(1990) 04 MAD CK 0004

In the Madras High Court

Case No : Writ Miscellaneous Petition No''s. 1920 and 5041 of 1989 In Wp No. 1259 of 1989

Flash Builders APPELLANT

Vs

Appropriate Authority, Income Tax Department RESPONDENT

Date of Decision : 05-04-1990

Acts Referred:
Income Tax Act, 1961 — Section 269UD, 269UD(1), 269UE, 269UE(2), 269UF

Citation : (1990) 04 MAD CK 0004

Hon'ble Judges : K.M. Natarajan, J

Bench : Single Bench

Judgement

K.M. Natarajan, J.—These petitions coming on for hearing upon perusing the petitions and the affidavit filed with WMP No. 1920 of 1989

and the order of this Court dated 2-2-1989 and made in WMP. No. 1920 of 1989 and the counter and reply affidavits filed thereon and upon

hearing the arguments of Mr. K. Mani Advocate for the petitioner in WMP No. 1920 of 1989 and for the 1st respondent in WMP No. 5041 of

1989 and of Mr. C. Natarajan Advocate for the 3rd Respondent in WMP No. 1920 of 1989 and for the petitioner in WMP No. 5041 of 1989

and steps not having been taken to issue notice to the 1st and 2nd respondents in WMP No. 1920 of 1989 and for the 2nd and 3rd respondents

in WMP No. 5041 of 1989 the Court made the following order:

The brief facts for filing these two petitions are as follows:

W.M.P. No. 1259 of 1989 is filed by the purchaser for issue of a writ of certiorari calling for the records to quash the impugned order dated 9-1-

1989 issued by the first respondent in the writ petition, namely, u/s 268UD(1) of the income tax Act, 1961 (''the Act'') ordering the purchase of the property at No. 85, Chamiers Road, Alwarpet, Madras-18 by the Central Government, in respect of which the writ petitioner is claimed to have

entered into an agreement for purchase with the third respondent for a consideration of Rs. 50,50,000 and in respect of which he advanced Rs.

3,75,000 in addition to substantial amounts of expenditure, which he had incurred for making application to the M.M.D.A. for permit and sanction

of plan for construction of and other developmental matters. By virtue of the impugned order, u/s 269UD(1) the property shall vest in the Central

Government free from all encumbrances from the date of the order. The first respondent also directed that under the provisions of section

269UE(2) of the Act transferor or any other person who may be in possession of the property shall surrender and deliver possession of the said

property to the first respondent or any other person who is authorised by them within 15 days of the service of the order of free from all

encumbrances. According to the writ petitioner, the above provisions are unconstitutional and as such, the impugned order is totally illegal. He has

also filed W.M.P. No. 1920 of 1989 for granting interim stay of operation of the impugned order of the first respondent and restraining the first

respondent from taking further steps in pursuance of the said order. The writ petitioner obtained interim stay on 2-2-1989. To vacate the said

interim stay, the third respondent filed W.M.P. No. 5041 of 1989.

It is advanced in the affidavit that filed in support of the petition for vacating the grant of stay that the agreement was entered into by him with the

first respondent on 18-10-1988 and at the time of the said execution, a sum of Rs. 1 lakh was received by him and the sale consideration was

fixed at Rs. 50,50,000. As per the agreement, the balance amount was required to be paid in two instalments namely, the first of such instalment of

Rs. 4,50,000 should be made on or before 15-1-1989 and the second payment of the balance of Rs. 45,00,000 should be made on or before 15-

3-1989 and since the first respondent contravened the said terms, the third respondent became entitled to rescing the same. According to the third

respondent the impugned order dated 9-1-1989 was received by him on 20-1-1989. He would submit that apart from Rs. 1 lakh no further

amount was paid and the allegations contrare fale. Since the writ petitioner has committed breach, he has not only lost his right to purchase the property but he is also debarred from challenging the action of the first respondent. The writ petitioner cannot challenge the action of the authority,

namely, the first respondent the appropriate authority of the income tax Department. It is further stated that unless the sale consideration of Rs.

50,50,000 due and payable by the appropriate authority first respondent is received by him, he will not be able to tide over his financial

commitments and problems. He would submit that he has been living in the property even since 1971. He closed down his business and he is not

doing any business at present. His two sons are prosecuting studies in USA and the third one is undergoing studies in Guindy Engineering College,

Madras and, hence, he is in dire need of funds. He would further state that he met with an accident recently and is incurring heavy expenditure on

that account. He would further state that there is no constitutional violation of the present piece of legislation and that it is perfectly valid. The same

is intended to curb the dealings in black money, concealment of income and other anti-social activities. Since the said legislation is within the power

of the Parliament, the writ petitioner has no case for stay. Hence, he prays for vacating the stay as well as for issue of a direction to the first

respondent to pay the sum of Rs. 50,50,000 with interest at the rate of 10 per cent per annum.

2. The writ petitioner filed a reply-affidavit denying the said allegations made by the third respondent in the writ petition. He would state that the

interim stay was granted by this Court after appreciation of the facts and the interim stay ought to be made absolute. Further, the third respondent

has deliberately omitted to mention and/or acknowledge of the receipt of a further sum of Rs. 2,75,000 on various dates mentioned in para 5 of the

writ petition. He was ready and willing to pay the amount of first instalment of Rs. 4,50,000 on 15-1-1989 and he had already paid Rs. 2,65,000

on various dates. But even before the first instalment became due and payable he was paying the above said sum in instalment at the demand of the

third respondent. The impugned order dated 9-1-1989 was passed in the meantime. The third respondent had assured the writ petitioner that he

would take steps to have the order of the first respondent set aside and secure the permission of the first respondent for the sale in terms of the

agreement and that it was only on the basis of the said assurance the writ petitioner effected a payment of Rs. 15,000 on 15-1-1989 and another sum of Rs. 10,000 on 19-1-1989. The third respondent has purposefully suppressed all these facts with ulterior motives. According to the writ

petitioner, he has not committed any breach thereof. The allegations contrary made by the third respondent are opposed to facts and they were

made with the obvious intention of gaining an unfair addition to the extent of Rs. 2,75,000. With regard to the non-mention of Rs. 50,000 in Form

No. 37(1), it was said that the said amount was paid subsequent to the agreement and there is no provision in Form No. 37(1) which should

reflect the terms of the agreement and not what transpired subsequently. It is further stated that the third respondent having agreed to obtain the

approval of the appropriate to the writ petitioner, he has acquired a right under the agreement to purchase the property and as such, he is

competent to question the impugned order of the first respondent in the writ petition. It is only the third respondent who is liable to reimburse the

writ petitioner all the expenses incurred by him for preparing plan for M.M.D. A. approval and the other work connected with the development

and also liable to pay compensation as the writ petitioner had incurred loss and the loss of profit, in addition to repaying the amount of Rs.

3,50,000 together with interest. It is also submitted that since the third respondent is a honest seller and the writ petitioner is a honest buyer, they

should be protected and the injunction should be made absolute and the impugned order should be set aside. It is further submitted that the order -

zealousness with which the third respondent is seeking to supporting the acquisition of the property would prove his motive. The third respondent

instead of co-operating with the petitioner in challenging the said order, is now attempting to put a spoke in his wheel which proves his mala fides.

Hence, the writ petitioner prayed for dismissal of the petition to vacate the injunction.

3. The learned counsel for the third respondent drew the attention of this Court to the decision reported in O.Y.V.R. Moorthy v. Government of

India [W.A. Nos. 1359 to 1361 of 1988, dated 18-1-1989] wherein a Bench of this Court directed the income tax Department to pay the vendor

a sum of Rs. 10.75 lakhs out of the total consideration of Rs. 18 lakhs, after deducting the advance paid by the buyer to the seller, namely, Rs.

7.25 lakhs in the manner set out in the order and also directed the vendor to hand over possession to the department and also hand over the discharged mortgaged deed. While so doing, the Bench has directed the department not to auction or sell the property during the pendency of the

writ petitions. It was further observed that in case the petitioners in the writ petitions succeed, they should pay a sum of Rs. 10.75 lakhs to the

department and on the contrary, if the writ petitions fail, a sum of Rs. 7.25 lakhs shall be paid by the department to the writ petitioners. The learned

counsel for the third respondent is willing to sell the property to the income tax Department if the writ petitioner is not willing to act as per terms of

the agreement and purchase the property, and if the writ petitioner wants to prosecute the writ petition, he should be directed to deposit the

balance of sale consideration and otherwise, the stay should be vacated so as to enable him to get the entire sale price from the income tax

Department by virtue of the impugned order.

4. The learned counsel for the writ petitioner drew the attention of this Court to the decision reported in R. Padma v. Appropriate Authority,

income tax Department [1988] W. L.R. 270 (Mad.) wherein a Division Bench of this Court held:

Even though the contingent vesting of the property had taken place u/s 269UE, when the Central Government had been prevented from paying the

consideration u/s 269UF at the instance of the purchaser, there is considerable risk in directing the Government to pay the entire sale

consideration. If the writ petition is allowed the vesting disappears, and the ownership will be with the appellants. No owner of property could ever

ask for payment of sale consideration, before transfer of title in immovable property. It will be highly inappropriate to direct public funds to be

parted with especially when the Central Government is prevented from implementing the provisions of the Act.

The learned judges while referring to the order passed by this Court in Tilak Kaur v. Shy am Investments [W.A. No. 1637 of 1987, dated 15-10-

1987, observed:]

It has been made clear that the directions given therein were confined to the facts of the case, therefore, the said order could have no relevance to

the claims made by appellants herein.

5. The learned counsel appearing for the income tax Department, Mrs. Nalini Chidambaram submitted that the order passed in W.A. No. 1359 to

1361 of 1988 cannot be relied on in support of the case of the third respondent as the said order was passed in the circumstances of the said case

wherein the parties agreed to the terms and it was not an order passed on merits after taking into consideration all the relevant provisions and its

impact. In R. Padma''s case (supra), it was observed:

While entering into the agreement the appellants (vendors) having known about the existence of chapter XX-C in the Act, ought to have stipulated

terms and conditions which would not involve an order being passed u/s 269UD(i). Having entered into an agreement of sale, which is one, that

cannot be permitted under chapter XX-C of the Act, it is the appellate who will have to be blamed in the manner in which they have stipulated the

terms and conditions therein. Therefore, no owner of property can ever ask the Government to pay any portion of the sale consideration, unless

and until the proceedings in the Court are disposed of. If any loss occasions because of the conduct of 4th respondent, it is for the appellants to

take such proceedings as are available to them in law as against him for indulging in litigation. Public funds cannot be taken away by an owner of

property when the agreement-holder resorts to litigation of this nature.

It is to be noted that the vendors in that appeal where the vendors while the fourth respondent was the purchaser. It was ultimately held:

Hence in matters of this nature, whenever a stay order is obtained at the instance of any of the parties to an agreement of sale, and there is an

interdiction by the Court. Preventing the authorities from pursuing further steps consequent to the issue of an order u/s 269UD(1) then there would

be no directive from the Court to the income tax Department to pay the sale consideration during the pendency of proceedings in Court...

6. Consequently the Bench dismissed the appeal. It is clear from the ratio laid down in the above said decision that the remedy of the third

respondent, vendor is only to take such proceedings as are available to him in law as against the writ petitioner for indulging in litigation in any loss

on occasioned because of his conduct and no direction can be given to the income tax Department to pay the sale consideration during the

pendency of proceedings in Court. The reason for not issuing such direction is also obvious from the observation made by the Bench, which is to

the effect:

It is common knowledge as to how difficult it is for the Government to realise amounts by sale of immovable property. In spite of success in the

writ petition, 4th respondent may thereafter commit breach of contract. It would be unwise to subject the Government to part with public funds

and therefore face litigation, and in doing so, it would be spending more funds to succeed in those matters.

It is not disputed by both the parties that the constitutionality of chapter XX-C is pending consideration before various High Courts and the

Supreme Court. In the event of certain provisions being struck down, the vesting u/s 269UD would disappear, and in such event the owners will

have to look to the purchaser for sale consideration. It is to be noted that the third respondent as well as the petitioner were aware of the existence

of chapter XX-C, when they entered into agreement and that it is applicable to this transaction. As per the terms of the agreement, it is for the third

respondent in the writ petition to obtain necessary permissions from the income tax Department to sell the property, and only on production of the

same, the sale deed is to be executed and the entire amount will have to be paid. Even before the period fixed for payment of the first instalment

namely 15-1-1989, the impugned order was passed on 9-1-1989. The third respondent is in possession of the property and he has not parted

with possession. It is significant to note that according to third respondent the impugned legislation is valid and the writ petitioner has no case for

stay. According to the writ petitioner, he has paid Rs. 3,75,000 towards the sale price as per terms of the agreement, whereas according to the

third respondent in the writ petition, he received only Rs. 1 lakh and not any other payment and that the writ petitioner has come forward with false

version, which is a matter to be enquired into in the proceedings. The above dispute cannot be resolved here as it is oath against oath and the writ

petition cannot be dismissed on the ground that the writ petitioner has come forward with false allegations. As rightly observed by the Division

Bench of this Court in R. Padma''s case (supra) the third respondent is at liberty to take such proceedings which are available under law as against

the writ petitioner for rescinding the agreement to recover the loss incurred by him and other remedies before competent civil Court. Applying the

ratio laid down in the Bench decision of this Court in R. Padma''s case (supra), I am of the view that the interim stay already granted is to be made absolute and the petition to vacate the stay is to be dismissed.. Accordingly W.M.P. No. 1920 of 1989 is allowed while W.M.P. No. 5041 of

1989 is hereby dismissed. However, there will be no order as to costs.

