

(2014) 07 CHH CK 0035
In the Chhattisgarh High Court
Case No : Tax Case No. 36 of 2013

Income Tax Officer (TDS)

APPELLANT

Vs

Naya Raipur Development Authority

RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Income Tax Act, 1961 — Section 194LA, 201, 201(1A), 260A
Land Acquisition Act, 1894 — Section 11, 16, 17, 23, 23(2)

Citation : (2014) 07 CHH CK 0035

Hon'ble Judges : Yatindra Singh, C.J.;Goutam Bhaduri, J

Bench : Division Bench

Advocate : Anand Dadariya, Counsel, Advocate for the Appellant; Rajeshwar Rao, Counsel, Advocate for the Respondent

Judgement

1. The only point involved here is,

Whether the land acquired by agreement by the Assessee under the Chhattisgarh Nagar Tatha Gram Nivesh Adhinyam, 1973 (the Nivesh-Act) is compulsory acquisition within the meaning of section 194LA of the Income Tax Act, 1961 (the IT-Act) or not?

It arises in this tax case that is filed against the order of the Income Tax Appellate Tribunal, Raipur Bench, Raipur (the Tribunal) dated 19.07.2013 allowing the appeal of the Naya Raipur Development Authority, Raipur (the Assessee) for the Assessment Year (the AY) 2008-09.

THE FACTS

2. Raipur is the capital of Chhattisgarh. The State decided to build a capital city adjacent to the existing Raipur and for this purpose, an authority in the name of Raipur Capital Area Development Authority was constituted u/s 64 of the Nivesh-Act. It was later on re-named as Naya Raipur Development Authority, (the Assessee).

3. The Assessee acquired land within its area in the AY 2007-2008 and paid consideration to the land owners. However, no tax was deducted at source (the TDS).

4. The Assessing Officer (the AO) issued notices to the Assessee on 05.11.2007 for furnishing information regarding deduction of TDS amount as per the provisions of section 194LA of the IT-Act.

5. The Assessee filed its return denying its liability to deduct TDS as well as applicability of section 194LA of the IT-Act.

6. The AO rejected the claim of the Assessee and held that:

? The property acquired by the Assessee was not an agricultural property;

? The acquisition was a compulsory acquisition; and

? Section 194LA of the IT-Act is applicable.

7. On the basis of the aforesaid finding, the AO held the Assessee to be in default u/s 201 of the IT-Act. The TDS tax liability was assessed to Rs. 6,94,77,403/- alongwith interest u/s 201(1A) of the IT-Act of Rs. 76,42,514 (total Rs. 7,71,11,918).

8. Aggrieved by the aforesaid order, the Assessee filed an appeal before the Commissioner of Income Tax (Appeals) (the CIT-A). It was dismissed on 20.10.2008 affirming the findings as well as liability recorded by the AO.

9. Aggrieved by the aforesaid order, the Assessee filed an appeal before the Tribunal. It was allowed on 19.07.2013 holding that there was no compulsory acquisition and as such section 194LA of the IT-Act was not applicable.

10. In view of the aforesaid finding, the Tribunal did not decide the other question namely, whether the property was agricultural property or not.

11. Aggrieved by the order of the Tribunal, the Income Tax Department (the Department) has filed the present appeal u/s 260A of the IT-Act.

POINTS INVOLVED

12. We have heard counsel for the parties. This appeal was admitted on 14.05.2014 on the following two substantial questions of law:

(i) Whether in the facts and circumstances of the case, the acquisition by the Naya Raipur Development Authority is a compulsory acquisition or not;

(ii) Whether in the facts and circumstances of the case, section 194LA of the Income Tax Act, 1961 is applicable or not.

However, the basic question in this appeal is mentioned in the opening paragraph of the judgment. In case it is decided in favour of the Department, then the matter is to be sent back to the Tribunal to decide the question whether the

property was agricultural property or not.

THE DECISION

13. The word "compulsory acquisition" is not defined in the IT Act or for that matter in any other statute. However, it is expropriation or is done in exercise of "eminent domain" the word, which was coined by 17th century jurist Grotius.

14. Halsbury's Laws of England, Volume 8(1), 4th Edition explains that "Where land or an interest in land is purchased or taken under statutory powers¹ without the agreement of the owner² it is said to have been compulsorily acquired³".

15. In *Sunder Vs. Union of India (UOI)* the question involved before the Supreme Court was, whether the State was liable to pay interest on the amount envisaged u/s 23(2) of the Land Acquisition Act, 1894 (the LA-Act) or not. While deciding this question, the court observed,

[I]n the compulsory acquisition the land owner is deprived of the right and opportunity to negotiate and bargain for the sale price. It depends on what the collector or the court fixes as per the provisions of the LA-Act.

16. It is clear that in a case of compulsory acquisition, the seller has no option. He can neither refuse to sell his land nor can he negotiate the price. The price is fixed by the statute itself. The conditions that must be satisfied before a purchase can be said to be compulsory acquisition are as follows:

(i) The seller has no option but to sell the land;

(ii) The seller can not negotiate the price. It is fixed by the statute or determined under the principles mentioned therein.

17. There are many examples of such statutes. The Zamindari Abolition Acts, Ceiling Acts, Nationalisation Acts are examples of such compulsory acquisition but the most prominent law regarding compulsory acquisition of immovable property is the LA-Act.

18. The first law for compulsory acquisition of immovable property was contained in Bengal Regulation I of 1824. Similarly, the Building Act XXVIII of 1839 as well as Act XX of 1852 provide compulsory acquisition of land in Bombay as well as in Madras Presidency.

19. The aforesaid enactments were replaced by the Act VI of 1857. This was supplemented by Act XXII of 1863. These statutes were consolidated and replaced by the Act 10 of 1870, which in turn was replaced by the LA-Act.

20. The preamble of the LA-Act explains that it was enacted "to amend the law of the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition".

21. Section 4 of the LA-Act provides publication of preliminary notification for

intention to acquire the land. After conducting an enquiry and deciding the objections, final notification is published u/s 6 of the LA-Act.

22. The Collector fixes the compensation u/s 11 of the LA-Act. He can take possession after award is made and the property vests in the State without any encumbrances u/s 16 of the LA-Act.

23. In case of emergency, the Collector may take possession before an award is made and then the property vests in the State free from all encumbrances u/s 17 of the LA-Act.

24. The compensation required to be given under the LA-Act is the market value of the property on the date of the notification u/s 4. It is to be calculated by the principles mentioned u/s 23 of the LA-Act.

25. In case, a person, whose land is acquired, disputes the amount of compensation, then it is to be referred to the civil court.

26. Under the LA-Act, there is no discretion of a person not to sell the land or to negotiate the price. The price is fixed under the principles mentioned under the LA-Act. This is a compulsory acquisition.

27. In the present case, the property was not acquired under the LA-Act but under the Nivesh-Act. Here, the seller had no option but to sell the property to the Assessee: the first condition is satisfied but the question is whether the second condition of price being fixed is satisfied or not.

28. Chapter VIII of the Nivesh-Act is titled as "Special Areas". Section 64 is in this chapter and is titled as "Constitution of Special areas". It is under this section that the Assessee was constituted.

29. u/s 66 of the of the Nivesh-Act, the Assessee is a body corporate with perpetual succession and a common seal and has power to acquire, hold and dispose of property.

30. Section 69 of the Nivesh-Act is titled as "Powers". Under this section, the Assessee, while acquiring any land exercises the powers and follows the procedure which a Town and Country Development Authority has or follows for acquiring any land.

31. Chapter VII of the Nivesh-Act is titled as "Town and Country Development Authority". Section 56 is in this chapter. It is titled as "Acquisition of land for Town and Country Development Authority or Housing and Urban Development Authority of Chhattisgarh". It provides that the Town and Country Development Authority can acquire the land by agreement and in case of failure of agreement, then it is to be acquired under the LA-Act (for section see below)4.

32. The Assessee acquires the land u/s 56 of the Nivesh-Act read with section 69 of the Nivesh-Act.

33. Section 56 of the Nivesh-Act provides two different procedures for acquisition

of land. One is by agreement and in failure of the same, it is to be done under the LA-Act.

34. There is no dispute between the parties that in the present case, the property was not acquired under the LA-Act and it was acquired only by agreement.

35. In case the property is acquired by agreement, then the price is not fixed by the statute: it is settled by the parties. The second condition of compulsory acquisition is not satisfied. The acquisition of the property by the Assessee cannot be said to be a compulsory acquisition.

36. The fact that after the mutual agreement between the parties, the price was stated in a notification by the Assessee, does not make it a compulsory acquisition. No one was bound by that. In case of disagreement, the Assessee had to proceed under the LA-Act. Here, this was not done: all agreed to pay the price fixed by mutual agreement.

CONCLUSIONS

37. Our conclusions are as follows:

? In case of compulsory acquisition the seller has neither option to opt out of the acquisition nor can he negotiate the price. It is fixed by the statute or is determined under the principles stated therein;

? In the present case, price was neither fixed by the statute nor by the principles stated therein but was agreed by the mutual negotiation;

? The Tribunal has rightly held that there was no compulsory acquisition; and

? Section 194LA of the Income Tax Act, 1961 was not applicable. In view of our conclusions, the tax case has no merit. It is dismissed.

1 See eg the Land Clauses Consolidation Act 1845 s. 18; the Compulsory Purchase Act 1965 s. 5 (as amended); and para 100 post. See also the Acquisition of Land Act 1981 s. 2; and para 34 post.

2 Even where there is power to acquire land compulsorily the acquisition may be effected by agreement. As to when an acquisition amounts to one by agreement, and when it amounts to compulsory purchase, see para 93 et seq post.

3 Where, however, there is a purchase of the whole or any part of any statutory undertaking under any enactment in that behalf prescribing the terms on which the purchase is to be effected, the provisions of the Land Compensation Act 1961 as to compulsory acquisitions of land are excluded (s 36(1)); and it has been held that transfer of industries to public ownership did not amount to a compulsory purchase or sale (*John Hudson & Co. Ltd. v. Kirkness (Inspector of Taxes)* [1954] 1 All ER 29, [1954] 1 WLR 40, CA; affd sub nom *Kirkness (Inspector of Taxes) v. John Hudson & Co. Ltd.* [1955] 2 All ER 345, HL). For the purpose of the Land Compensation Act 1961 s. 36, "statutory undertaking"

means an undertaking established under any enactment: s. 36(2). "Enactment" includes an enactment in any local or private Act of Parliament and an order, rule, regulation, byelaw or scheme made under an Act of Parliament (s 39(1)); and reference in Land Compensation Act 1961 to any enactment are to be construed as references to that enactment as amended by or under any other enactment as amended by or under any other enactment (s 39(9)).

As to the exclusion of statutory undertakers' land from compulsory purchase under the Acquisition of Land Act 1981 see s. 16; and para 41 post.

4 Section 56 of the Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 is as follows:

56. Acquisition of land for Town and Country Development Authority or Housing and Urban Development Authority of Chhattisgarh.-The Town and Country Development Authority or Housing and Urban Development Authority of Chhattisgarh may at any time after the date of publication of the final town development scheme u/s 50 but not later than three years therefrom, proceed to acquire by agreement the land required for the implementation of the scheme and, on its failure so to acquire, the State Government may, at the request of the Town and Country Development Authority or Housing and Urban Development Authority of Chhattisgarh, proceed to acquire such land under the provisions of the Land Acquisition Act, 1894 (No. 1 of 1894) and on the payment of compensation awarded under that Act and any other charges incurred by the State Government in connection with the acquisition, the land shall vest in the Town and Country Development Authority or Housing and Urban Development Authority of Chhattisgarh subject to such terms and conditions as may be prescribed.