

(1996) 06 MAD CK 0070
In the Madras High Court
Case No : Writ Appeal No. 429 of 1996

Government of India

APPELLANT

Vs

Jagadish A. Sadarangani

RESPONDENT

Date of Decision : 21-06-1996

Acts Referred:

Income Tax Act, 1961 — Section 269UC, 269UC(1), 269UD, 269UD(1), 269UD(1A)

Citation : (1996) 136 CTR 539 : (1996) 221 ITR 338

Hon'ble Judges : K.A. Swami, C.J.;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : Deokinandan, S.V. Subramanian for C.V. Rajan, for the Appellant;
K.M.L. Majele, S. Govind Swaminathan for P. Subba Reddy, for the Respondent

Judgement

K.A. Swami, C.J.—This appeal by the Government of India is preferred under clause 15 of the Letters Patent against the order dated April 3, 1996, passed in Writ Petition No. 17773 of 1995, allowing the writ petition and quashing the communication dated December 11, 1995, issued by the appropriate authority under Chapter XX-C of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), and further directing the appropriate authority to consider the matter as prayed for by the writ petitioner and to pass appropriate orders within a period of eight weeks from the date of receipt of the order.

2. The facts of the case briefly stated are as follows : There is a vast urban property known as "Krishna Vilas" situate at No. 6, Police Commissioner Officer Road, Egmore, Madras. The extent of the property is 23.5 grounds, comprising 5,239 sq. mts. of vacant land and 954 sq. mts. of built-up area. The respondent and one N. Krishnamoorthy agreed to purchase the aforesaid property on September 7, 1995, from the executors to the estate of Sherrard Ramsay Unger (1) Miss M. E. Gwynne, daughter of Thomas Gwynne and (2) Dr. L. C. Lobo, son of late G. L. Lobo, for a sum of Rs. 5,50,00,000 and paid an advance of Rs. 1,50,00,000 pursuant to the execution of the agreement of sale. The balance was to be paid as per the terms of the agreement later. The vendor and the

purchaser together made an application in Form No. 37-I on September 7, 1995, before the Appropriate Authority, Madras. The appropriate authority on examining the application in Form No. 37-I found certain defects and wanted certain clarifications. Therefore, the said authority addressed a letter dated October 30, 1995, to the intending transferors and transferees. The intending transferees submitted a reply dated November 22, 1995. We may also point out here that in the letter dated October 30, 1995, apart from raising nine points, the appropriate authority also made it clear that under sub-section (4) of section 269UC of the Act, the said rectification is sought for and the defects should be rectified within fifteen days, failing which the application in Form No. 37-I will be treated as non est. The nine points referred to in the said letter are as follows :

"1. The agreement dated September 7, 1995, does not specify or authorise the transferors to execute the sale deed on behalf of the legal owners or their heirs;

2. Agreement is executed by Ms. M. E. Gwynne and Dr. L. C. Lobo (as transferors) which locus standi is not clear;

3. The agreement does not speak of Ms. M. E. Gwynne revoking the life interest over the property which means that this property cannot be called as freehold property (please refer to legal opinion given by Mr. P. Subba Reddy, advocate).

4. The extent of property under transfer is about 24 grounds which includes 8.01 grounds for which acquisition under the U.L.C. is in force and stay by the High Court. The total consideration is towards the entire land inclusive of the portion affected under the U.L.C.

5. Parent documents are illegible.

6. Following documents were not furnished by you :

(a) Patta;

(b) Acceptability of the land earmarked for the U.L.C. authorities;

(c) Opinion of the U.L.C. authorities for sale of whole property wherein a portion is affected by the U.L.C. order;

(d) Electricity charges card;

(f) Consent of the residual beneficiaries for the disposal of the property mentioned in the judgment.

7. Clause 11 of the agreement is not clear as regard to "handing over vacant possession of the property".

8. In the agreement (page No. 4), it is stated that the vendors and beneficiaries are agreeable to the payments made in favour of M/s. G. Gopinath and T. S. Sridharan. It is not clear as to how M/s. G. Gopinath and T. S. Sridharan are connected with the vendors and the beneficiaries.

9. Consent letters of the beneficiaries are not furnished."

3. With reference to the objections raised regarding urban land ceiling, the intending purchasers stated that they would be satisfied with the area that would be left out after the excess area is taken away by the urban land ceiling authorities. On considering the reply, the appropriate authority by the communication dated December 11, 1995, bearing No. AA/MDS/9(282) 12 of 1995-96 informed the writ petitioner as well other parties to the agreement that they may file a fresh application in Form No. 37-I for transfer of the balance land after a finality is reached with regard to the excess vacant land. As the arguments are advanced on the contents of the aforesaid communication, we consider it appropriate to reproduce the said communication :

"Please refer to the above. On a scrutiny of Form No. 37-I filed by you, it is seen that in column 3 of annexure to the said Form, it is mentioned that the property sought to be transferred consists of 5,239 sq. mts. of land and 954 sq. mts. of built-up area. In column 8, it is mentioned that the U.L.C. acquisition proceedings to the extent of 8.50 grounds out of a total extent of 23.50 grounds stayed by the High Court in Writ Petition No. 16211 of 1991.

4. It transpires, therefore, that the transferors intend to transfer the entire extent of 5,239 sq. mts. (i.e., 23.50 grounds) inclusive of the excess vacant land declared as such by the U.L.C. authorities, of 2,284.5 sq. mts. (10.24 grounds and not 8.50 grounds as mentioned in column 8(b) of Form No. 37-I), which is prohibited by section 6 of the T.N.U.L. (C and R) Act, 1978. for ready reference, the said section is reproduced below :

"6. Transfer of vacant land. - No person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer any such land, or part thereof, by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement u/s 7 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of section 11; and any such transfer made in contravention of this provision shall be deemed to be null and void."

5. In view of the prohibition contained in section 6 quoted above, the agreement entered into between the parties on September 7, 1995, to transfer the entire land including the excess vacant land of 2,284.5 sq. mts. shall be deemed to be null and void. The matter is also sub-judice vide Writ Petition No. 16211 of 1991. In view of the above position, the members of the appropriate authority could not effectively exercise their powers with regard to pre-emptive right to purchase the subject property and, therefore, the same is lodged in the office. If you are so advised, you may file a fresh Form No. 37-I for transfer of the balance land or after a finality is reached with regard with regard to the excess vacant land.

6. Aggrieved by the aforesaid communication, one of the intending purchasers has filed the writ petition in question.

7. We may also point out here that one of the executants of the agreement for sale, Dr. L. C. Lobo, filed Writ Petition No. 16211 of 1991 for quashing the order dated March 25, 1991, passed by the State Government in Lr. No. 46969/TI/90-3 in which it was held that the land was in excess of the ceiling limits. The State Government passed the aforesaid order in the exercise of its power u/s 34 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, setting aside the order of the competent authority in his proceedings in R. Dis. 652 of 1986, dated May 19, 1989. The relevant portion of the order passed by the State Government reads thus :

"IX. At the time of personal hearing you have stated as follows :

- (i) That the previous competent authority has not given 500 sq. mts. as appurtenant area for two other dwelling units other than main buildings;
- (ii) that all the buildings situated in the land have not been given proper building regulation area and appurtenant area;
- (iii) that the out-house has been used as residential unit; and
- (iv) that there are several fruit bearing trees spread over to an extent of 1,200 sq. mts.

The above facts were not taken into account by the previous competent authority while calculating the excess vacant land and the orders passed by the former competent authority is wrong. The orders passed by the present competent authority is, therefore, correct and the above order need not be canceled.

The points urged by you during the personal hearing have been carefully considered by the Government with reference to the records available. The former competent authority's order has not been quashed by the High Court. The High Court has not directed the petitioner to stress his grievances before the competent authority but only before the Commissioner of Land Reforms, (i.e.), the appellate authority, since the appeal petition is still pending before him. It is seen from the topo sketch that the land consists of one main building, one out-house, and a store-room. The buildings such as store-room, out-house, garage are not eligible for building regulation area. Main buildings only are to be considered while calculating building regulation area. Further, in the earlier inspection reports, it has not been mentioned that several fruit bearing trees are spread over to an extent of 1,200 sq. mts.

In the above circumstances, your arguments are not acceptable and the orders issued by the competent authority that the urban land owner, Thiru Ramsay Unger, does not have excess vacant land are not in order. In exercise of the powers conferred u/s 34 of the Act, the Government hereby cancel the orders passed by the competent authority in his proceedings R. Dis. 652 of 1986, dated May 19, 1989."

8. It is the validity of this order, which was challenged in Writ Petition No. 16211

of 1991, by Dr. L. C. Lobo.

9. During the course of hearing, it was brought to our notice about the Writ Petition No. 16211 of 1991 filed by Dr. L. C. Lobo. As it was necessary to decide that writ petition along with this writ appeal, we passed the following order, dated June 12, 1996, which reads as follows :

"This appeal is preferred against the order dated April 3, 1996, passed by the learned single judge of Writ Petition No. 17773 of 1995. Learned single judge has directed the respondent in the writ petition, who is the appellant in the appeal to reconsider the matter as prayed for in the writ petition and pass appropriate orders, within a period of eight weeks from the date of receipt of a copy of that order.

2. During the course of the arguments, it is brought to our notice that the appropriate authority was required to pass such an order, having regard to the provisions contained in section 6 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, and also the order dated March 25, 1991, passed by the competent authority under the Tamil Nadu Urban Land (Ceiling and Regulation) Act. The competent authority under the Tamil Nadu Urban Land (Ceiling and Regulation) Act has set aside the earlier order dated May 19, 1989, and has held that there is excess vacant land. The said order is challenged in Writ Petition No. 16211 of 1991 and an interim order has been obtained in Writ Miscellaneous Petition No. 24422 of 1991.

3. It is contended that as it is not open to the appropriate authority to go into any question except of question as to granting to objection certificate or to make a pre-emptive purchase, as such the decision of the competent authority under the Tamil Nadu Urban Land Ceiling and Regulation) Act, which is challenged in Writ Petition No. 16211 of 1991, is not relevant for the purpose of considering the writ appeal, therefore, the writ appeal alone should be considered and Writ Petition No. 16211 of 1991 should be decided separately later on.

We are of the view that the order passed by the competent authority under the Tamil Nadu Urban Land (Ceiling and Regulation) Act setting aside the earlier order and holding that there is excess vacant land, read with section 6 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act would have a direct bearing on the consideration of the application filed for a no objection certificate. Hence, we direct Writ Petition No. 16211 of 1991 be posted along with this writ appeal for hearing on June 18, 1996."

10. When the appeal and the writ petition came to be posted, Dr. L. C. Lobo, the petitioner in Writ Petition No. 16211 of 1991, made a submission that the petition may be permitted to be withdrawn. The letter requesting for withdrawal of the writ petition was also filed. On the basis of the submission and the letter, we passed the following order :

"Learned counsel for the petitioner submits that the petitioner maybe permitted

to withdraw the writ petition. Letter to that effect has been filed and an endorsement has also been made in the bundle. The letter and the endorsement are placed on record and the writ petition is dismissed as withdrawn. No costs."

11. Therefore, the position that emerges is that the order of the State Government declaring excess urban vacant and remains undisturbed. That being so, unless the notification is published u/s 11(3) of the Urban Land Ceiling Act vesting the excess or surplus vacant land in the State Government, no portion of the land in question can be sold or agreed to be sold.

12. We may also point out that on the date when the agreement was entered into and on the date when the communication was issued by the appropriate authority and even as on this date, the order passed u/s 11 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act (hereinafter referred to as "the Urban Land Ceiling Act") has not been gazetted. This fact is also specifically stated by learned counsel appearing for the respondent in the appeal, namely, the writ petitioner.

13. As per section 6 of the Urban Land Ceiling Act, "No person holding vacant land in excess of the ceiling limit immediately before the commencement of this Act shall transfer any such land, or part thereof, by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement u/s 7 and a notification regarding the excess vacant land held by him has been published under sub-section (1) of section 11; and any such transfer made in contravention of this provision shall be deemed to be null and void." We have specifically extracted this section only to point out that the bar contained in section 6 of the Urban Land Ceiling Act operates from the date of commencement of the Act, in the case of persons holding urban vacant land in excess of the ceiling limits, till that excess is determined and the order of such determination is published in the Gazette. The effect of publication of the excess vacant land, is to vest the land in the State Government, thereby leaving the owner of the excess land out of title and thereafter he will not have any right to transfer it. Hence, the bar is limited to the period from the date of commencement of the Urban Land Ceiling Act till the date of publication, in the Gazette, of the order u/s 11 of the Urban Land Ceiling Act determining the excess land. We may also point out at the subsequent stage of this judgment the decisions relied upon as to the effect of section 6 of the said Act.

14. The learned single judge has held that it is not open to the appropriate authority to go into any other matter except to grant to grant no objection certificate to decide to make pre-emptive purchase based on the decision of the Delhi High Court in Savitri Devi Vs. Appropriate Authority and others, , and the decision of the Supreme Court in Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others, . Before us it is contended by learned senior counsel for the Central Government that the provisions of section 269UC of the Act have been amended and sub-section (4) has been specifically introduced to overcome the difficulties experienced by the Department having

regard to the decisions of the various High Courts that the appropriate authority has no option in the matter except to issue no objection certificate or to take a decision within a specific period for making pre-emptive purchase with effect from July 1, 1995. This aspect of the matter has not been taken into consideration by the learned single judge. In the light of this amendment, it is submitted that none of the decisions reported prior to the coming into force of sub-section (4) of section 269UC has application to the case on hand, therefore, the decision of the Supreme Court in *Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others*, also cannot be applied because the said decision also related to the case wherein the matter related to a date prior to the coming into force of sub-section (4) of section 269UC of the Act.

15. On the contrary, it is contended by Mr. Govind Swaminathan, learned senior counsel that the appropriate authority has no other option except the two options as referred to above, that the impugned communication of the appropriate authority does not make any reference to sub-section (4) of section 269UC of the Act, that even otherwise, there is no defect in the agreement as such, that the object of enacting Chapter XX-C is to ensure that there is no undervaluation of immovable property when sold with a view to avoid tax; that as there is no such undervaluation, the decision of the learned single judge does not call for any interference and that there is no defect in the application made in Form No. 37-I, therefore, the provisions of sub-section (4) of section 269UC are not attracted.

16. In the light of the rival contentions, the following points arise for consideration :

(1) Whether the provisions of sub-section (4) of section 269UC are applicable to the case on hand. If so, what is the scope and effect of the same ?

(2) Whether the order of the appropriate authority calls for interference ?

17. Point No. 1 : Sub-section (4) of section 269UC of the Act came to be introduced by the Finance Act, 1995, with effect from July 1, 1995. The object of introducing sub-section (4) has been stated in the Finance Bill (see [1995] 212 ITR 98 in specific terms (page 314) :

"The new sub-section (4) is intended to deal with cases of defective statements which are furnished to the appropriate authority. In such cases where a statement is found to be defective, the appropriate authority may intimate the defect to the party concerned and give them an opportunity to rectify the defect within fifteen days of such intimation or within such extended period as may be allowed by the appropriate authority. Where the defect is rectified within the period provided in this sub-section, the statement shall be deemed to have been received by the appropriate authority on the day the defect is rectified. Where the defect is not rectified, it will be considered as if the statement was never furnished to the appropriate authority." The reasons for introducing such amendment has been further stated as follows (see [1995] 212 ITR 363 :

"Many High Courts have held that the provisions of Chapter XX-C allow the Income Tax Department to either purchase the property or issue a no objection certificate in response to an application for no objection certificate furnished in Form No. 37-I. There is no third alternative. The Supreme Court, while dismissing the Department's SLP in *Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others*, , has upheld this view of the High Courts. Problems are faced by the appropriate authorities when an application for no objection certificate submitted by any intending seller is found to be defective. The appropriate authorities are, therefore, being empowered to intimate the defects, if any, in Form No. 37-I to parties for rectification within the specified time. Where the defects are not rectified within the specified period, it shall be presumed that the statement has never been furnished and where the statement is rectified, it shall be taken as if the statement had been furnished on the date on which it stood rectified and the period of limitation prescribed in section 269UD shall be reckoned from that date."

18. It is now well-established that the objects and reasons for enacting a particular provision of law or statute as stated at the preliminary stage of preparing and introducing the Bill are relevant and can be looked into for the purpose of finding out the intention of the Legislature and also to determine the true scope of the provision, if the provision is ambiguous.

19. Sub-section (4) of section 269UC of the Act is as follows :

"Where it is found that the statement referred to in sub-section (2) is defective, the appropriate authority may intimate the defect to the parties concerned and give them an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the appropriate authority may, in its discretion, allow and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Chapter, the statement shall be deemed never to have been furnished."

20. The words used in the said sub-section are "the appropriate authority may intimate the defect to the party concerned and give them an opportunity to rectify the defect" within a particular period. Therefore, the argument advanced is that it is only in the case of defect, the said provision would be attracted and not otherwise. We have already extracted the objects and reasons for introducing sub-section (4) of section 269UC of the Act. It has been specifically stated in the objects that the said amendment has become necessary in view of the fact that the High Courts have interpreted section 269UC that there is no other alternative to the appropriate authority except to grant no objection certificate or to make pre-emptive purchase. The agreement in question has been entered into subsequent to the coming into force of the said amendment. So, the entire proceedings under Chapter XX-C have taken place in the instant case after the coming into force of sub-section (4) of section 269UC of the Act. The decisions

relied upon by learned counsel for the respondent - the writ petitioner have been rendered with reference to cases in which the appropriate authority had passed order before July 1, 1995. Thus, sub-section (4) of section 269UC of the Act is applicable to the agreement in question.

21. We will now refer to the decisions relied upon by learned counsel for the writ petitioner. In *C.B. Gautam Vs. Union of India and Others*, , the Constitution Bench of the Supreme Court considered the constitutional validity of Chapter XX-C of the Act and held that the said provision is valid with certain modifications regarding the right of the purchaser. This decision was relied upon in support of the plea that the object of Chapter XX-C is only to eliminate undervaluation and in cases of undervaluation which would be 15 per cent. or more than below the real value of the property, to make pre-emptive purchase of the same. Therefore, in this decision, it has not been laid down that the appropriate authority has got only two options either to make a pre-emptive purchase or to grant no objection certificate. No doubt, the scope of Chapter XX-C of the Act has been dealt with. But, sub-section (4) of section 269UC was not in the statute when the decision was rendered. Therefore, there was no occasion to consider the scope of sub-section (4) of section 269UC.

22. In *Savitri Devi Vs. Appropriate Authority and others*, the agreement of sale was entered into on August 5, 1993. The Statement in Form No. 37-I was filed on August 21, 1993. A notice was issued on November 8, 1993, by the appropriate authority stating that the apparent consideration stated in the statement filed in Form No. 37-I was not the fair market value and, therefore, the petitioner was called upon to show cause why the property should not be purchased. Then the petitioner therein sent a reply pointing out that the sale in that case was in respect of a particular property and the same was not comparable with that of the present agreement to sell. On November 23, 1993, the petitioner received the order from the appropriate authority stating that the lease under which the land was obtained by the petitioner stipulated that "for breach of any of the covenants or conditions of the perpetual lease deed, the land and development office will have the right to re-enter the premises". On account of the misuse of the premises in question, charges had already been levied by the land and development office for the period February 10, 1976, to July 14, 1992. Since, the premises in question was used for non-residential purposes in violation of condition No. 7 of clause 2 of the perpetual lease deed, the land and development office was free to exercise the right to re-enter notwithstanding the liability on account of misuse charges amounting the liability on account of misuse charge amounting to Rs. 1,96,85,963 which was outstanding and for which notice had already been given by the land and development office. Therefore, the application was premature and it was not acceptable. On appeal, the High Court took a view following its earlier Division Bench decision in *Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others*, that the appropriate authority had no other option except to grant no objection certificate or make a pre-emptive purchase and no third

alternative was permissible. Accordingly, the High Court allowed the writ petition and directed the appropriate authority to issue no objection certificate under Chapter XX-C of the Act.

23. The decision in *Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others*, was taken to the Supreme Court (see *Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others*, . However, no decision was rendered on merits. It was dismissed as withdrawn on the ground that no objection certificate had been issued as early as on January 15, 1991. However, while dismissing the case, the Supreme Court observed as follows (page 308) :

"Counsel for the petitioners fairly tells us that a "no objection certificate" was issued as early as on January 15, 1991. Then suggestion that it was issued under pressure and threat of a contempt proceeding is made out from the record.

We agree that two alternatives are open under the scheme of the legislation : (1) the Union of India through the appropriate authority 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 that view of the matter, the High Court was right in its conclusion. The SLP is dismissed. No costs."

24. The said decision is reported in *Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others*, . The decision in *Appropriate Authority, Government of India Vs. Naresh M. Mehta*, . The said appeal was preferred against the order dated January 10, 1991, passed by the learned single judge in *Naresh M. Mehta Vs. Appropriate Authority*, . The writ appeal was dismissed confirming the order of the learned single judge. It was found in the order of the learned single judge as well as in the judgment of the Division Bench that there was no defect or lack of power to transfer and the refusal to grant no objection certificate was not sustainable. The appropriate authority refused to grant no objection certificate on the ground that agreement was not valid inasmuch as the City Municipal Corporation Act and the Development Control Rules framed under the Town and Country Planning Act prohibited the sale of property privately subdivided. The court found that there was no such bar on sub-division either in the Madras City Municipal Corporation Act or in the Town and Country Planning Act or the Development Control Rules. Therefore, the reason for refusing to grant no objection certificate was untenable. There was no other ground for refusing to grant the no objection certificate. Apart from the fact that the said decision has been rendered before the introduction of sub-section (4) of section 269UC, it does not decide whether the appropriate authority could have gone into those matters. Therefore, we are of the view that nothing much turns upon this decision and no sustenance can be drawn by the writ petitioner from this decision.

25. The decision in *Iol Limited Vs. S.C. Prasad and others*, is also rendered prior

to introduction of sub-section (4) of section 269UC of the Act. That was a case in which by the agreement of sale dated March 10, 1994, the property was agreed to be sold. However, possession was delivered before the grant of no objection certificate. The question that arose for consideration was as to when the transfer took place. This question did not arise in that case. Therefore, the said decision cannot be held to have any bearing on the point involved in the case on hand. Reliance was also placed on the decision in *Ranchhodbhai Galabhai Patel and Another Vs. Union of India*, . That was a case in which the agreement of sale was entered into on April 9, 1994, to effect sale in respect of a plot of land admeasuring 4,000 sq. mts. situated within the limits of village Ravet, Taluk Haveli, District Pune. The consideration was Rs. 25,00,000. On September 14, 1994, the petitioners filed from No. 37-I and on December 12, 1994, a show-cause notice was issued by the appropriate authority u/s 269UD(1A) of the Act to the petitioners. The appropriate authority passed an order dated December 26, 1994. Thereafter, then petitioners filed an application for rectification on January 19, 1995, before the appropriate authority and also filed supplementary submissions on May 17, 1995. The appropriate authority rejected the application for rectification by the order dated June 30, 1995, passed u/s 269UD(1A). Both the orders were challenged. In that decision, it has been held that the only power which is conferred upon the appropriate authority u/s 269UD of the Act is the power to decide whether to purchase the property or not. The investigation to be undertaken by the appropriate authority is only with a view to determine whether the pre-emptive right of purchase could be exercised or not. If the appropriate authority has reservations or doubts with regard to the legality of the proposed sale, it is open to the authority not to exercise the right to purchase, but section 269UD does not contemplate the rejection of any statement in Form No. 37-I by the appropriate authority. The certificate issued does not pronounce on the legality or validity of the transaction. If the transaction is otherwise illegal or invalid, it will be for some other authority in another forum to decide on the same. As far as the appropriate authority is concerned, the certificate which is issued has relation only to the question whether the Government is interested in purchasing the property or not.

26. Reliance was placed on a decision of the learned single judge of this court in *A.D. Thiru (Huf) Vs. Appropriate Authority and another*, . That was a case in which Form No. 37-I was rejected on November 29, 1994, by the appropriate authority. The appropriate authority neither decided to make per-emptive purchase nor issued a no objection certificate to the respondents. The authority had merely rejected the statement. The learned single judge placed reliance on the decision of the Supreme Court in *Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others*, and set aside the order of the appropriate authority and remitted the matter for fresh consideration. This decision was rendered prior to the coming into force of sub-section (4) of section 269UC of the Act. In *Madhukar Sunderlal Sheth and others Vs. S.K. Laul and others*, , it has been held that there is a statutory bar on transfer of the property without

complying with certain statutory requirements and the agreement entered into for sale without complying with the requirements will make the agreement void and, therefore, such an agreement cannot form the basis for seeking a no objection certificate. In that case, the trust property was agreed to be sold without obtaining permission from the Commissioner under the Bombay Public Trusts Act. It may be pointed out that such permission was necessary before entering into agreement of sale of public trust property. In the facts and circumstances of the case, it was held thus (page 595) :

"The purpose of Chapter XX-C (which contains these provisions) is to curb sales of immovable properties for an apparent consideration which is less than the real consideration. Hence, power is given to the Income Tax authorities to purchase the property for the apparent consideration. In the case of a public trust, however, certain special provisions have been enacted under the Bombay Public Trusts Act to ensure that property belonging to a public trust is not sold by the trustees for an apparent consideration which is less than the real value of the property. In other words, it is necessary to ensure that when immovable property of a public trust is sold, the public trust gets the full market value of the property. Hence, section 36 of the Bombay Public Trusts Act makes the sale of immovable property of a public trust invalid without the sanction of the Charity Commissioner. If section 269UD can be brought into operation before the sanction of the Charity Commissioner is obtained, the consequences of an agreement for sale of the property of a public trust for a consideration less than the market value of the property may be visited on the public trust. The Income Tax authorities would pay the apparent consideration which is less than the market value to the public trust to acquire the property. The beneficiaries of the public trust would be the losers. They would lose the protection which section 36 of the Bombay Public Trusts Act gives them.

In our view such is not the intention of sections 269UC and 269UD, nor need the sections be interpreted in this manner. Section 269UC comes into the picture when the sale of a property is intended to take place. At least three months before such sale the statement is required to be furnished. This would necessarily imply that the statement must refer to an agreement of sale which is capable of being put into effect. In the present case, the trust property cannot be validly sold without the permission of the Charity Commissioner. Hence, such an agreement of sale cannot be acted upon by the Income Tax authorities. We are not dealing with a situation where there may be disputes between various parties as to their right to the property in question, their right to enter into the agreement of sale, etc. Here is a case where the sale cannot take effect by reason of a statutory bar on such sale without the approval of the Charity Commissioner. Therefore, section 269UC can come into operation only after the approval is granted by the Charity Commissioner for such sale. The period of filing such a statement has to be computed with reference to the approval granted by the Charity Commissioner for the sale of the property, bearing in mind the public purpose underlying such approval. The Department was,

therefore, right in considering the form in question as invalid."

27. With reference to the decision of the Delhi High Court in *Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others*, and also with reference to another decision of the same High Court in *Irwin Almeida and others Vs. Union of India and others*, , it was held thus (at page 597 of 198 ITR) :

"The ratio of the decision of the Delhi High Court in the case of *Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others*, , has no application to the present case. The decision of a Division Bench of this court (Pendse and Jhunjhunwala JJ.) dated March 11, 1991, in Writ Petition No. 683 of 1991 (*Irwin Almeida and others Vs. Union of India and others*, also cannot apply because this is not a case where the Income Tax authorities have purported to examine the title of the parties to the agreement or questioned their right to enter into the agreement. There is a clear statutory prohibition in the present case against the sale of immovable property of a public trust without the approval to the Charity Commissioner."

28. In *RAJASTHAN PATRIKA LTD. Vs. UNION OF INDIA AND OTHERS.*, the agreement of sale related to an area of land measuring 1,033.33 sq. yards. The agreed consideration was Rs. 25 lakhs. The agreement was entered into on March 7, 1991, and was got registered with the Sub-Registrar, Jaipur, on March 7, 1991. The agreement was subject to certain conditions. The appropriate authority held that the agreement inter se between the parties and respondent No. 4 was required to get no objection certificate under Chapter XX-C of the Act. Therefore, the authority did not grant no objection certificate or take a decision to make pre-emptive purchase of the property. It was held by the Rajasthan High Court as follows (page 459) :

"While considering the third submission urged by Shri Ranka that the appropriate authority has to make up its mind on the basis of Form No. 37-I as to whether the apparent consideration has been understated, the appropriate authority has no right to examine the title or legality or illegality or invalidity of the transaction or other deficiencies in such transaction; it will be sufficient to observe that if the particulars of the agreement for transfer furnished in the annexure to the statement made in Form No. 37-I disclose that the transfer has already been effected, even if the appropriate authority does not enter into the question of title, etc., if has no valid basis for the purposes of exercising its rights within the specific period and, therefore, the question of exercising such right does not arise. If a statement in Form No. 37-I is made after crossing the stage of intended transfer and after the transfer within the meaning of the provisions under the Income Tax Act, it can safely be said that the parties by effecting the transfer of the property or part of the property have already created a situation in which the appropriate authority has no occasion to exercise its right and as such the stage of making an order u/s 269UD(1) is not even available to the appropriate authority and in fact, the parties by their conduct of effecting transfer in advances seek to deprive the appropriate authority of an opportunity

of exercising its option and power u/s 269UD(1) and, therefore, this submission made by Shri N. M. Ranka is based on a legal fallacy and the petitioner cannot be allowed to take advantage of such a position and to say that since the order has not been made u/s 269UD(1), the appropriate authority became duty-bound to issue the no objection certificate u/s 269UL(3). It is the settled position of law that no party can be allowed to take advantage of its own wrong. Mr. G. S. Bafna has rightly argued that the provisions for grant of no objection certificate could not be invoked because the petitioner and respondent No. 4 had already effected the transfer before submitting the application in form No. 37-I and, therefore, the appropriate authority was not obliged to issue the no objection certificate. Mr. N. M. Ranka had made repeated reference to the case of Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, , first decided by the Delhi High Court and thereafter by the Supreme Court, and contended that only two alternatives were open to the appropriate authority, i.e., either to buy the property or in the event of its decision, not to buy it, it has to issue a no objection certificate leaving it open to the parties to deal with the property. True it is that the petition against the decision of the Delhi High Court in Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, was dismissed by the Supreme Court, but the order of the Supreme Court reported in Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others, shows that the no objection certificate had already been issued on January 15, 1991, when the order was passed on April 23, 1991, and the Supreme Court itself has observed that the suggestions that the no objection certificate was issued under pressure and threat of contempt proceedings, are made out from the record. In the latter part of this order, the Supreme Court has agreed that two alternatives are open under the scheme of legislation, i.e., either to buy the property or even in the event of its decision not to buy it, it has to issue the no objection certificate leaving it open to the parties to deal with the property. In the case of Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, , there is no violation of the provisions of the Income Tax Act as such before the filing of the statement in Form No. 37-I and it was observed by the Delhi High Court that it was not certain as to which portion of the land would be surrendered to the State Government in view of the orders having been passed under the Urban Land Ceiling Act and that the agreement to sell was not capable of being made certain and was void as per section 29 of the Indian Contract Act, the appropriate authority had found that the agreement to sell was a contingent contract depending upon the orders of the competent authority under the Urban Land Ceiling Act and thus the appropriate authority took objections with regard to the legality of the transaction, which had nothing to do with violation of any of the provisions of the Income Tax Act and, therefore, the Supreme Court agreed that two alternatives were open under the scheme of the legislation, i.e., either to buy the property or to issue a no objection certificate. Such is not the fact situation in the case at hand. We have come to a positive finding that the parties had effected the transfer before filing the

statement in Form No. 37-I and thus the parties in the present case had violated the relevant provisions of the Income Tax Act itself and had made it well nigh impossible for the appropriate authority to pass an order for purchase of such a property u/s 269UD(1), even if it wanted to pass such an order because the petitioner and respondent No. 4 in this case had acted in a manner so as to pre-empt a situation in their favour in which the appropriate authority could ill afford to pass an order of purchase by the Central Government and we agree with Shri. G. S. Bafna that in this case when possession of part of the property had already been taken over by the petitioner before filing the statement in Form No. 37-I, had the appropriate authority still ordered for the purchase of the property by the Central Government, the Central Government could not have stopped the limit of making the payment to respondent No. 4 and it would have done so only to its detriment and then to fight for possession with the petitioner and go on litigating the matter for years after years after blocking a huge sum without the advantage of the property so purchased. Therefore, in the facts of the present case, in addition to the two options which have been mentioned by the Supreme Court in *Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others*, , agree with Shri G. S. Bafna that third option was also available to the appropriate authority, i.e., not to act upon the invalid statement in Form No. 37-I filed by the parties after effecting the transfer and violating section 269UC(1) and the parties had thus rendered themselves liable to action for violating the provisions of the Income Tax Act. We are of the considered opinion that when the parties have violated the provisions of the Income Tax Act and have acted in a manner so as to thwart the very purpose of the provisions relating to the restrictions on transfer of immovable property and to thwart the Central Government's pre-emptive right of purchase, besides the alternatives of either purchasing or issuing a no objection certificate, the option is also available not to act upon the statement in Form No. 37-I which is found to be violative of the provisions of the Income Tax Act and to prosecute the concerned parties by taking resort to the machinery under the Act. Mr. Ranka has failed to cite any case in which there is a direct violation of the relevant provisions of the Income Tax Act itself relating to the Central Government's right to pre-emptive purchase and the restrictions on transfer of immovable property and, therefore, none of the decisions cited by Mr. Ranka, except the decision of the Delhi High Court in *Megsons Exports Vs. Union of India and others*, , are of any assistance for the purposes of the controversy, which we are called upon to decide in this case."

29. Thus, it has been pointed out that there is a third alternative open to the appropriate authority. The decision of the Supreme Court in *Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others*, , has also been referred to.

30. Thus, the position that emerges is that the decision of the Supreme Court in *Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others*, related to a case wherein there was no initial bar for making a transfer; nor was there any statutory bar for effecting transfer. The decision of the

Supreme Court should be construed in the light of the facts of that case. We are of the considered view that sub-section (4) of section 269UC of the Act in appropriate cases enables the appropriate authority to have recourse to a third alternative. Having regard to the objects and reasons for enacting sub-section (4) of section 269UC of the Act, we have no hesitation to hold that it covers not only the formal defects in the statement filed under subsection (2) thereof, but also the defects which go to the very root of the transaction on the basis of which the statement is filed under sub-section (2) thereof. If the transaction is impermissible in law, it is unenforceable. Such a transaction cannot form a basis for filling the statement under sub-section (2) of section 269UC of the Act. The appropriate authority cannot be compelled to act upon an unenforceable, illegal and void agreement. The function of the appropriate authority is not merely confined to issuing as to pre-emptive purchase, if the real market value of the immovable property concerned in the proceeding demands it.

31. We shall now consider the scope and effect of section 6 of the Urban Land Ceiling Act. This section has been interpreted by this court in more than one decision. In *Mariamamma Varghese v. K. V. Balasubramaniam* [1994] 1 LW 391, the appeal was filed before this court against the decree dismissing a suit for specific performance of an agreement for sale. The Division Bench interpreted section 6 of the Urban Land Ceiling Act in the following terms (page 392) :

"The impediment is that the transaction, assuming it could fructify through the hands of the court, will come within the mischief of section 6 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act (24 of 1978) (hereinafter referred to as "the Act"). That provision inhibits the coming into existence of any such transaction as the present one and further says that such transaction will be null and void. The court is not supposed to lend its hands for the purpose of arriving at this result, assuming that the plaintiff has got a case on merits otherwise."

32. A similar view was taken in *Samiappan (B. P.) v. Arunthavaselvan* [1994] 1 LW 399. That decision related to the bar on sale contained in section 23 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, which provision is also in pari materia with section 6 of the Urban land Ceiling Act. The Division Bench held thus (page 402) :

"The plaintiff seeks to have the agreement enforced by a court of law and get a sale deed in pursuance thereof. If the court grants a decree in favour of the plaintiff and it leads to a sale deed in favour of the plaintiff, either by the party or by the court, that sale is automatically void and it is deemed to be void always as per the provisions of the Act. The court cannot be a party to a transaction which would be void in law. Hence, there is no substance in the contention that the agreements are not affected by the provisions of the Act."

33. We may point out there that in the instant case also, we are concerned with an agreement of sale. Section 6 of the Urban Land Ceiling Act prohibits transfer of any land by way of sale, mortgage, gift, lease or otherwise made in

contravention of the provisions contained herein and, any such transaction shall be deemed to be null and void. Again, in *Prabhavathi Jain v. Government of Tamil Nadu* [1995] 2 LW 200, the same view has been reiterated. In addition to that, section 43 of the Urban Land Ceiling Act has been referred to and it has been held with reference to that section as follows (page 207) :

"It is a settled position of law that a decree for specific performance cannot be granted in contravention of the provisions of section 6 of the Act. Section 6 inhibits the coming into existence of any transaction, as the present one, and further says that such transaction will be null and void. Further, in view of section 43 of the Act, the provisions of the Act shall have effect notwithstanding anything inconsistent therewith in any agreement or decree or order of the court."

34. Section 43 of the Urban Land Ceiling Act specifically provides that the provisions of the Urban land Ceiling Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or any custom, usage or agreement or decree or order of a court, Tribunal or other authority. Thus, section 43 gives overriding effect to the provisions contained in the Urban Land Ceiling Act over any other law, agreement, decree or order, etc., as stated in that section.

35. Therefore, it is clear that the agreement of sale which was entered into during the pendency of the return filed under the Urban Land Ceiling Act cannot be considered to be a valid and enforceable agreement. In the eye of law, it is a void agreement. The appropriate authority is a statutory authority. It exercises the power under Chapter XX-C of the Act. Invalidity of an agreement of sale makes the whole transaction unenforceable. As such, it introduces a serious defect in the statement filed under sub-section (2) of section 269UC of the Act, on the basis of such invalid and unenforceable agreement of sale and thereby attracts sub-section (4) of section 269UC of the Act. It is one of the cardinal principles of interpretation of statutes that an interpretation should advance and subserve the object of the statute and should not result in defeating the very object of the statute. We have already referred to the objects and reasons for introducing sub-section (4) of section 269UC of the Act. A statutory authority exercising statutory power cannot be compelled to ignore the basic defect in the agreement, which also disables the appropriate authority to make its decision as to pre-emptive purchase, on determining the real market value, which will be the basis for taking a decision regarding pre-emptive purchase. As in the instant case, until the proceeding is completed as per section 11 of the Urban Land Ceiling Act, no transaction of sale or purchase can take place. The appropriate authority cannot be expected or compelled to act in contravention of section 6 of the Urban Land Ceiling Act and to make a decision as to pre-emptive purchase. Such an interpretation would not only defeat the very object or sub-section (4) of section 269UC of the Act, and it would also result in compelling the appropriate authority to act in contravention of the provisions of the Urban Land Ceiling Act, or, not to make any decision as to pre-emptive purchase of the immovable

property concerned in the agreement. The very introduction of sub-section (4) of section 269UC of the Act is to bale out the appropriate authority from such a situation and to enable it to have the third alternative to make an appropriate decision in accordance with law. Point No. 1 is answered accordingly.

36. Point No. 2 : From what we have stated above, it follows that the appropriate authority was justified and was well within its power in holding that the application in Form No. 37-I was defective and further informing the petitioner to file a fresh application. The learned single judge even though has referred to sub-section (4) of section 269UC of the Act, has not given full effect to the said provision. We are of the view that the decision of the learned single judge is liable to be interfered with. Whereas, the order of the appropriate authority does not call for interference. Point No. 2 is answered accordingly.

37. For the reasons stated above, the writ appeal is allowed, the order dated April 3, 1996, passed in Writ Petition No. 17773 of 1995 is set aside and the writ petition is dismissed. However, there will be no order as to costs. Consequently, C.M.P. No. 6151 of 1996 is dismissed.