(1996) 08 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 897 of 1995

Ghaziabad General Industries Pvt. Ltd. and Another APPELLANT

Vs

Appropriate Authority and Others RESPONDENT

Date of Decision : 07-08-1996

Acts Referred:
Income Tax Act, 1961 — Section 269UL

Citation : (1997) 139 CTR 29 : (1997) 227 ITR 884 : (1997) 92 TAXMAN 64

Hon'ble Judges : Paritosh K. Mukherjee, J;M.C. Agarwal, J

Bench : Division Bench

Advocate : Vishnu Sahai and B. Dayal, for the Appellant; Shekhar Srivastava, for the Respondent

Judgement

1. By this petition under Article 226 of the Constitution of India, the petitioners challenge an order passed by the appropriate authority u/s 269UC of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), by which the appropriate authority has expressed its inability to act upon the statement in Form No. 37-1 submitted to it.

2. The petitioner, Ghaziabad General Industries Pvt. Ltd., holds 12,399.60 sq. metres of land bearing number A-6, site-IV Industrial Area, Sahibabad, under an agreement with the U. P. Small Industries Development Corporation and had constructed certain sheds thereon which were let out to Dabur India Limited. There was an agreement to sell the said property to Dabur India Limited for a consideration of Rs. 1,30,00,000. The requisite information in Form No. 37-I was submitted to the appropriate authority with a request to issue a no objection certificate. The learned appropriate authority has passed the impugned order recording its conclusion as follows ;

" From the above discussion it becomes clear that the transferor, namely, Ghaziabad General Industries, has not proved that it is having legal rights over the property or is competent to transfer the same. On October 30, 1993, a licence was granted to the present transferor by the U. P. Small Industries

Development Corporation for 12 months to carry out and execute work of building and erection of industrial sheds for the factory. When the work was completed and by whom is not known, rather it is claimed that sheds were already built up but who built it is not clarified. The present transferor is yet to obtain from the U. P. Small Industries Development Corporation a lease deed in writing. There is nothing on record that the U. P. Small Industries Development Corporation had agreed to transfer the rights, benefits, etc., to some other party from the said licensee, namely, Ghaziabad General Industries. How the present transferor claims his legal right over the property beyond one year period of lease, i.e., October 29, 1994, is not satisfactorily explained.

Reasonable opportunities have been given to both the parties, i.e., the transferor and the transferee, but they have failed to comply with them properly. That being the situation, the appropriate authority, Lucknow, finds itself unable to act on such form. It is done accordingly."

3. The appropriate authority has thus neither opted to purchase the property in question nor issued a no objection certificate as provided in Section 269UL of the Act without which any sale deed executed by the petitioner in favour of the proposed vendees cannot be registered. It has, therefore, filed the present writ petition for a writ of mandamus to direct the appropriate authority to issue a no objection certificate as contemplated u/s 269UL(3) of the Act. In its counter affidavit, the respondents have stated the same thing as are stated in paragraph 8 of the impugned order.

4. We have heard Sri B. Dayal, learned counsel for the petitioners, and Sri Shekhar Srivastava, learned counsel for the respondents.

5. The Supreme Court in Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others, , has held that in the scheme for preemptive purchase contained in Chapter XX-C of the Act, the Union of India has only two options open to it. The first is that it could buy the property, or (ii) in the event of its decision not to buy, it has to issue a no objection certificate leaving it open to the parties to deal with the property. In doing so, the Supreme Court affirmed the judgment of the Delhi High Court in Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, , in which after a detailed discussion of the various provisions contained in Chapter XX-C, the Delhi High Court had come to the aforesaid conclusion and held that where the appropriate authority does not buy the property it is obliged to issue a no objection certificate. In that case, the appropriate authority after observing that it was not certain as to which portion of the land would be surrendered to the State Government in view of the orders passed under the Urban Land Ceiling Act and that the agreement to sell was not capable of being certain and was invalid as per Section 29 of the Contract Act, concluded that the statement in Form No. 37-I was premature and invalid and the same was ordered to be filed. The court held that it was not permissible to the appropriate authority to act in that manner and that it was obliged to issue a no objection certificate once it did not

opt to buy. Therefore, a writ of mandamus was issued directing the appropriate authority to issue a no objection certificate in terms of Section 269UL(3) of the Act. It is this view that has been confirmed by the Supreme Court in the judgment referred to above. Since then several other High Courts have taken the same view.

6. Learned counsel for the respondents placed reliance on certain observations of the Delhi High Court (page 628 of the report) where it is stated that the appropriate authority is entitled to see material and documents like document of title, agreement, etc., in order to satisfy itself whether the apparent consideration is proper or not in order to come to the conclusion whether to purchase the property or not and that the investigation which will be taken up by the appropriate authority is only with a view to determine whether the pre-emptive right of purchase should be exercised or not. There can be no quarrel with these observations and they will not help the respondents. It is not a case in which the vendor or the vendee are accused of concealing any information and not producing the relevant title deeds. As the conclusion arrived at by the appropriate authority reproduced above would show that the vendor has made its cards clear to the appropriate authority and the appropriate authority has come to a definite conclusion that in its view the vendor''s title is not perfect. It cannot force the vendor to acquire a better title. The vendor has the right to sell the property with whatever title it has and it is on that quality of title that the appropriate authority has to make up its mind to buy the property or not. It is clear from the tenor of the language used in the impugned order that the appropriate authority has come to the conclusion that because of the alleged defects in the title of the vendor it should not purchase the property in question. Therefore, declining to buy the property is clear from the order and that being so the only other option open to the authority was to issue a no objection certificate as required by law.

7. We, therefore, allow this petition and direct the appropriate authority, Income Tax Department, Lucknow, respondent No. 1, to issue a no objection certificate as contemplated by Section 269UL(3) of the Act to the petitioner in respect of the property in question within a period of 30 days from the date the petitioner produces a certified copy of this order before it. The petitioner will get its costs of this writ petition from the respondents which we assess at Rs. 3,000.