(1994) 09 CAL CK 0023

In the Calcutta High Court

Case No : Matter No. 1481 of 1994

Dwarkanath Chatterjee and Others APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 30-09-1994

Acts Referred:

Income Tax Act, 1961 — Section 269UC, 269UL

Citation : (1995) 127 CTR 116 : (1995) 213 ITR 470 : (1995) 82 TAXMAN 599

Hon'ble Judges : Tarun Chatterjee, J

Bench : Single Bench

Advocate : Mitra, for the Appellant; Pal, for the Respondent

Judgement

Tarun Chatterjee, J.—Writ petitioners Nos. 1 to 5 are the joint owners of the premises Nos. 9, 7/1A and 7/1B, Lovelock Place, Calcutta-700 009 (hereinafter referred to collectively as the said premises). Writ petitioner No. 6 has entered into an agreement on January 28, 1994, with the writ petitioners Nos. 1 to 5 to develop the said premises. By the Finance Act, 1986, with effect from October 1, 1986, Chapter XX-C consisting of Sections 269U to 269UO was inserted in the Income Tax Act, 1961, with the object of inducing the transferors and the transferees to declare the full amount of consideration in their agreements for transfer. Section 269UC of the Income Tax Act, 1961 (hereinafter referred to as "the Act") provides as follows :

"(1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), or in any other law for the time being in force, no transfer of any immovable property of such value exceeding ten lakh rupees as may be prescribed, shall be effected except after an agreement for transfer is entered into between the person who intends transferring the immovable property (hereinafter referred to as ''the transferor'') and the person to whom it is proposed to be transferred (hereinafter referred to as ''the transferee'') in accordance with the provisions of Sub-section (2) at least four months before the intended date of transfer.

(2) The agreement referred to in Sub-section (1) shall be reduced to writing in the form of a statement by each of the parties to such transfer or by any of the parties to such transfer acting on behalf of himself and on behalf of the other parties.

(3) Every statement referred to in Sub-section (1), shall,--

(i) be in the prescribed form ;

(ii) set forth such particulars as may be prescribed ; and

(iii) be verified in the prescribed manner,

and shall be furnished to the appropriate authority in such manner and within such time as may be prescribed, by each of the parties to such transaction or by any of the parties to such transaction acting on behalf of himself and on behalf of the other parties." .

2. The prescribed form u/s 269UC of the Act is Form No. 37-I.

3. Section 269UD of the Income Tax Act, 1961, inter alia, provides that 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 in writing, make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of the 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, .

4. By an amendment of the Finance Act, 1993, a second proviso has been inserted by which the period of limitation has been increased from two months to three months for giving effective opportunity to the affected persons of being heard by the appropriate authority. The fourth proviso has been inserted by the amendment of the Finance Act, 1993, which provides 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 Chapter XX-C of the Income Tax Act with reference to the date of vacation of the said stay.

5. Section 269UL of the Act provides as under :

"(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 if 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 Sub-section (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."

6. In due compliance with the provisions of Section 269UC of the Act, the writ petitioners duly reduced to writing the said agreement dated January 28, 1994, in the prescribed From No. 37-I and furnished the same to the appropriate authority on February 17, 1994. On the basis of the aforesaid prescribed Form No. 37-I, an order was passed by the appropriate authority on May 31, 1994, which is under challenge in this writ application. From the impugned order, it appears that the following findings were made by the appropriate authority :

"(a) That no evidence of any power having been executed by petitioners Nos. 3, 4 and 5 in favour of petitioner No. 1 (who had signed the Form No. 37-I as their constituted attorney) had been disclosed;

(b) No material has been brought on record to show that the executors of the probated wills of Gayatri Devi Chatterjee and Binapani Chatterjee has rendered accounts to this court ;

(c) That Binapani Chatterjee and Gayatri Devi Chatterjee had both made their wills on January 18, 1989, and that as Gayatri Devi Chatterjee died soon thereafter on April 10, 1989, such close proximity of her death with the date of execution of the wills was too close for comfort and was a flaw that afflicted the right and title of the persons who claimed to be transferors in the said sale agreement ;

(d) That the passage of right and title of the property into the hands of petitioner No. 1, to his mother, Gayatri Devi Chatterjee, and to his late brother, Prabudhanath Chatterjee, had not been supported by any material evidence ;

(e) The right and title to the property in question claimed to be owned and possessed had not been firmly and undoubtedly established by the transferor and as such the right of the transferors to own and possess the said, property by successive inheritance and to transfer the same through their alleged constituted attorney become not only doubtful but also, invalid.

(f) The request of the transferors and the transferee as contained in Form No. 37-I cannot be acted upon in law and is held to be non est; "

7. Mr. Mitra, appearing on behalf of the writ petitioner, challenged the impugned order of the appropriate authority on the ground that the appropriate authority had or has no power under Chapter XX-C of the Act to consider anything other than the question of issue of an order for the purchase of the said premises for the apparent consideration. He further contended that by deciding the title of writ petitioners Nos. 1 to 5 in respect of the said premises and by coming to a finding that the right of writ petitioners Nos. 1 to 5 to transfer the premises was doubtful and invalid, the appropriate authority had acted beyond and in excess of its jurisdiction.

8. Mr. Pal, appearing on behalf of the respondent, however, contested the said submission raised on behalf of the writ petitioners.

9. Having heard learned counsel appearing for the parties and after giving my serious consideration to the submissions made on behalf of the parties, I am of the view that Mr. Mitra was right in his submission that Section 269UD of the Act does not confer any authority, power or jurisdiction to the appropriate authority to go into the question of title of the writ petitioners in respect of the property in question which is sought to be sold on the basis of the agreement for sale.

10. As noted earlier, Chapter XX-C of the Act was brought into force with effect from October 1, 1986. Initially, a scheme was prepared in 1972 for purchase of immovable properties by the Central Government, proposed to be transferred, to counteract evasion of taxes and a new Chapter being Chapter XX-A of the Act was inserted for acquisition of immovable properties in certain cases of transfer for the said purpose. Section 269RR under Chapter XX-A of the Act was inserted with effect from October 1, 1986, by the Finance Act, 1986, which provides that Chapter XX-A shall not apply to any transfer made after September 30, 1986. Therefore, from the scheme and object of introducing Chapters XX-A and XX-C of the Act, it would be evidently clear that such provisions have been inserted by the Legislature to counteract evasion of taxes in the matter of acquisition of immovable properties in certain cases of transfers and, therefore, the intention of the Legislature would be clear from the object of introducing Chapters XX-A and XX-C of the Act that in order to counteract evasion of taxes, a right to purchase any immovable property at an amount equal to the amount of apparent consideration, has been created in favour of the Central Government. Section 269UD of the Act clearly says that the appropriate authority on receipt of a statement under Sub-section (3) of Section 269UD in respect of any immovable property may make an order for purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration. The use of the word "may" in Section 269UD of the Act by the

Legislature is significant. Considering the object and the scheme of Chapters XX-A and XX-C and considering the use of the word "may" in Section 269UD of the Act, there cannot be any doubt in one''s mind that a right is created in the Central Government to purchase an immovable property at an amount equivalent to the amount of apparent consideration, i.e., if a transferor and a transferee in order to evade tax enter into an agreement for transfer of an immovable property for a consideration which is not the real consideration then a right of purchase to the Central Government at such consideration is created by these two chapters to counteract the evasion of taxes. Therefore, the consideration u/s 269UD of the Act to be taken into account by the appropriate authority is only to see whether the immovable property in question, in order to evade taxes, is going to be sold at an amount equal to the amount of apparent consideration. It does not appear to me from a plain reading of the provisions in Section 269UD of the Act that this section contemplates any power conferred on the appropriate authority to come to any finding except with regard to the adequacy of the consideration shown in an agreement for sale and on that basis to decide whether the order for purchase of the concerned immovable property by the Central Government by an amount equal to the amount of apparent consideration should be passed or not. In my view, therefore, this is the only power conferred on the appropriate authority while dealing with Form No. 37-I u/s 269UD of the Act. Hence u/s 269UD of the Act, in my view, the appropriate authority is not conferred with power to go into the question whether the transferors have any right, title and interest in the immovable property in question.

11. I have already noted down the findings made by the appropriate authority in the impugned order. From a perusal of the said findings, as noted earlier, it is clear that the said findings of the appropriate authority were made on the question of title of writ petitioners Nos. 1 to 5 in respect of the said premises. It also appears from the findings made in the impugned order that from the date of execution of the wills and from the date of death of one Smt. Gayatri Devi Chatterjee, accounts had not been duly rendered, by the executors of the said will. As held hereinabove, the appropriate authority while dealing with Form No. 37-I filed u/s 269UD of the Act, is not conferred with any power to go into the question of title or any other question except what has been held hereinabove. I am of the view that the appropriate authority had acted beyond the jurisdiction to decide Form No. 37-I u/s 269UD of the Act by going into the question of title and other questions as found by the appropriate authority. In my view, therefore, the appropriate authority had or has any power under Chapter XX-C of the Act to engage itself in any exercise not concerning the order for purchase of an immovable property in question by the Central Government for the apparent consideration. That being the position, I am of the view that the appropriate authority, in passing the impugned order u/s 269UD of the Act, had exceeded its jurisdiction and, therefore, the impugned order passed u/s 269UD of the Act is liable to be set aside.

12. The view that I have taken, as noted above, on the scope of Chapter XX-C of the Act is fortified" by the two Division Bench decisions, one of the Delhi High Court in Satwant Nakang Vs. Appropriate Authority, Income Tax Department, New Delhi,) and the other reported in Appropriate Authority, Government of India Vs. Naresh M. Mehta, . In view of my discussions made hereinabove, I set aside the impugned order dated May 30, 1994, passed by the appropriate authority, which is annexure ''C'' to this writ petition.

13. Since the order under challenge is set aside, a question arises now whether this court shall direct the appropriate authority to issue a "no objection" certificate in view of the first and second provisos to Section 269UD of the Act or shall direct the appropriate authority to hear the matter afresh and to give liberty to the Central Government to exercise their right to purchase the said premises u/s 269UD of the Act. According to Mr. Mitra, the question of giving fresh opportunity to the Central Government to obtain an order for purchase of the said premises from the appropriate authority cannot arise at all in view of the mandatory provisions as occurring in the first and second provisos to Section 269UD of the Act. On the other hand, Mr. Pal, appearing on behalf of the Revenue, has contended that as this court is setting aside the impugned order passed by the appropriate authority refusing to issue any no objection certificate to the writ petitioner on the ground which is foreign to the scope of Section 269UD of the Act, as held by this court, an opportunity must be given to the Central Government afresh to make up their mind in the matter of purchase of the said premises u/s 269UD of the Act.

14. Having heard learned counsel, appearing for both the parties, on the question referred to hereinabove and after giving my serious consideration to the same and after carefully examining Chapters XX-A and XX-C of the Act and the relevant provisions under the said Chapters, I am of the view that the question of giving further opportunity to the Central Government to make up their mind to purchase the said premises at this stage is not permissible in law in view of the mandatory provisions in the first and second provisos u/s 269UD of the Act. In order to appreciate the contentions so raised by learned counsel for both the parties, it would be necessary to consider Sections 269UD and 269UL of the Act afresh at this stage.

15. Section 269UD of the Act clearly provides that the appropriate authority, after receiving a statement under Sub-section (3) of Section 269UC in respect of any immovable property, "may" make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of the apparent consideration.

16. Section 269UL of the Act provides that if the Central Government is of the opinion that the power conferred on it u/s 269UD of the Act to purchase an immovable property at an amount equal to the amount of the apparent consideration should not be exercised in the facts and circumstances of that case, it shall issue a no objection certificate declaring that the Central

Government has no objection if the property is transferred on the basis of the agreement of sale entered into by the parties. From a plain reading of Section 269UD of the Act and Section 269UL of the Act, it must be held that the power to purchase the immovable property in the exercise of the power u/s 269UD of the Act is not mandatory but a discretionary one. It will be open to the Central Government not to exercise the power of purchase u/s 269UD of the Act and to issue a no objection certificate in terms of Section 269UL of the Act if the Central Government is of the opinion that in the facts and circumstances, of that particular case, such power of purchase should not be exercised. Therefore, from a plain reading of these two provisions of the Act and in view of the word "may" used in Section 269UD of the Act, it must be held that the right to purchase a property is not mandatory but a directory one. Section 269UD of the Act, in my view, confers only a discretionary power on the Central Government to exercise its right of pre-emption in respect of the property in question which is the subject-matter of an agreement for sale. Now let us consider the relevant provisos to Section 269UD of the Act. The first proviso to Section 269UD of the Act runs as follows :

"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, u/s 269UC in respect of such property is received by the appropriate authority," .

17. The second proviso to Section 269UD of the Act, however, as noted earlier, increased the period available under the first proviso from two months to three months for giving effective opportunity to the affected persons of being heard by the appropriate authority.

18. The fourth proviso to Section 269UD of the Act, to which I have already referred hereinabove, provides 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 Chapter XX-C of the Income Tax Act with reference to the date of vacation of the said stay. In my view, we are not concerned with the fourth proviso to Section 269UD of the Act for two simple reasons; firstly, it contemplates cases where an order for purchase of a property has been passed by the appropriate authority and, secondly, where an order of stay has been granted by any court against the passing of an order for purchase of the immovable property by the appropriate authority. In the case in hand, admittedly, no such order for purchase was passed by the appropriate authority. On the other hand, the order that is under challenge in this writ application is an order passed by the appropriate authority rejecting Form No. 37-I filed on behalf of the writ petitioners u/s 269UC of the Act. It is also the admitted case that no stay order had been granted by this court while the writ petition was moved in this court. Therefore, the question of applying the fourth proviso to Section 269UD of the Act in the facts and circumstances of this case, does hot arise at all.

19. From a plain reading of the first and the second provisos to Section 269UD of the Act, it is clear that the period of limitation to pass an order of purchase of any immovable property shall be three months from the end of the month in which the statement, referred to in Section 269UC in respect of the property in question, is received by the appropriate authority. Therefore, it is clear that an embargo on the appropriate authority has been created by the Legislature to pass an order for purchase u/s 269UD of the Act after the period of three months expired. Section 5 of the Limitation Act, however, has not been applied by the Legislature to extend the period of limitation in Section 269UD of the Act.

20. In view of the above, I am of the view that after the expiration of a period of three months from the end Of the month in which the statement referred to in Section 269UC of the Act in respect of such property is received by the authority, the appropriate authority loses its jurisdiction or power to exercise its discretionary power of purchasing the property in question. As noted earlier, a new provision for purchasing immovable property by the Central Government in certain cases of transfer, under Chapter XX-C of the Act, has been introduced by the Finance Act, with effect from October 1, 1986. By this Chapter XX-C of the Act, a scheme has been introduced which empowers the Central Government to purchase immovable properties which are being offered for sale in the market at the price agreed to by the transferor subject to certain limitations that the provision for purchase shall not apply to or in relation to any immovable property where an agreement for transfer of such property is made by a person to his relative on account of love and affection if a recital to that effect is made in the agreement for transfer and that such right of purchase shall not apply to the proposed value of less than Rs. 10 lakhs located in metropolitan cities. There is yet another significant factor that needs to be considered here. As held earlier, Section 269UD of the Act confers discretionary power on the Central Government to exercise its right of pre-emption in respect of the property in question and in the event the Central Government is of the opinion that such power should not be exercised in the facts and circumstances of a case, they shall issue a "no objection" certificate in favour of the person who intends to transfer the immovable property in question by entering into an agreement for sale. That apart on a plain reading of Section 269UD(1) of the Act and the first and second provisos to Section 269UD of the Act; I am also of the view that the right to exercise the discretionary power to purchase an immovable property in question is restricted to the passing of an order for purchase by the appropriate authority before the expiration of three months from the end of the month in which the statement referred to in Section 269UC in respect of such immovable property is received by the appropriate authority. The reasons are as follows :

In Section 269UD(1) of the Act, it is significant to note that the power to purchase an immovable property under that section is a directory one and a discretion has been given to the Central Government to use such discretionary power of purchase as it is significant from Section 269UD(1) of the Act wherein the word "may" has been used, whereas the first proviso to Section 269UD of the

Act is a mandatory one wherein the word "shall" has been used. Thus, the use of two different words, i.e., "may" and "shall" firmly established the difference, i.e., Section 269UD(1), is directory in nature and Section 269UD is mandatory in nature with regard to purchase of any immovable property. An embargo has been made, on the appropriate authority for passing an order for purchase u/s 269UD of the Act if the period of limitation, as mentioned in the proviso to Section 269UD expires. In this view of the matter also, it must be held that the proviso to Section 269UD of the Act is a mandatory provision and after the expiry of limitation, as mentioned in the proviso to Section 269UD of the Act, the question of passing any order for purchase shall not arise at all. Therefore, from the above, it is clear that the intention of the Legislature was to allow the Central Government to exercise its right of purchase of any immovable property limited to the period mentioned in the first and second provisos to Section 269UD of the Act. That being the position, and considering the use of the words "may" and "shall" in Section 269UD of the Act, I am of the view that the Central Government could exercise its right to purchase the said premises in terms of Section 269UD of the Act only before the period of limitation as prescribed in the first and second provisos to Section 269UD of the Act. Therefore, the appropriate authority, in my view, cannot pass any order for pre-emption in respect of any property after expiration of the period of three months, as mentioned in Section 269UD of the Act subject to the fourth proviso to Section 269UD of the Act by which, however, the Central Government is entitled to get the period of limitation extended or counted in a case where an order for purchase has to be passed and an order of stay has been granted by any court. Since in this case, admittedly, no order of purchase has been passed nor any stay has been granted by this court or any other court, as noted earlier, the question of applying the fourth proviso in the facts of this case, does not arise at all.

21. In view of my discussions made hereinabove and considering the scope and scheme of Chapter XX-C of the Income Tax Act, particularly considering the scope of Sections 269UD and 269UL of the Act, I have no hesitation to hold that the first and second provisos to Section 269UD are mandatory in nature and no order can be passed after the expiry of three months, as mentioned in the first and second provisos to Section 269UD of the Act. A Division Bench of the Delhi High Court, relied on by Mr. Mitra, on behalf of the writ petitioner in Satwant Nakang Vs. Appropriate Authority, Income Tax Department, New Delhi, made the following observations in connection with the question whether, when an order is set aside, the appropriate authority can be given an opportunity to reconsider the statement of the writ petitioner filed in Form No. 37-I of the Act and to make up his mind to purchase the property on the apparent consideration mentioned in the agreement for sale, at page 664 of the aforesaid decision :

"We are not impressed by this submission. The agreement under reference is dated October 9, 1989. The petitioner moved the appropriate authority by filing the statement in Form 37-I on October 20, 1989. Thereafter, the Act lays down a very tight schedule for the appropriate authority to make up its mind to purchase or not to purchase the property. There is no provision for extension of time. tHE respondents have missed the bus and have passed the impugned order on December 15, 1989, rejecting the pre-emption on quite irrelevant considerations. This court would not like to extend the period and frame a fresh time schedule for the Department specially when the statute does not give any such power to the court." .

22. The aforesaid decision of the Delhi High Court was also followed by a Division Bench of the Madras High Court, in Appropriate Authority, Government of India Vs. Naresh M. Mehta, , it has observed as follows :

"That apart, as already pointed out, the first proviso to Section 269UD(1) of the Act specifically states that no order for the purchase by the Central Government shall be made after the expiration of a period of two months from the end of the month in which the abovesaid statement was received by the appropriate authority."

23. In view of the aforesaid observations made hereinabove and in view of the aforesaid two decisions of the two different High Courts of India, with which I am in full agreement, I have no hesitation to hold that the Department is not entitled to an order permitting them to reconsider their case for purchase of the said premises.

24. In view of my findings made hereinabove that the proviso to Section 269UD of the Act is a mandatory provision of pre-emption by the appropriate authority of the Central Government, let us now consider whether the limitation does arise in this case or not.

25. From the records, it appears that Form No. 37-I was furnished on February 17, 1994. The impugned order was passed on May 31, 1994. Therefore, admittedly a period of three months had already expired when the impugned order was passed by the appropriate authority. Apart from that, it appears from the record that the writ petition was moved on July 8, 1994. Therefore, even on the date of moving the writ application, the period of three months, as mentioned in Section 269UD of the Act, had already expired. In that view of the matter, it is no more open to me to pass an order directing the appropriate authority to reconsider the question of pre-emption in the exercise of the power u/s 269UD of the Act.

26. Before I part with this judgment, it would be necessary to consider the two decisions cited on behalf of the Revenue in order to satisfy me that when an order passed by the appropriate authority u/s 269UD of the Act is set aside, the appropriate authority should be given an opportunity to reconsider the statement of the assessee filed in Form No. 37-I of the Act and to make up its mind to purchase the said premises on the apparent consideration mentioned in the agreement. The first decision is reported in The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another, . In that decision, an order of summary assessment and retention for

search and seizure were under challenge on the ground whether limitation for passing such an order could be made by the party for whose benefit the property was seized or whether the High Court, in its jurisdiction, could quash a consent summary assessment order and permit fresh order to be made and if an order is passed subsequent to the order of this High Court in its writ jurisdiction, the question of limitation of 90 days for passing an order, would be mandatory or not. In my view, this decision cannot be applied to the facts and circumstances of this case. In the facts and circumstances of that case of the Supreme Court, a consent summary assessment was quashed by the writ court and the writ court directed the officer concerned to proceed afresh and in terms of such direction, an order was passed by the concerned Income Tax Officer in the exercise of its power u/s 132 of the Income Tax Act. The Supreme Court held that when an order quashing a consent summary assessment and permitting fresh order has to be made, the assessee cannot be permitted to take the question of limitation when the subsequent order of assessment is made in terms of the said consent order passed by the writ court in its writ jurisdiction. The decision of a single Bench of this court in Kelvin Jute Co. Ltd. and Another Vs. Appropriate Authority and Others, was also cited on behalf of the Revenue. Reliance was placed on the operative part of the said decision by learned counsel for the respondent in support of its contention. The operative part of the said judgment reads as follows (at page 464) :

"For the foregoing reasons, this court is of the view that the reasons assigned by the appropriate authority in passing the impugned orders cannot be sustained in law. The writ petition is thus allowed. Let a writ of certiorari be issued quashing the impugned orders. There will be a writ of mandamus commanding the respondents-appropriate authority to consider Form No. 37-I afresh in accordance with law within a period of 60 (sixty) days from the date of communication of this order to take effective steps either u/s 269UD of the Income Tax Act or to issue a no-objection certificate in the event there is no inclination to exercise the right of purchase."

27. Relying on the aforesaid direction of the learned judge, made in the said decision, it was submitted by learned counsel for the respondent that it is open to this court also to issue a writ of mandamus commanding the respondent/ appropriate authority to consider Form No. 37-I afresh in accordance with law to take effective steps either u/s 269UD of the Act or to issue a "no objection" certificate in the event there is no inclination to exercise the right to purchase. In my view, this decision does not authoritatively hold that it will be open to the Central Government to reconsider the question of purchase if an order passed by it is set aside by a competent forum.

28. In view of my discussions made hereinabove and in view of the aforesaid two decisions of the two different High Courts of India, I am of the view that the proviso to Section 269UD of the Act is a mandatory provision and in the absence of any power given in the Act itself to extend, the period of limitation, there

cannot be any question to direct the appropriate authority to reconsider the question of purchase when such period had already expired. Under these circumstances, I allow the writ petition and set aside the impugned order of the appropriate authority dated May 31, 1994, which is annexure ''B'' to this writ petition and direct the respondents to issue a "no objection" certificate u/s 269UL of the Act for the registration of the sale deed of the said premises within three months from the date of communication of this order.

29. The writ petition stands allowed.

30. There will be no order as to costs.

31. All parties concerned to act on the signed xerox copy of this judgment on the usual undertaking.

