(1994) 08 MAD CK 0011

In the Madras High Court

Case No : C.S. No. 490 of 1982, Application No. 2492 of 1983

Hindustan Petroleum Corporation Limited — APPELLANT

Vs

Elite Optical Industries
Elite Optical Industries Vs Hindustan Petroleum Corporation Limited, 861, Anna Salai, Madras-2 — RESPONDENT

Date of Decision : 02-08-1994

Acts Referred:
Income Tax Act, 1961 — Section 230A, 269
Presidency Small Cause Courts Act, 1882 — Section 3, 41

Citation : (1994) 08 MAD CK 0011

Hon'ble Judges : Jayasimha Babu, J

Bench : Single Bench

Advocate : C. Harikrishnan /Defendant, for the Appellant; N.V. Balasubramaniam for the Income Tax Department, M/s. King and Partridge for Respondent/Plaintiff, for the Respondent

Judgement

Jayasimha Babu, J.—In this suit for ejectment, the defendant tenant having applied to the Court for an order u/s 9(1) of the Madras City

Tenants'' Protection Act, this Court by its order dated 16-2-1993 held that the tenant is entitled to the benefit of the Act and is entitled to purchase

the suit land for which the value had to be fixed in accordance with the Act. A Commissioner was therefore appointed to determine the minimum

extent of land required for convenient enjoyment by the tenant and also to fix the land value taking into consideration the average market value of

the three years immediately preceding the date of the order. The Advocate Commissioner visited the spot, obtained plans and photographs of the

property, collected the sales statistics of the properties in that area, recorded the deposition of the parties and their witnesses regarding the valuation as also the extent of land required by the tenant, obtained copy of the sale deed dated 26-3-1990 under which the plaintiff had sold a

plot situated behind the suit land, considered the valuation report of the approved value and after considering all the material, fixed the total value of

the land at Rs. 22,45,000/-.

2. The Court thereafter considered the report and the objections of the plaintiff thereto who claimed a higher amount and made an elaborate order

on 17-2-1994 and fixed the market value of the land in accordance with the provisions of S. 9(1) at Rs. 26,85,000/-. The rate at which plaintiff

had sold the plot behind the suit land in 1990, the commercial value of the property considering its location, the effect of inflation and all other

relevant factors were considered while determining the market value.

3. The court granted time till 30-6-1994 to the tenant/defendant to pay the sum so determined to the plaintiff. Accordingly the defendant had paid

the amounts to the Plaintiff, the plaintiff has now to execute the sale deed in favour of the defendant.

4. Learned counsel for the plaintiff submitted that the plaintiff is ready to execute the sale deed. In order that the document may be registered, the

counsel sought a direction from the Court to the Registering Officer to register the sale deed without requiring the applicant to furnish a certificate

from the appropriate authority under S.269 UL of the Income Tax Act, 1961 as the said provision has no application when the sale deed is being

executed and registered pursuant to the order made by the Court under S.9 of the Madras City Tenants'' Protection Act.

5. As the question regarding the applicability of Ch. XXC of the Income Tax Act to the compulsory sales effected pursuant to the statutory option

exercised by the tenant, and the order of the Court directing the landlord to execute and register the sale deed after receiving the market value

determined by the Court u/s 9 of the State Act, is likely to arise in other similar cases, learned Standing Counsel for the Income Tax Department,

Mr. N.V. Balasubramanian was requested to assist the Court. He has addressed arguments, after obtaining instructions from the Department.

6. Sri Balasubramanian invited my attention to the Judgment of the Supreme court in the case of C.B. Gautam Vs. Union of India and Others,

wherein the Constitution Bench of the Court examined the validity of the provisions contained in Chapter XXC of the Income Tax Act, 1961. The

Court has pointed out in the Judgment that the provisions of Chapter XXC can be resorted to only where there is a significant undervaluation of the

property to the extent of 15% and more in the agreement of sale as evidenced by the apparent consideration being lower than the real market

value by 15% or more. As regards the object of these provisions, the Court observed that the very historical setting in which this Chapter came to

be enacted indicates that it was intended to be resorted only in cases of attempts at tax evasion by significant undervaluation of immovable

property agreed to be sold, the Court also observed that an imputation of tax evasion would arise when an order of compulsory purchase is made,

and there fore, before making an order of compulsory p(sic) chase, the parties were entitled to notice as reasonable opportunity to show cause

that the undervaluation in the agreement of sale was not with a view to evading the tax.

7. It is therefore clear that the object of the provisions contained in Chapter XXC of the Income Tax Act is to prevent evasion of tax and it is only

to achieve that object, provision has been made enabling the Central Government to compulsorily purchase the properly which is found to have

been undervalued in the agreement of sale voluntarily entered into by the parties, to the extent of 15% or more.

8. When a compulsory sale is effected by a plaintiff in favour of the defendant/ tenant who has exercised the statutory option conferred on him

under Sec.9(1) of the Madras City Tenants'' Protection Act to purchase the property at the price determined by the court, no question of evasion

of tax or attempt at evasion of tax can arise in such a transaction. Section 9 of the said Act reads thus:

9(1)(a)(i)ï¿½ Any tenant who is entitled to compensation u/s 3 and against whom a suit in ejectment has been instituted or proceeding under

Sec.41 of the Presidency Small Cause Courts Act 1882, taken by the landlord, may, within (one month) of the date of the Madras City Tenants''

Protection (Amendment) Act, 1955, coming into force or of the date with effect from which this Act is extended to the Municipal Town or Village

in which the land is situate, or, within (one month) after the service on him of summons, apply to the Court for an order that the landlord shall be directed (to sell for a price to be fixed by the Court, the whole or part of the extent of land specified in the application).

(ii) Notwithstanding anything contained in Clause (a)(i) of this sub section, any such tenant as is referred to in sub clause (ii) b of Clause (4) of

Section 2 or his heirs, may within a period of two months from the date of the publication of the Madras City Tenants'' Protection (Amendment)

Act, 1973 apply to the Court (whether or not a suit for ejectment has been instituted or proceeding under Sec. 41 of the Presidency Small Cause

Courts Act, 1882 (Central Act XV of 1882) has been taken by the landlord or whether or not such a suit or proceeding is pending) having

jurisdiction to entertain a suit for ejectment or in the City of Madras either to such Court or to the Presidency Small Cause Court, for an order that

the landlord under the tenancy agreement shall be directed to sell for a price to be fixed by the Court the whole or part of the extent of the land

specified in the application)

(b) On such application, the Court shall first decide the minimum extent of the land which may be necessary for the convenient enjoyment by the

tenant. The Court shall then fix the price of the minimum extent of the land specified in the application under Cl.(2) whichever is less. The price

aforesaid shall be the average market value of the three years immediately preceding the date of the order. The court shall order that within a

period to be determined by the Court, not being less than three months and not more than three years from the dale of the order, the tenant shall

pay into Court or otherwise as directed the price so fixed in one or more installments with or without interest.)

(2) In default of payment by the tenant of any one installment, the application (under Cl.(a) of Sub Section (1) shall stand dismissed, provided that

on sufficient cause being shown, the court may excuse the delay and pass such orders as it may think fit, but not so as to extend the time for

payment beyond the three years above mentioned. On the application being dismissed, the court shall order the amount of the installment or

installments, if any paid by the tenant, to be repaid to him without any interest.

(3)(a)On payment of the price fixed under (l(b) of Sub Sec.(1)) the Court shall pass an order directing the conveyance by the landlord to the

tenant of the extent of land for which the said price was fixed. The Court shall by the same order direct the tenant to put the landlord into

possession of the remaining extent of the land, if any. The stamp duly and registration fee in respect of such conveyance shall be borne by the

tenant.

(b) On the order referred to clause (a) being made, the suit or proceeding shall stand dismissed. any decree or order in ejectment that may have

been passed therein but which has not been executed shall be vacated.

Explanation: ''Land'' means the interest of the landlord in the land and all other interests which he can convey under any power and includes also

the full interest which a trustee can convey under the power possessed by him to convey trust property when necessity exists for the same or the

alienation of the properly is for the benefit of the estate or trust).

(3-A) Notwithstanding anything contained in Cl.(b) of sub Sec.(3) of this section or in sec.5 of the Madras City Tenants'' Protection (Amendment)

Act, 1973 (Tamil Nadu Act 4 of 1972) or any other law for the time being in force, the Court which passed the decree or other referred to in Sub

Cl.(ii)(b) (2) of Cl.(4) of Scc.2 shall, on application made by the tenant referred to in that sub cl. within a period of two months from the date of

the publication of the Madras City Tenants'' Protection (Amendment) Act, 1972 reopen or review the proceedings relating to such decree or order

and may pass a decree or an order that the tenant referred to in the said sub clause is entitled to the rights under this Act and pass such other

supplemental, incidental or consequential orders as are necessary for the purpose as if the Madras City Tenants'' Protection (Amendment) Act,

1973 were in force at the time at which the decree or order was passed)"".

9. The Madras City Tenants'' Protection Act does not require any agreement of sale to be entered into between the plaintiff and defendant in a suit

or proceedings under the Act, before the order is made by the Court directing the plaintiff/landlord to execute a sale deed in favour of the

defendant/tenant. The parties are required to enter into the transaction of sale and the plaintiff is required to execute a sale deed only on account of

the order made by the Court pursuant to the exercise of the statutory right conferred on the tenant to seek such an order subject to the payment of

the price fixed by the Court.

10. Further the price to be paid by the vendee is not left for the parties to be decided between themselves and the scope for the parties agreeing to

pay the price or apparent consideration which is different from the real value or the market value, therefore does not arise. The Section itself lays

down the basis on which the price Is to be determined. The basis being the average market value of three years immediately preceding the date of

the order. It is not open to the parties to agree on a sum which is different to the price fixed by the Court, as the consideration for the sale. Thus,

the price paid by the vendee to the vendor pursuant to an order made under Sec. 9 of the Madras City Tenants'' Protection Act is not merely an

apparent consideration but is in fact the value of the property that is directed to be sold and there is no scope for any further investigation by any

other authority as to whether the consideration is apparent or real. The very mode of arriving at the price as provided in Sec. 9(1) (b) of the

Madras City Tenants'' Protection Act precludes any possibility of the apparent consideration not being the real consideration or being less than the

market value of the property.

11. The two Acts, viz. the Madras City Tenants'' Protection Act and the Income Tax Act should be construed harmoniously. The right of

preemptive right purchase at the market price as determined by the Court, conferred on the tenant under the State Act cannot be negated by the

prescribed authority under Chapter XXC of the Income Tax Act substituting the Central Government as the purchaser in place of the tenant.

12. It has, therefore, to be held that when a sale deed is executed by the plaintiff/vendor in favour of the defendant/tenant under the provisions of

the Madras City Tenants'' Protection Act pursuant to an order made by the Court u/s 9(1) of the said Act and at the price determined by the

Court in accordance with the provisions of the said Act, the document is required to be registered by the Registering Authority without reference to

the provisions contained in Chapter XXC of the Income Tax Act. The. Registering Authority shall register the sale deed to be executed by the

plaintiff in favour of the defendant in respect of the suit schedule property at the price already determined by the Court. The plaintiff will now

proceed with the execution of the sale deed and for that purpose the defendant will submit the draft sale deed to the plaintiff within four weeks from to-day. The plaintiff will deliver the title deeds to the defendant within two weeks from to day. The expenditure towards stamp and

registration shall be borne by the defendant. The sale deed with be executed by the Managing Partner of the plaintiff who has represented the firm

in the suit. After the draft salt deed is made available to the plaintiff, the plaintiff shall obtain the clearance u/s 230A of the Income Tax Act. A copy

of the order shall be made available to the learned counsel for the Income Tax Department.

