

(1994) 02 BOM CK 0002

In the Bombay High Court

Case No : Writ Petition No's. 687 and 709 of 1993

Himalaya Builders and Developers and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 17-02-1994

Acts Referred:

Income Tax Act, 1961 — Section 269UD(1)
Land Acquisition Act, 1894 — Section 23

Citation : (1996) 2 BomCR 108

Hon'ble Judges : H.W. Dhabe, J;G.D. Patil, J

Bench : Division Bench

Advocate : D.K. Deshmukh, for the Appellant; P.N. Chandurkar and S.S. Wandile, for the Respondent

Final Decision : Allowed

Judgement

H.W. Dhabe, J.—These two writ petitions can be conveniently disposed of by this common judgment. However, for the sake of convenience we shall deliver the judgment in Writ Petition No. 687 of 1993.

2. The petitioner in Writ Petition No. 687 of 1993 is a partnership firm carrying on business of building houses and developing sites for houses. By an agreement dated 20-5-1992 the petitioner purchased Plot No. 29 Sheet No. 21-A admeasuring approximately 9206 sq.ft. for construction of a building thereon. The said Plot No. 29 belonged originally to one Balkrishna Mukundrao Satwalekar. He expired on 25-1-1991. He had left behind him his widow, one son and two daughters. His widow expired on 24-10-1991. The aforesaid agreement of sale was executed on 20-5-1992 by the son of the deceased Balkrishna, viz. Parag and was consented to by his two daughters.

3. Perusal of the agreement of sale dated 20-5-1992 shows that the consideration agreed to between the parties was Rs. 18,42,000/- for the purchase of the said plot, out of which an amount of Rs. 51,000/- was paid by the petitioner to the Vendors at the time of the execution of the said agreement

dated 20-5-1992 and the balance consideration of Rs. 17,91,000/- was to be paid to the Vendors by the petitioners in instalments as shown in para 1 of the said Agreement of sale. In case of default of payment of the above instalments on the due date, the petitioner was required to pay interest upon the same for delayed payment at the rate of 18% per annum from the due date till payment. The petitioner was to construct residential apartments on the suit land and the Vendor was required to execute the regular sale-deed of the suit plot in favour of the nominee of the petitioner within six months next after the date of receipt of full payment of the entire amount of consideration agreed to between the parties.

4. The Vendor had also agreed and has undertaken as per Clause 16 of the said Agreement of Sale dated 20-5-1992 to remove the three tenants occupying some portion of the suit plot within a period of three months and it was made clear in the said clause that there would be no liability or responsibility upon the petitioner to get the premises vacated by the tenants. The petitioner had agreed to extend all possible assistance and co-operation for the said purpose. However, in case, the Vendor failed to get the premises vacated, he was made liable for damages to the petitioner for breach of contract. Perusal of Clause 20 of the said Agreement dated 20-5-1992 further shows that the Vendor had agreed to vacate the premises in his occupation within sixty days from the date of the agreement i.e. 20-5-1992 and it was made clear that the petitioner would be entitled to demolish the said portion. The Vendor had also agreed to get the tenanted premises vacated within three months and thereafter the petitioner was also entitled to demolish the said premises at its own cost. The entire material was to belong to the petitioner and the Vendor was to have no right over it.

5. Since the price of the above property in question exceeded Rs. 10 lacs, the petitioner and the Vendor submitted a statement to the appropriate authority in the prescribed Form 37-I as required by section 269-UC of the Income Tax Act, 1961 read with Rule 48-L of the Income Tax Rules, 1962. After the receipt of the statement in Form 37-I the Appropriate Authority, by an order dated 31-7-1992 passed u/s 269-UD(1) of the Income Tax Act, 1961 (for short "the Act") directed compulsory purchase of the aforesaid property in question for apparent consideration of Rs. 17,02,448/- payable by the Central Government u/s 269-UF of the Act. The above apparent consideration of Rs. 17,02,448/- was calculated as shown in para 4 of its aforesaid order dated 31-7-1992 by allowing the rate of interest of 8% per annum for determination of the discounted value of the consideration or to be processed with deferred payment of consideration as provided in section 269-UA(b) of the Act read with Rule 48-I of the Income Tax Rules, 1962. The above net consideration of Rs. 17,02,448/- included the amount of Rs. 51,000/- paid by the petitioner by way of earnest money to the Vendor which amount was to be paid to it.

6. The aforesaid order dated 31-7-1992 passed by the Appropriate Authority was challenged in this Court vide Writ Petition No. 1818 of 1992 and Writ Petition No. 1819 of 1992 filed respectively by the vendor and the purchaser i.e. the

petitioner. By the judgment of this Court dated 11-12-1992 rendered in the above writ petitions, the aforesaid order of the Appropriate Authority dated 31-7-1992 was set aside and the proceedings were remanded to it for a fresh decision according to law u/s 269-UD(1) of the Act in the light of the judgment of the Supreme Court in the case of C.B. Gautam Vs. Union of India and Others, . It may be seen that the Supreme Court has held in C.B. Gautam's, case cited supra that it was necessary for the Appropriate Authority to give a show cause notice to the transferor and the transferee and also an opportunity of being heard, if they so desired, before passing an order for compulsory purchase u/s 269-UD(1) of the Act. The principles of natural justice were thus read in the aforesaid provisions of section 269-UD(1) of the Act for the exercise of powers by the Appropriate Authority thereunder so as not to render the said provision arbitrary, discriminatory and violative of Article 14 of the Constitution. Since no such show cause notice was given to the transferor and the transferee in the instant case and there was thus no compliance with the principles of natural justice, the aforesaid order of the Appropriate Authority dated 31-7-1992 was set aside by this Court as stated above.

7. After remand, the show cause notices were given by the Appropriate Authority on 30-12-1992 to the petitioner and the Vendor in the instant case asking them to show cause as to why their property in question should not be purchased under Chapter XXC of the Act. They were to send their replies to the show cause Notice at Ahmedabad by 8-1-1993 and if they so desired, the personal hearing was to be given to them at Nagpur office on 14-1-1993 at 2.30 P.M. The petitioner and the Vendor submitted their replies to the show cause notice on 14-1-1993. In the reply, they pointed out that the show cause notice issued by the Appropriate Authority on 30-12-1992 did not reveal any reasons for coming to the prima facie conclusion that the property in question was grossly under valued and as such they were prejudiced in meeting the case of the Department of gross under valuation of the property in question effectively. The issuance of the show cause notice was thus according to them in violation of the principles of natural justice.

7A. The petitioner and the Vendor then justified in their reply that the consideration agreed to between them represented the fair market value of the property in question at the time of the execution of the agreement of sale. The land rate per sq. feet according to them thus came to Rs. 200/- per sq. feet. They also raised the contention that according to the legal position, two sisters of the Vendor who consented to the Agreement of sale were legal heirs of the deceased owner of the suit property being his daughters and had thus equal share in its consideration because of which the share of each was below Rs. 10 lacs. As such, according to them, the provisions of Chapter XXC of the Act were not attracted in regard to the instant sale transaction. The petitioner as well as Vendor were also orally heard through their representative Shri M.M. Oak, C.A.

8. The appropriate authority thereafter passed a fresh order on 23-2-1993

directing compulsory purchase of the suit property u/s 269-UD(1) of the Act on payment of apparent consideration of Rs. 17,02,448/- by the Central Government. The said apparent consideration of Rs. 17,02,448/- included an amount of Rs. 51,000/- paid by the petitioner to the Vendor at the time of the execution of the Agreement of sale on 20-5-1992 and the same was thus payable to the petitioners. The appropriate authority recorded the reasons for the compulsory purchase of the suit property separately on the same date i.e. 23-2-1993.

9. Perusal of the reasons recorded by the appropriate authority would show that according to the appropriate authority taking into consideration the discounted value of the consideration agreed to between the parties and deducting from the same the scrap value of the existing structure upon the suit plot, the land rate of the suit plot would come to Rs. 182/- per sq. feet. As a comparable sale instance, the appropriate authority had taken into consideration the sale instance of Plot No. 14/1 Dhantoli, Nagpur from which under an Agreement of sale dated 1-9-1990, an area admeasuring 10,000/- sq. feet was sold for consideration of Rs. 21,00,000/-. The discounted rate of the said comparable sale instance worked out to Rs. 190/- per sq. feet as on the date of the agreement of sale i.e. 1-9-1990. However, since the property in question was agreed to be sold in May, 1992, there was time gap of about 21 months between the two transactions. Considering 12% increase in land valuation every year, the land rate of the Plot in comparable sale transaction was worked out at Rs. 232/- per sq. feet in May, 1992. But, the land in the comparable sale instance was situated in different and better locality as compared to the suit land for which reason 5% rebate was given for the said factor to arrive at a comparable rate for the land in the comparable sale instance. The land rate of the land in the comparable sale instance was thus reduced from Rs. 232/- per sq. feet to Rs. 220/- per sq. feet in May, 1992. As there was difference of more than 15% in the land rate of the suit property i.e. Rs. 182/- per sq. feet and the land rate of property in the comparable sale instance relied upon by the Appropriate Authority i.e. Rs. 220/- per sq. feet, the Appropriate Authority held that the suit property was significantly undervalued.

10. The Appropriate Authority then rejected the contention raised on behalf of the parties that the two sisters had independent and equal shares in the suit property along with the Vendor and therefore the consideration for the pre-emptive purchase u/s 269-UD(1) of the Act, was below Rs. 10/- lacs. It thus held that there was joint ownership of the suit property and since the consideration paid for the same was more than Rs. 10 lacs, the provisions of the Chapter XXC of the Act were attracted in the instant case. It further held that each of the two sisters had 1/3rd share in the suit property which was ancestral property and therefore, it was necessary to deposit their 2/3rd share with it till the release deed signed by them was submitted to it.

11. The Appropriate Authority thus directed that on payment of apparent

consideration of Rs. 17,02,448/- which included Rs. 51,000/- payable to the petitioner/transferee, the suit property shall vest in the Central Government. However, considering the fact that the Vendor was to give possession of the suit property in his occupation as well as in occupation of the tenants to the petitioner within the stipulated time and further since the two sisters could also claim 2/3rd share (1/3rd share each) in the ancestral property, it directed that the purchase consideration should be deposited with it till the release Deed was executed by the two sisters of the Vendor in his favour and the vacant possession was given by him of the suit property.

12. Feeling aggrieved by the above order of the Appropriate Authority dated 23-2-1993, the petitioner has preferred the instant writ petition in this Court.

13. The learned Counsel for the petitioner has raised the following contentions in this writ petition.

a) There is total non-compliance with the principles of natural justice because the Show cause notice issued by the Appropriate Authority did not give particulars of the alleged sale instance relied upon by it, or any other material it had in its possession to arrive at a prima facie view that the suit property was grossly undervalued. In the absence of such material being disclosed in the show cause notice, the petitioner and the Vendor were prejudiced in their defence as they had no opportunity to meet the case of the department.

b) The sale instance relied upon by the Appropriate Authority was not a comparable sale instance so far as the suit property was concerned particularly when the suit property was tenanted property and the land in the comparable sale instance had better location and higher F.S.I.

c) Even assuming that the land-rates of the land in the comparable sale instance and the suit land were correctly calculated, the market value of the suit property as determined from the land rate of the land in the comparable sale instance was only marginally higher than 15% and as such it could not be held in the facts and circumstances of the instant case that the suit property was significantly undervalued and its compulsory purchase u/s 269-UD(1) of the Act was thus justified in the light of the judgment of the Supreme Court in C.B. Gautam's, case cited supra.

d) The Vendor and his two sisters had equal shares in the consideration agreed to between the parties and since the share of each was thus below Rs. 10,00,000/-, the provisions of Chapter XXC of the Act were not attracted in the instant case.

The learned Counsel for the respondents vehemently contested the above contentions raised on behalf of the petitioners.

14. In appreciating the above contentions raised on behalf of the petitioner, we will first deal with its contention relating to the question whether the suit property can be said to be significantly undervalued. In this regard it may be

seen that the Appropriate Authority has first worked out the discounted value of the apparent consideration of Rs. 18,42,000/- under the agreement of sale in the instant case dated 20-5-1992. Perusal of para 7 of the order of the Appropriate Authority dated 23-2-1993 shows how it has calculated the discounted value of the aforesaid apparent consideration of Rs. 18,42,000/- which was payable in instalments as provided under the agreement of Sale dated 20-5-1992. The discounted value of the apparent consideration of Rs. 18,42,000/- worked out by the Appropriate Authority is Rs. 17,02,448/- which includes the earnest amount of Rs. 51,000/- paid by the petitioner to the Vendor. Perusal of para 6 of the reasons separately recorded on the same date i.e. 23-2-1993 by the Appropriate Authority then shows that from the above discounted value of Rs. 17,02,448/-, the Appropriate Authority has deducted an amount of Rs. 30,000/- towards the scrap value of the structure upon the suit land so as to determine the market value of the suit land as on the date of agreement i.e. 20-5-1992. The Appropriate Authority has thus found that the market rate for the suit land as on 20-5-1992 is Rs. 182/- per sq.ft.

15. As regard the land in the comparable sale-transaction, the aforesaid para 6 of the reasons recorded by the Appropriate Authority on 23-2-1993 itself shows how it has calculated the discounted rate of the said land on the date of its agreement for sale. The market rate of the said land in the comparable sale transaction is thus calculated by it at Rs. 190/- per sq. ft. as on the date of its agreement for sale i.e. 1-9-1990. Since the comparable sale transaction had taken place in September, 1990 and there was time gap of about 21 months between the said comparable sale transaction and the suit-transaction which had taken place on 20-5-1992, the Appropriate Authority has allowed an increase of 12% in the price of the plot under comparable sale transaction. Thus its price is calculated by it at Rs. 232/- per sq.ft. on the date of the suit transaction i.e. 20-5-1992. Allowance is then made for better location of the land in the comparable sale transaction by giving rebate of 5% in the aforesaid market price of Rs. 232/- per sq.ft. The said market rate of Rs. 232/- per sq.ft. is thus reduced to Rs. 220/- per sq.ft. as on 20-5-1992 which according to the Appropriate Authority represents the fair market price of the land in the comparable sale-transaction as on 20-5-1992. It thus found that the rate of Rs. 182/- per sq.ft. for the land in the suit transaction was lower than 15% as compared to the alleged fair market rate of Rs. 220/- per sq.ft. arrived at by it on the basis of the rate for the land in the comparable sale transaction. It, therefore, held that the suit land was significantly or grossly undervalued.

16. The learned Counsel for the petitioner has urged before us that even assuming that the aforesaid calculations are correct, the difference in the price of the land in the suit transaction and the alleged fair market value arrived at by the Appropriate Authority on the basis of the land in the comparable sale transaction i.e. between Rs. 182/- per sq.ft. and Rs. 220/- per sq.ft. is only 15.8% which according to him is just a marginal difference. The submission thus is that if the fair market value is thus marginally higher, it cannot be said that the

suit property is significantly undervalued so as to attract the provisions of section 269-UD(1) of the Act. Before we consider the above submission made on behalf of the petitioner, it is necessary to point out that the difference of 15.8% between the aforesaid two land-rates as calculated by the petitioner is not correct. Even the said difference calculated as 16.3% in the note submitted by the petitioner is also not correct because it actually works out to 17.3%. The question thus to be considered is whether the said difference is satisfactorily explained in the light of the judgment of the Supreme Court in C.B. Gautam's, case cited supra.

17. The learned Counsel for the petitioner has submitted before us that the margin of 15% difference between the fair market value and the apparent consideration for pre-emptive purchase of the immovable property in question is not an invariable or inflexible rule to determine whether the suit property is significantly undervalued. In support of the above submission, the learned Counsel for the petitioner has urged before us that sometimes, as in the instant case, there are theoretical or hypothetical factors taken into consideration for determination of fair market value. Even where the sale transaction is properly a comparable sale transaction, the fair market price is always to a certain extent an hypothetical price and, therefore, there should be flexibility in determining the question whether the Immovable property in question is significantly undervalued or not and the rule of 15% difference between the fair market price and the apparent consideration should not be treated as a rigid rule. It is further urged that even assuming that the fair market value to a certain extent exceeds 15% of the price agreed to between the parties, even according to the judgment of the Supreme Court it only raises a presumption about proliferation of black money and the said presumption is rebuttable by establishing other relevant factors such as the factor that the Immovable property in question is tenanted or a leased property regarding which, it is a matter of common knowledge, that such a property cannot fetch its proper market value because of the question of eviction of the tenants & for getting vacant possession of such encumbered property.

18. There is great force in the above submissions made on behalf of the petitioner. In the instant case it may be seen that there are two theoretical or hypothetical factors which have been taken into consideration in determining the fair market value on the basis of the land rate of the alleged comparable sale transaction relied upon by the Appropriate Authority. The said two hypothetical factors are (1) 12% increase given in the rate of the land in the comparable sale-transaction to bring it to the date of the suit transaction and (ii) allowance made in the said rate by giving rebate of 5% for better location of the said land in the comparable sale transaction.

19. As regards the question of determination of fair market value on the basis of the comparable sale instance method, the law is well settled with numerous decisions of the Supreme Court upon section 23 by the Land Acquisition Act,

1894, which decisions are also useful in the determination of the fair market value of the Immovable property in question on the date of its agreement of sale. It is clear from the said decided cases that the basic test for determination of the fair market value is the test how a willing buyer and a willing seller would determine the price on the date of agreement of sale of the Immovable property. As regards the question of comparability of the sale-instances, the basic considerations are (i) proximity of time to the date of agreement of sale and (ii) proximity of location to the suit site. It is useful to refer to the judgment of the Supreme Court in the case of *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, in which all the relevant factors, plus or minus, which need to be considered in determining the fair market value of the land are referred to and discussed. The said principles or the relevant factors are also relevant and useful in determining the fair market value of the Immovable property in question on the date of its agreement of sale for the purpose of pre-emptive purchase u/s 269-UD(1) of the Act.

20. It is clear in the light of the above tests that neither time wise nor vicinity wise, the sale-transaction relied upon by the Appropriate Authority is comparable with the suit transaction for which reason the Appropriate Authority has given an increase at the rate of 12% p.a. to bridge the gap of 21 months and to bring the market rate of the land in the sale transaction from September 1990 to May 1992 and as regards the better location of the said land in the sale-transaction, it has given a rebate of 5% to make it comparable with the land in the suit transaction. In thus making the sale instance a comparable sale transaction an element of hypothetical factors has clearly entered into determination of its land rate and thus into determination of the fair market value of the suit-land. In fact, before using such a sale instance as a comparable sale transaction, it was necessary for the department to show that there was no other comparable sale transaction nearabout the suit property timewise and vicinity wise. That apart, why we are pointing out these factors is that when normally the fixation of such market value is always to certain extent hypothetical in nature, absence of comparable sale transaction time-wise or vicinity-wise makes the calculation of the fair market value more hypothetical. It is in these circumstances that we have to consider the question whether it can be said that the suit property is significantly undervalued because of the marginal difference between the alleged fair market value of the land in the comparable sale transaction arrived at by the department and the apparent consideration in the suit transaction.

21. Another factor which is pressed into service on behalf of the petitioner to show how the alleged comparable sale transaction is not a comparable sale transaction is that whereas the F.S.I. of the suit plot is one, the land in the alleged comparable sale transaction has more F.S.I. available because as stated in his letter dated 6-3-1993 addressed to Smt. Anita Deotale, the Assistant Engineer Building (West), Nagpur Corporation has informed her that under the Nagpur Municipal Corporation Building Bye-laws, 1965 for 10,000 sq. feet. area, permissible plinth area is 1/3rd of the plot area at each first floor as per Bye-law

No. 63, the number of stories cannot exceed 4 and the aggregate height cannot exceed 50 feet, except with the special permission of the Corporation. It is however, pointed out that from 11-1-1993, the Building Bye-laws of the Nagpur Improvement Trust are applicable to the land in the jurisdiction of the Nagpur Municipal Corporation also. It is also pointed out that sanctioning of building plan in Dhantoli is withheld due to sewer line and the Water supply problem. It is material to see that the above averments made by the petitioner in ground No. (vi) of the grounds in the petition are not specifically traversed or denied by the respondents. It is also alleged in the said para (vi) of the grounds that the Plot No. 14/1 in the alleged comparable sale transaction can be used for commercial purpose, whereas no such facility is available to the suit Plot No. 29, which averments are not also specifically traversed or denied by the respondents. It is clear that, if the F.S.I. is more and if the construction can be made for commercial purpose, the said factors would give higher market price to the land in the alleged comparable sale transaction. The alleged comparable sale transaction cannot therefore be said to be a comparable sale transaction so far as the suit transaction is concerned. Moreover, no allowance is made for the aforesaid factors by the Appropriate Authority to make the market rate of the land in the suit transaction. Had such an allowance been made, the margin of difference would have been much lower and might have been even below 15%.

22. In considering the question whether the rule laid down by the Supreme Court of difference of 15% between the fair market value and the apparent consideration paid for the suit property by the purchaser is an invariable or inflexible rule for determining whether the suit property is significantly undervalued or not, it is material to see that 15% difference criteria is brought out in the affidavit of the department itself in C.B. Gautam's, case. In this regard, it is necessary to take into consideration the fact that the fair market value of the suit property determined by the department may not be its exact determination, particularly where the theoretical or hypothetical factors enter into its calculation. In fact in para 4(c) of the return filed on behalf of the respondents, the respondents themselves have clearly admitted that there cannot be any exact or perfect comparison of market rate/price of the property on the basis of advantage or disadvantage of the property on account of the factors referred to in the said para viz. location of the plot, F.S.I. and tenants etc. We cannot therefore construe the Rule of 15% difference as inflexible or invariable Rule.

22A. In our view, what it means is that according to the department, on the basis of the material available with it, when there is a difference of 15% in the price of the suit property offered by the purchaser and its fair market value arrived at by it, a prima facie case is made out to act u/s 269-UD(1) of the Act i.e. to give show-cause notice to the parties concerned for pre-emptive purchase of the suit property. However, when pursuant to the show-cause notice the material brought on record shows that the difference in the fair market value and the apparent consideration paid for the suit property is marginally or slightly

higher than 15% which difference can be explained by the parties upon good and valid reasons, the 15% margin between the fair market value and the apparent consideration paid for the suit property, in our view, cannot be strictly adhered to hold that the property is significantly undervalued. Further, in our view, the Appropriate Authority must use its discretion like a quasi-judicial authority and determine in the facts and circumstances of each case, whether the marginal difference of 15% or slightly more can make the property significantly undervalued.

23. Even where the difference is more than 15%, the Supreme Court has observed in para 30 of its judgment in C.B. Gautam's, case cited supra that there would be a presumption that there is an attempt to evade the tax, but then such a presumption is rebuttable and can be rebutted by the parties by showing what bona fide considerations were there which had induced the seller to sell his immovable property at less than what might be considered to be the fair market value. Some of the instances given therein are about the tenanted properties where normally the market value will be lower if the purchaser cannot get the vacant possession and is required to take steps to evict the tenants. If such factors are established, then in that case also it cannot be said that merely because the difference between the apparent consideration of the suit property and its alleged fair market price arrived at by the department is 15% or more, there is significant undervaluation of the suit property. This would also show that there is flexibility in determination of the question of significant undervaluation of the suit property.

24. In the instant case, the suit property is a tenanted property whereas the property in the alleged comparable sale transaction was not a tenanted property. The said difference in the two properties would account for the difference in their market prices. The learned Counsel for the department has however, urged before us that under the agreement of sale dated 20-5-1992, the seller had himself undertaken to get the suit property vacated and, therefore, the submission is that this factor does not affect or reduce the fair market value of the suit property. Clause 16 of the agreement of sale dated 20-5-1992 clearly shows, and there is no dispute, that the Vendor had undertaken to get the tenanted property vacated within the period stipulated therein. It is however, difficult to see whether the assurance of the Vendor that he would get the tenanted premises vacated would or would not affect the determination of the true market price of the suit property because if the tenants would not on their own vacate the suit premises, the Vendor would be required to take legal steps against them to get the suit premises vacated which would consume sometime before which the vacant possession could not be given to the purchaser when in the meanwhile the market price of the suit property would appreciate. It thus cannot be said that this factor would not at all enter into consideration in determining the market price of the suit property in the instant case.

25. In our view, therefore, because of the reasons hereinbefore given viz.

hypothetical factors being taken into consideration in determining the market rate of the land in the sale instance on the date of the suit transaction, the difference in F.S.I. and the commercial purpose for which the land in the sale instance can be used, and the suit property being tenanted whereas the property in the sale instance being not, it cannot be said that merely because the difference in the fair market price and the apparent consideration of the suit land is slightly more than 15%, the suit land is significantly undervalued.

26. The learned Counsel for the department has relied upon the judgment of this Court in *Smt. Vimla Devi v. S.K. Laul and others*, decided on 10-3-1993 : 1993 Mah.L.J. 801, in support of his submission that the Rule of difference of 15% in the fair market price of the suit property and its apparent consideration is an invariable or inflexible rule to determine the question whether the suit property is significantly undervalued for the purpose of its pre-emptive purchase. Perusal of the said Judgment would show that it dwells upon the facts and circumstances in that case. The department had relied upon three sale instances in that case and the petitioner had relied upon two sale instances and after examining the material placed on record by both the parties, conclusion was arrived at that the suit property in that case was undervalued, because the price determined was lower than 15% of the fair market value determined through the comparable sale instances about which the material was placed by the department. Perusal of the said Judgment does not show that merely because the fair market price arrived at by the department is 15% or more than the price agreed to by the parties for the same, an inference should be drawn that the property is significantly undervalued. In other words, the question whether the said rule of difference of 15% in the fair market price and the apparent consideration agreed to between the parties is an invariable or inflexible rule to determine whether the suit property is significantly undervalued for the purpose of its pre-emptive purchase is not considered by this Court in the said case. The said Judgment in the said case is thus of no assistance to the respondents.

27. Apart from the above contention there is great force in the contention raised on behalf of the petitioner that there is non-compliance with the principles of natural justice in issuing the show cause notice in the instant case regarding pre-emptive purchase of the suit property, because the particulars of the sale instance relied upon by the Appropriate Authority are not given in the said show cause notice issued to the petitioner and the Vendor. It may be seen that issuing a show cause notice before directing pre-emptive purchase of the Immovable property in question u/s 269-UD(1) of the Act is not an empty formality. If the opportunity to show cause has to be real, and substantial, the parties to whom the show cause notice is issued must know what the case of the department is and on the basis of what material a prima facie view is sought to be taken that Immovable property in question is grossly or significantly undervalued. It is only when the particulars of the sale instance or the material upon which the department seeks to rely in this regard is disclosed in the Show Cause Notice that the parties affected thereby can properly meet the case of the department.

28. The learned Counsel for the department has however urged before us that if we find that the show cause notice is defective, the proceedings should be remanded back to the Appropriate Authority. In our view, we cannot accede to the above submission made on behalf of the respondents because a lot of time is already consumed as the matter had been once remanded to the Appropriate Authority when no Show cause notice at all was issued by it before directing pre-emptive purchase of the suit property. It is clear even from the provisions of section 269-UD(1) of the Act that the pre-emptive purchase has to be made within the time stipulated therein and the parties cannot be required to wait for a long time to complete their sale transaction, particularly when the prices of the Immovable property appreciate by passage of time and neither the seller gets the price for his land immediately nor the purchaser gets possession of the suit property within reasonable time.

29. In this view of the matter, it is not necessary for us to decide any other contentions raised by the petitioner in this writ petition.

30. In the result, the instant writ petitions are allowed. The impugned order of the Appropriate Authority is set aside. Rule in the above terms. No costs.