to proceed on the basis that the directed the payment of consideration amount with interest to the petitioner in case the writ petition fails. This was on the assumption that petitioner may

comply with the earlier direction to pay the balance consideration to the owner. If there was such a payment, but the writ petition ultimately fails, property would vest in the Central Government and if so, the payment of consideration amount shall have to be made to the petitioner. The Bench said that this was necessary as otherwise the Central Government would have to make the payment of the apparent consideration to the purchaser. The word ''purchaser'' in the last sentence was an obvious error. It ought to have been ''seller''. This mistake has been noticed both by D.P. Wadhwa J. and R.L. Gupta, J. in their judgments. It is quite clear that the Bench which made the order on 11.5.1989 (of which D.P. Wadhwa, J. was a member) thought that in case the writ petition fails the apparent consideration shall have to be paid by the Central Government to the seller (owner) and Therefore made it clear that the said amount shall be paid to the petitioner who has been directed to make the payment to the seller earlier. This indicates that at the relevant point of time the understanding of the Bench was that under the Act the entitlement to the consideration payable by the Central Government was with the owner.

(41) The petitioner did not make the payment which he should have made on or before 11.7.1989. Therefore, the Central (Government had to make payment before the end of the month next to the month in which the property vested in the Central Government. In other words, in the instant case the property stood vested in the Central Government on the failure of the petitioner to pay the balance amount on 11.7.1989. The consideration amount Therefore, had to be paid by the Central Government before the end of August, 1989. The Central Government paid this amount to the petitioner on 18.8.1989. According to the petitioner he was not aware of this payment. He filed C.M. 3575/1989 in the earlier writ petition on 22.8.1989. I have already quoted the relevant averments made in the said C.M.P. The petitioner pointed out that his failure to make the payment has occasioned the ''consequences'' under Chapter XX-C to follow the purchase order. Therefore, he wanted a clarification regarding the payment of Rs.10 lakhs to him. He wanted a clarification whether the owner should refund the sum of Rs.10 lakhs to him, on the Revenue paying the full consideration to the owner, or whether the department should pay the said amount of Rs.10 lakhs directly to the petitioner and the balance to the owner. In an earlier para (which is already quoted) there is a specific averment that by staying the auction of the property the owner would not be prejudicially affected because he would receive the full apparent consideration. The petitioner referred to the sum of Rs. lO lakhs as representing "the refund of his paid'' up amount" directly from the concerned authority and that the first party shall have no objection for the same. The entire tenor of the said C.M.P. indicates that even according to the petitioner the entire apparent consideration shall have to be paid by the Central Government to the owner directly and in the circumstances, he sought a direction/clarification from this court regarding the said amount.

(42) The understanding of the petitioner about the meaning of a statutory provision certainly would not bind him always. There can not be estoppel against

the Statute. I have referred to this understanding of the petitioner to show as to how the petitioner and his legal adviser understood the meaning of the relevant words, just before the alleged date of the cause of action for the present writ petition.

(43) The provisions of Chapter XX-C do not provide for payment of any compensation for the loss of the contractual right created in favor of the person who agreed to purchase the property. He has to seek the compensation or the restitution of the amount paid by him by recourse to other remedies.

(44) In the view I have taken as above, the writ petition shall have to be dismissed.

(45) Before parting, it is not irrelevant to note that in view of the decision of the Supreme Court in C.B. Gautam''s case; 199 Itr 530, normally there should not be any impediment. for the petitioner to succeed in his earlier writ petition, which is still pending. In the result the writ petition is dismissed. No costs.

