(1985) 07 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No. 26257 of 1982

Girnar Builders (P.) Ltd. APPELLANT

Vs

Inspecting Assistant Commissioner RESPONDENT

Date of Decision : 18-07-1985

Acts Referred:

Citation : (1986) 27 TAXMAN 371

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : K. Poornabodha Rao, for the Appellant; K. Srinivasan and H. Raghavendra Rao, for the Respondent

Judgement

K.S. Puttaswamy, J.—A house property bearing No. 2 situated on Artillery Road, Civil Station, Bangalore City, measuring about 627 sq. mts. was originally owned by one Sadiq Hussain of Bangalore City, who on 15-6-1981 transferred the same to the petitioner for a sum of Rs. 1,80,000. On an examination of the said transfer, the IAC, being of the opinion that the fair market value of the property exceeds the apparent consideration stated in the instrument of transfer by more than 15 per cent had issued Notice No. CR 62/30399 of 1981-82 dated 18-12-1981 (Annexure G) to the transferor and transferee u/s 269D(1) of the income tax Act, 1961 (''the Act'') proposing to acquire the property to Government under Chapter XX-A of the Act. In this petition, under article 226 of the Constitution, the petitioner had challenged the said show-cause notice principally on two grounds and they are (i) that the proceedings had not been initiated by the IAC within the permitted time, and (ii) that the transaction being real and genuine there was no justification to initiate the proceedings under the Act. The respondents have resisted this writ petition.

2. Shri K. Poornabodha Rao, the Learned Counsel for the petitioner, strenuously contends that the initiation of the proceedings had to be reckoned as made only on 5-4-1982 on which day only the IAC intimated the fact of publication in the Official Gazette and so reckoned the proceedings were barred by time. In support

of his contention Shri Rao strongly relies on a Division Bench ruling of the Allahabad High Court in U.S. Awasthi and Another Vs. Inspecting Assistant Commissioner of Income Tax (Acquisition Range) and Another,

3. Shri K. Srinivasan, the learned senior standing counsel for the income tax Department, appearing; for the respondents, refuting1 the contention of Shri Rao contends that the date of publication in the Official Gazette should be reckoned as the date of publication for purpose of section 269D(1) and so construed the proceedings were in time. In support of his contention Shri Srinivasan strongly relies on the ruling of the Supreme Court in State of Maharashtra Vs. Hans George, and a Division Bench ruling of the Gujarat High Court in COMMISSIONER OF Income Tax, GUJARAT-III Vs. SHILABEN KANCHANLAL RANA. COMMISSIONER OF Income Tax, GUJARAT-III v. BHAGWANDAS S. RESHAMWALA.,

4. In his letter No. CR 62/30899 of 1981-82/Acq. dated 2-4-1982 (Annexure J) the IAC has stated that the notice of acquisition had been published in the Gazette of India dated 6-3-1982 on page 2999 of Part III-1, the correctness of which is not disputed by the petitioner. What that is so, this Court must necessarily proceed to examine the case on the basis of the facts stated by the IAC in her letter dated 2-4-1982 (Annexure J) which means that the notice of acquisition had been published in the Gazette of India dated 6-3-1982. Even otherwise, I have no reason to disbelieve the correctness of the statement made by the IAC in her letter dated 2-4-1982.

5. What emerges from the above is that the notice of acquisition had been published in the Government of India Gazette dated 6-3-1982 and that fact had been intimated by the IAC in her letter dated 2-4-1982 which has been served on the petitioner on 5-4-1982. On these facts, the question is whether the initiation is barred by time, which depends on the true construction of section 269D(1). That section that is material reads thus:

(1) The competent authority shall initiate proceedings for the acquisition, under this Chapter, of any immovable property referred to in section 269C by notice to that effect published in the Official Gazette:

Provided that no such proceedings shall be initiated in respect of any immovable property after the expiration of a period of nine months from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act, 1908 (16 of 1908), or, as the case may be, section 269AB:

The proviso to section 269D(1) requires the publication of the notice of acquisition to be published within a period of nine months from the end of the month in which the instrument of transfer was registered under the Indian Registration Act. The upper limit specified in section 269D(1) had to be reckoned from the date of publication in the Official Gazette. What then is the meaning of the term ''the date of publication in the Official Gazette'' In Mayer Hans George''s case (supra) the Supreme Court examining this very question, expressing concurrence with the views expressed by C.K. Allen in his treatise Law and Order had ruled that the very date on which publication was effected in the Official Gazette was the date of publication for purposes of an enactment as also the public against whom it operates. On this principle explained at length by the Gujarat High Court in Shilaben Kanchanlal Rana''s case (supra), in which that High Court had dissented from the contrary views expressed by the Allahabad High Court in U.S. Awasthi''s case (supra), without noticing the ruling of the Supreme Court in Mayer Hans George''s case (supra), it must be held that the notice of acquisition u/s 269D(1) was published on 6-3-1982 and not on 5-4-1982, on which day the IAC intimated the petitioner.

6. Earlier, I have held that the notice of acquisition had been published in the Gazette of India dated 6-3-1982. When one computes the period from the end of the month in which the instrument of transfer was registered, viz., 15-6-1981, and the date of publication in the Gazette of India on 6-3-1982, it is clear that the notice of acquisition had been published well within the period of time stipulated in the proviso to section 269D(1).

7. As the very question on which Shri Rao''s contention is direly concluded by the ruling of the Supreme Court in Mayer Hans George''s case (supra), it is unnecessary to deal with U.S. Awasthi''s case (supra) in which the Allahabad High Court had expressed a different view.

8. On the above discussion, I see no merit in this contention of Shri Rao and I reject the same.

9. Shri Rao next contends that all the facts and circumstances and the material on record did not justify the IAC to form her opinion and initiate the proceedings under Chapter XX-A.

10. Shri Srinivasan contends that the satisfaction of the authority, which was also based on relevant material cannot be examined by this Court as if it is an appeal and a different conclusion reached on the same by this Court in exercise of its extraordinary jurisdiction under article 226 of the Constitution.

11. In the notice issued, the IAC who had undoubtedly the jurisdiction to initiate the proceedings, had stated that the stated consideration was not the real consideration, that the fair market value of the property exceeded the same by more than 15 per cent and the same, therefore, justified the initiation of proceedings under Chapter XX-A. A notice issued under Chapter XX-A, the correctness of which can be contested on all grounds that are stated in this petition and such other grounds as are available in law cannot be examined by this Court as if it is an appeal and a different conclusion reached, at any rate, at this stage. In any event, it is open to the petitioner to contest the same on each one of the facts stated herein, the correctness of which have to be examined by the first appellate authority and also by this Court in a second appeal. But, before that there is no justification for this Court to interfere with the same.

12. When the petitioner approached this Court challenging the very notice, this Court had stayed the proceedings. In this view, Shri Rao prays for 45 days'' time from this day for filing objections before the IAC. In the circumstances that had developed, it is proper to grant the time sought for by Shri Rao.

13. In the light of my above discussion, I hold that this writ petition is liable to be rejected. I, therefore, reject this writ petition. But, the petitioner is granted 45 days'' time from this day for filing its objections before the IAC who on receipt of the same will proceed to decide the matter in accordance with law who is also bound to examine each one of the pleas to be urged by the petitioner on merits.

14. Writ petition is disposed of in the above terms. But, in the circumstances of the case, I direct the parties to bear their own costs. Let this order be communicated to the first respondent within 15 days from this day.