(1983) 05 PAT CK 0017

In the Patna High Court

Case No : Appeal From Original Order No. 92 of 1977

Inspecting Assistant Commissioner APPELLANT

Vs

Nand Kishore Singh and Others RESPONDENT

Date of Decision : 16-05-1983

Acts Referred:
Income Tax Act, 1961 — Section 269D, 269D(1), 269D(2), 269G, 269H

Citation : (1983) 35 CTR 287 : (1984) 148 ITR 721

Hon'ble Judges : Birendra Prasad Sinha, J;B.P. Griyaghey, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; Sreenath Singh and K.N. Jain, for the Respondent

Judgement

Birendra Prasad Sinha, J.—This is an appeal by the IAC, Acquisition Range, Patna, the Competent Authority u/s 269H (Chap. XX-A) of the LT. Act, 1961.

2. Land measuring more or less 0.53 acres, equivalent to 171/2 kathas, with a double storeyed building (plinth area 8,670 sq. ft.) and outhouses (plinth area 1,350 sq. ft.), situated on the crossing of Dak Bungalow Road and Sinha Library Road, one of the most important areas in the town of Patna, was sold by Kumar Tara Nand Sinha and his four brothers to Shri Nand Kishore Singh and seven others for an apparent consideration of Rs. 2,75,000 under a sale deed No. 11372 which was registered at Patna on August 16, 1973. An information to this effect was received by the Competent Authority in Form No. 37G in Januany, 1974, from the registering authority. The Competent Authority directed his inspector to make a local enquiry and report about the fair market value of the property. The inspector submitted his report on January 16, 1974. According to the inspector, the fair market value of the property in question was Rs. 8,70,000 approximately which was very much higher than the apparent consideration, shown in the transfer document. The Competent Authority, therefore, initiated a proceeding for acquisition of this property under Chap. XX-A of the I.T. Act, 1961, on January 16, 1974. On January 31, 1974, notices u/s 269D(1) in English

and in Hindi were issued for publication in the Official Gazette of India, Pt. III, Section 1, which was published in the Official Weekly Gazette of India, dated May 18, 1974. Notice was also served upon Kumar Tara Nand Sinha, one of the transferors and Shri Nand Kishore Singh and seven other transferors, in accordance with the manner prescribed in the Act. The matter was referred to the Valuation Officer of the Valuation Cell, I.T. Department, Patna, u/s 269D(1)(a) of the Act, requiring him to determine the fair market value of the property. On April 26, 1974, separate written objections were received from each of the transferees. The main objection was that there was no under-valuation in the transfer of land and there was no difference between the fair market value and the sale price shown in the transfer document. They objected to the valuation made by the Valuation Officer as being arbitrary, wrong and without any basis and asserted that the average price of land could not exceed Rs. 13 to 14 thousand per katha. The objectors also filed a valuation report from a private valuer, namely, Shri Brajbans Prasad, according to which the value of the property could not exceed Rs. 2,96,000. After considering the objections raised by the transferees and other materials on record, the Competent Authority overruled those objections and found that on a rough estimate the average rate of Rs. 40,000 per katha for the land was quite fair. Except the question regarding valuation, no other objection was raised on behalf of the transferees. The Competent Authority was satisfied that the fair market value of the property exceeded the apparent consideration therefore by more than 15 per cent. of such apparent consideration and the real consideration for transfer as agreed to between the parties had not been truly stated in the instrument of transfer. After obtaining the approval of the Commissioner of Income Tax I, Bihar, Patna, as required by Section 269F(6) of the Act, the Competent Authority passed an order for acquisition of the above-mentioned immovable property under Chap. XX-A of the Act, by his order dated October 8, 1974.

3. Being aggrieved by the order of the Competent Authority, IAC, I.T., Acquisition Range, Patna, the transferees, namely, Shri Nand Kishore Singh and others, filed an appeal before the Income Tax Appellate Tribunal u/s 269C of the Act, which was registered and numbered as I.T. (Acq.) N. No. 1-Pat of 1974-73, making the IAC, Acquisition Range, Patna, as the sole respondent. Apart from the question regarding valuation, certain other questions were also raised in the appeal on behalf of the transferees. The validity of initiation of the proceeding was challenged on the ground that the Competent Authority had no "reason to believe" as required u/s 269C of the Act, that the property in question had been transferred for an apparent consideration which was less than the fair market value of the property and that the consideration for such transfer as agreed to between the parties had not been truly stated in the instrument of transfer with certain objectives. The submission was that no reason had been recorded by the Competent Authority while initiating the proceeding. The other contention raised before the Appellate Tribunal was that there being five transferors of the property and the notice having been issued to only one of them, namely, Kumar Tara Nand

Sinha, the proceeding was vitiated and the Competent Authority could not proceed unless he had served the required notice u/s 269D of the Act, on all the transferors. What had happened was that in the notice issued u/s 269D(1) of the Act, the name of only Kumar Tara Nand Sinha was mentioned as the transferor.

4. The learned Appellate Tribunal held that the Competent Authority had good reasons to believe that the difference between the apparent consideration and the fair market value of the property was quite high at the time of initiation of the proceeding. The contention of the transferees in this respect was rejected. As regards the valuation arrived at by the Competent Authority, the objection by the transferees was also overruled.

5. The Appellate Tribunal, however, found that mention of only one of the transferors out of five in the notice published in the Official Gazette in accordance with Section 269D(1) of the Act vitiated the proceeding although the non-issue of notice u/s 269D(2) of the Act to any of the transferors or transferees was only an irregularity or a supervening illegality which could be corrected. On this ground alone the Appellate Tribunal held that the proceeding initiated suffered from a legal infirmity from the beginning and was, therefore, illegal. The acquisition proceeding was, accordingly, quashed.

6. It may be stated here that no such objection had been raised by any of the transferors including Kumar Tara Nand Sinha but, in the view of the Appellate Tribunal, such basic legal objection to the validity of the order could be raised by any person objecting to the order and it was immaterial that the transferor had not challenged the order on that ground.

7. The present appeal has been filed as mentioned above by the IAC, Acquisition Range, Patna, Competent Authority, u/s 269H of the Act, against the order of the Appellate Tribunal, dated March 7, 1975.

8. At the very outset when the appeal was called out for hearing, Mr. Sreenath Singh, learned counsel appearing on behalf of the respondents (the transferees), took a preliminary objection that this appeal was not maintainable as the same had been filed by the IAC, Acquisition Range, Patna, the Competent Authority, who had initiated the proceeding and had passed the order u/s 269F(6) of the Act. Learned counsel submitted that an appeal to the High Court can be filed u/s 269H of the Act by the Commissioner or any person aggrieved by any order of the Appellate Tribunal u/s 269F within sixty days of the date on which he is served with notice of such order under that section. According to him it was the Commissioner alone who could file this appeal and not the IAC, the Competent Authority. Learned counsel referred to Section 269H of the Act which reads as under :

"269H. Appeal to High Court.--(1) The Commissioner or any person aggrieved by any order of the Appellate Tribunal u/s 269G may, within sixty days of the date on which he is served with notice of such order under that section, prefer an appeal against such order to the High Court on any question of law :

Provided that the High Court may, on an application made in this behalf before the expiry of the said period of sixty days, permit, by order, the appeal to be presented within such further period as may be specified therein, if the applicant satisfies the High Court, that he has sufficient cause for not being able to present the appeal within the said period of sixty days."

9. It was submitted that the right of appeal is a creature of the statute and must be exercised only in the manner prescribed by law. In this connection Mr. Sreenath Singh relied upon the decisions of the Supreme Court in Soorajmull Nagarmull Vs. Commissioner of Income Tax, Calcutta, , and in Smt. Ganga Bai Vs. Vijay Kumar and Others, . In the case of Soorajmull Nagarmull Vs. Commissioner of Income Tax, Calcutta, the question was whether an appeal could be filed u/s 19 of the Defence of India Act, 1939, in cases where the amount awarded was less than Rs. 5,000. The Act provided a right to appeal against the award of the arbitrator but that right was restricted in the manner prescribed by the Rules. The rule provided that no appeal shall lie against an award where the amount of compensation did not exceed Rs. 5,000. In that case no compensation had been awarded by the arbitrator. An appeal was filed and it was contended that the law provided a right to appeal against all awards and had imposed a restriction only in those cases where some amount was awarded but the amount so awarded was less than Rs. 5,000. The contention was overruled. It was held that the right to appeal does not depend upon the claim made by the claimant, but upon the amount of compensation awarded by the arbitrator. In the case of Smt. Ganga Bai Vs. Vijay Kumar and Others, , a suit had been filed to enforce a mortgage. The court passed a preliminary decree for sale of half of the mortgaged property only. Being aggrieved by the decree directing the sale of half of the mortgaged property only, the plaintiff filed an appeal in the High Court. The suit had been dismissed as against some of the defendants, who also filed an appeal challenging certain findings of the trial court. It was held that the CPC provided for an appeal only as against a decree or against an order. No appeal, however, could lie against a mere finding for the simple reason that the Code does not provide for any such appeal. The appeal filed by some of the defendants against some findings of the trial court was held to be not maintainable.

10. That, however, is not the position in the present case. Section 269H of the Act provides for an appeal against an order of the Appellate Tribunal passed u/s 269G. This right can be exercised by the "Commissioner or any person aggrieved" within sixty days of the date on which he is served with notice of such order. Mr. Rajgarhia, learned counsel appearing on behalf of the appellant, contended that the IAC, the Competent Authority, is also a "person aggrieved" for the purpose of Section 269H of the Act, and a notice of the order passed by the Appellate Tribunal was served upon him and he filed the appeal within sixty days thereafter. The question is whether the IAC is also a "person aggrieved" within the meaning of Section 269H of the Act.

"Competent Authority" means an Assistant Commissioner of Income Tax authorised by the Central Government u/s 269B to perform the functions of a Competent : Authority under Chap. XX-A of the Act [see Section 269A(2)(b)]. Section 269A also defines the word "person interested". According to it "person interested" in relation to any immovable property includes all persons claiming or entitled to claim an interest in the compensation payable on account of acquisition of that property under Chap. XX-A. This may include the transferor and the transferee or any other person who may have a claim in the property. The words "any person aggrieved" has not been defined in the Act, but seems to have been used in Section 269H, in a wider perspective. It cannot be said to be limited only to the "persons interested". If the Legislature intended to restrict the right to appeal to the Commissioner, the transferor or the transferee or any other person claiming or entitled to claim an interest in the compensation or the person in occupation of the property as contended by the learned counsel, it would have used the words "persons interested" in Section 269H instead of "persons aggrieved". By using the words "persons aggrieved", the Legislature intended to make this right of appeal available to more persons, namely, those who felt aggrieved by such orders.

11. Chapter XX-A of the Act was inserted by the T.L. (Amend.) Act, 1972, with the salutary object of curbing black money which has been eating into and corroding the social and economic life of our country. The Competent Authority has been given very wide powers in this chapter to initiate proceedings for acquisition of certain properties and to pass orders for their acquisition with the approval of the Commissioner. An order passed by the Competent Authority, under this chapter, is appealable before the Appellate Tribunal u/s 269G of the Act, in the prescribed manner by the transferor or the transferee or any other person referred to in Sub-section (8) of Section 269F, namely, those who object to the acquisition or by any other person interested in such immovable property. In the present case, the order of the Competent Authority u/s 269F for the acquisition of the property was passed on October 8, 1974. As stated above, an appeal was preferred by the respondents u/s 269G before the Appellate Tribunal. Section 269G(2) provides that every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner. Rule 48F of the I.T. Rules, 1962, provides that an appeal u/s 269G to the Appellate Tribunal shall be in Form No. 37F and the form of appeal, the grounds of appeal and the form of verification appended thereto shall be signed by the person specified in Sub-rule (2) of Rule 45. In the appeal preferred by the respondents in Form No. 37F, the IAC, Acquisition Range, Patna, was made the sole respondent and against column No. 6 "address given was Central Revenue Building, Patna", The Commissioner of Income Tax was not made a respondent in the appeal. Notices of the appeal were sent to the IAC, the Competent Authority, and were served upon him. The Competent Authority appeared before the Appellate Tribunal along with other departmental representatives and was heard by the Tribunal. After hearing the Competent Authority and the respondents'' counsel, the appeal was allowed as stated above. In such a situation it cannot be said that the Competent

Authority is not an "aggrieved person" within the meaning of Section 269H. He had no personal stake in the matter because in that case he would have been only a "person interested" as defined in the Act. But, he had initiated the proceedings, passed an order, was made the sole respondent in the appeal before the Appellate Tribunal where he appeared and defended his order on behalf of the Department, and in the event of his order being set aside it cannot be said that he was not one of the persons aggrieved by the order of the Appellate Tribunal.

12. There is also another aspect of the matter to which Mr, Rajgarhia drew our attention. Referring to the scheme of the Act he pointed out that in the cases of assessment by the ITOs, only assessees have the right to appeal u/s 246 of the Act. Against an order of assessment any assessee can file an appeal before the AAC which is in the nature of a first appeal. The Commissioner, who is the head of the Department, has no right to appeal u/s 246 of the Act. Against the orders passed by the AAC or IAC or the Commissioner, an assessee can file an appeal u/s 253 of the Act. Here again the Commissioner has no right of appeal but if he objects to any order passed by an AAC u/s 154 or Section 250, he can direct the ITO to appeal to the Appellate Tribunal against the said order (see Section 253(2) of the Act). Section 269G also does not give any right to the Commissioner to file any appeal against an order of acquisition. The appeal u/s 269G is also in the nature of a first appeal. The Commissioner has been given the right of appeal to the High Court u/s 269H. Mr. Rajgarhia submitted that, being the head of the Department, the Commissioner may also direct the IAC, the Competent Authority, to file an appeal in the High Court u/s 269H in the same way in which he directs ITOs to file an appeal u/s 253(2) of the Act. A petition was filed on behalf of the appellant during the course of hearing of this appeal, stating, inter alia, that the Commissioner had directed the then standing counsel of the I.T. Department, Shri Shambhu Sharan, to move the High Court against the order passed by the Income Tax Appellate Tribunal. His submission is that on this score as well, the appeal should be held to have been validly filed. Without going into this aspect of the matter, I am of the view that the IAC, the Competent Authority, is also one of the "persons aggrieved" within the meaning of Section 269H and has the right to file an appeal against the order passed by the Appellate Tribunal. In In re Lamb : Ex Parte Board of Trade [1894] 2 QB 805 , Lord Esher observed as follows (p. 812) :

"The meaning of the term ''person aggrieved'' was explained by this court in Ex parte Official Receiver : Reed, In re [1887] 19 QB 174. It was there determined that any person who makes an application to a court for a decision, or any person who is brought before a court to submit to a decision, is, if the decision goes against him, thereby a ''person aggrieved'' by that decision."

13. Lord Kay, in the same judgment, made the following observations (p. 813):

"When two persons are in the position of litigants before the High Court, and the decision of the court goes against one of them, how it can be said that he is not a ''person aggrieved'', by the decision, I cannot understand."

14. In the case of Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property, , the person on whose information an enquiry was started by the custodian under the Evacuee Property Act was held to be an "aggrieved person" for the purpose of filing an appeal. When a person is given a right to raise a contest in a certain matter and his contention is negatived, then, he is certainly a person aggrieved by the order disallowing his contention. In the instant case, the IAC, the Competent Authority, had not only initiated the proceeding but he was made the sole respondent before the Appellate Tribunal to submit to a decision and when that decision went against him how can it be said that he is not a "person aggrieved" to file an appeal against that order. I, therefore, hold that the IAC, the Competent Authority, is an "aggrieved person" within the meaning of Section 269H and there is no infirmity in the appeal which has been filed by him. The preliminary objection taken by the respondents is, accordingly, overruled.

15. The only ground on which the appeal was allowed by the Appellate Tribunal and the proceeding initiated by the Competent Authority quashed, was that due to the non-mention of the names of all the transferors in the notice u/s 269D(1) of the Act, the proceeding suffered from a legal infirmity from the very beginning and, therefore, was illegal. Mr. Rajgarhia on behalf of the appellant assailed this finding of the Appellate Tribunal on various grounds.

16. He first submitted that the transferees cannot take advantage of their own fraud inasmuch as it was on the basis of their own statement furnished in Form No. 37G mentioning Kumar Tara Nand Sinha as the only transferor that the notice was published mentioning Kumar Tara Nand Sinha alone as the transferor. He also submitted that the appeal filed by the respondents before the Appellate Tribunal was itself not maintainable since all the parties to the proceeding including Kumar Tara Nand Sinha, the transferor, were not impleaded as parties to the appeal. It was next contended that at any rate the non-mention of the name''s of the four transferors other than Kumar Tara Nand Sinha in the notice published in the Official Gazette in accordance with Section 269D(1) was also an irregularity which did not go to the root of the jurisdiction and vitiate the proceeding.

17. Before proceeding to deal with the contention raised by the learned counsel, it will be useful to quote here Section 269D of the Act which reads as under :

"269D. Preliminary notice.--(1) The Competent Authority shall initiate proceedings for the acquisition, under this Chapter, of any immovable property referred to in Section 269C by notice to that effect published in the Official Gazette :

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

Provided further that-

(a) in a case where it is determined under Sub-section (4) of Section 269B by the Competent Authority who has initiated proceedings for the acquisition of any immovable property under this Chapter or by the Board that such Competent Authority has no jurisdiction to initiate such proceedings, the Competent Authority having jurisdiction may initiate such proceedings within-

(i) the period of nine months specified in the foregoing proviso; or

(ii) a period of thirty days from the date of such determination, whichever period expires later;

(b) in a case where proceedings for the acquisition of any immovable property under this Chapter could not be initiated during any period of time by reason of any injunction or order of any court prohibiting the initiation of such proceedings or preventing the examination of documents or other materials required to be examined for the purpose of determining whether such proceedings should be initiated, the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn shall be excluded in computing the period during which such proceedings may be initiated under this sub-section.

(2) The Competent Authority shall-

(a) cause a notice under Sub-section (1) in respect of any immovable property to be served on the transferor, the transferee, the person in occupation of the property, if the transferee is not in occupation thereof, and on every person whom the Competent Authority knows to be interested in the property ;

(b) cause such notice to be published-

(i) in his office by affixing a copy thereof to a conspicuous place;

(ii) in the locality in which the immovable property to which it relates is situate by affixing a copy thereof to a conspicuous part of the property and also by making known in such manner as may be prescribed the substance of such notice at convenient places in the said locality."

18. According to this provision the Competent Authority can initiate the proceeding for acquisition within nine months from the end of the month in which the instrument of transfer in respect of the property is registered under the Registration Act, 1908. In the instant case, the sale deed was executed by Kumar Tara Nand Sinha and four others in favour of respondents, Nand Kishore Singh and others, on March 16, 1973. Section 269P of the Act provides that notwithstanding anything contained in any other law for the time being in force, no registration officer shall register any document which purports to transfer any

immovable property belonging to any person unless a statement in duplicate in respect of such transfer, in the prescribed form and verified in the prescribed manner and setting forth such particulars as may be prescribed, is furnished along with the instrument of transfer. It also provides that the registering officer at the end of every fortnight shall forward to the Competent Authority one set of statements received by him under Sub-section (1) during the fortnight and a return in the prescribed manner and setting forth such particulars as may be prescribed in respect of documents of the nature referred to in Sub-section (1) which have been registered by him during the fortnight. The statement required to be furnished to the registering officer under Sub-section (1) of Section 269P has to be furnished in Form No. 37G (vide Rule 48G). Form No. 37G has to be signed and verified by the transferee. Apart from the detailed description and other particulars of the property, the consideration for transfer as stated in the instrument of transfer or the estimated fair market value of the property, name and address of the transferee and the transferor are required to be furnished by the transferee in Form No. 37G. It is the admitted case of the parties that in column No. 1 of Form No. 37G the name and address of the transferor was mentioned as Kumar Tara Nand Sinha alone and in column No. 2 the names of all the seven transferees were given. The fortnightly return u/s 269P(2)(b) in respect of the document registered has to be forwarded in Form No. 37H (vide Rule 48H). In Form No. 37H, the registration number of the document purporting to transfer immovable property registered during the fortnight, the name of the transferees and the transferors, consideration stated in the instrument of transfer and value of the property assessed for the purpose of stamp duty are to be given with a certificate from the registering authority stating, inter alia, that the particulars against items Nos. 1 to 4, 8, 10, 12(b) and 13 in the statement made in Form No. 37G by the transferees had been verified from the instrument of transfer and found to be correct and that all the particulars furnished in this return (Form No. 37H) were correct and complete ; (underlining* by me). This fortnightly return in Form No. 37G duly certified by the registering officer was received by the Competent Authority some time in January, 1974. Mr. Rajgarhia submitted that this was the only source of information on the basis of which the Competent Authority was to act. According to him, the above provisions have been inserted in the Act and the Rules with a view to supply the required information to the Competent Authority for the purpose of initiation of the proceeding under Chap, XX-A of the Act. According to him, there was no reason for the Competent Authority to doubt the veracity of the information supplied to him by the registering authority in Forms Nos. 37H and 37G. Since the name of only Kumar Tara Nand Sinha was mentioned in the statement furnished by the transferee in Form No. 37G, a duplicate copy of which had been received by the Competent Authority, the Competent Authority proceeded on that basis. It was, therefore, not open, according to Mr. Rajgarhia, to the transferees now to take advantage of the fraud committed by them. On the other hand, Mr. Sreenath Singh submitted that if the law provided that notices must be published u/s 269D(1) of the Act giving the names of all the transferors, then notwithstanding that complete particulars were not furnished by the transferees, the requirement of law must be fulfilled. According to Mr. Singh, Section 269D was not subject to Section 269P alone. The Competent Authority must gather all the information in respect of the transfer and if he had not done so, then he had failed in his duty and had erred in initiating the proceeding.

19. There is no doubt that the transferees did not supply the full and correct information in the statement filed by them in Form No. 37G. Prima facie, the Competent Authority had no reason to disbelieve the information supplied to him by the registering authority in Forms Nos. 37H and 37G. The Competent Authority thus acted bona fide while initiating the proceeding against Kumar Tara Nand Sinha, the transferor, and Nand Kishore Singh and others, the transferees. The transferees (respondents herein) did not raise any objection on this score before the Competent Authority, probably thinking that the proceeding could be corrected at that stage and notices sent to the rest of the transferors. Nor was there any objection on this score by Kumar Tara Nand Sinha, one of the transferors, who had notice of the proceeding. But, this by itself cannot preclude the transferee-respondent from raising this objection before the Appellate Tribunal. Mr. Rajgarhia relied upon a decision in Commissioner of Income Tax, Gujarat-II Vs. Premanand Industrial Co-operative Service Society Ltd., , in support of this contention that the transferee could not raise any objection in appeal. That decision does not support the contention of Mr. Rajgarhia. In that case three co-owners of a property had sold three plots of land to three industrial co-opera- tive societies. After the order passed by the Competent Authority acquiring those lands, appeals were filed by the transferors and the transferee-co-operative societies before the Tribunal and an objection was raised that notices u/s 269D(1) of the Act had not been served on the individual members of the transferee-co-operative societies. The appeals were allowed and the cases were restored to the file of the Competent Authority with a direction to dispose of the matter afresh according to law after service of notice was effected on the individual members of the three co-operative societies. Appeals were filed against the orders of the Appellate Tribunal and the High Court found that individual members of the co-operative societies were not "persons interested" for the purpose of Chap. XX-A of the Act and, therefore, it was not necessary to serve notice on them. That, however, is not the position in the instant case. It cannot be said that the transferees or any of the transferors are not "persons interested" for the purpose of Chap. XX-A of the Act. Such objections, therefore, could be raised by the transferees in the present case. Merely because the correct information was not supplied in Form No. 37G by the transferees, they cannot be said to be estopped from raising such objection. Mr. Rajgarhia also referred to a decision of this court in Smt. Lalita Todi and Others Vs. Commissioner of Income Tax, , for the proposition that the transferee-respondents must be deemed to have waived this objection by not raising it before the Competent Authority and, therefore, should not have been allowed to raise it before the Appellate Tribunal. In the above case the question had not

been agitated either before the Competent Authority or before the Tribunal. In the present case, the objection was raised in appeal before the Appellate Tribunal though not before the Competent Authority. Transferee-respondents had not really suffered any prejudice on account of notice not having been sent to four of the transferors and by raising the objection for the first time before the Appellate Tribunal and not raising it at the first opportunity, they might be playing a hide-and-seek game, but for all these reasons I would not go to the length of saying that this objection could not be raised in appeal.

20. The real question is whether non-mention of the names of all the transferors in the notice u/s 269D(1) was fatal to the proceeding as has been held by the Appellate Tribunal. Notice is an announcement, a warning or intimation of something. It is a means to acquaint the persons who are likely to be affected by any action, that such action is proposed to be taken and if he wants to resist it, he may do so. If any person is affected adversely, he has a right to be heard. Issuance of notice u/s 269D(1) is no doubt a pre-condition to the initiation of the proceeding. This is by publication in the Official Gazette. But, simultaneously, notice has to be served on the transferor, the transferee and the person in occupation of the property and any other person interested in the property in accordance with Section 269D(2) of the Act. The Legislature seems to have taken enough care to make it known to the transferor and the transferee and any other person interested in the property by publishing and issuing the notice in accordance with Sections 269D(1) and 269D(2) of the Act, that a proceeding has been initiated under Chap. XX-A of the Act. In the instant case, a notice was published u/s 269D(1) but the same did not mention the names of four transferors other than Kumar Tara Nand Sinha. It is difficult to appreciate the reasons given by the Appellate Tribunal that non-service of notice u/s 269D(2) to all the transferors is merely an irregularity but non-mention of all the transferors in the notice published u/s 269D(1) is fatal. In the case of Smt. Lalita Todi and Others Vs. Commissioner of Income Tax, , a Division Bench of this court held that a notice u/s 269D(1) was merely directory. The purpose of publication of the notice in the Official Gazette and the service thereof on the parties to be effected in accordance with Section 269D(2) was merely to apprise the persons concerned that such a proceeding was going to be initiated against them. That a notice had been published u/s 269D(1) in the present case is not in dispute. The only objection is that it did not contain the names of the four transferors out of five and it was only in the name of Kumar Tara Nand Sinha, one of the transferors. In my opinion, this was only an irregularity and not an illegality vitiating the entire proceeding.

21. It will appear from the order of the Appellate Tribunal that Kumar Tara Nand Sinha, one of the transferors who had been noticed by the Competent Authority under Sections 269D(1) and 269D(2), had received the entire consideration money on behalf of all the transferors. It will also appear that Kumar Tara Nand Sinha did not object to the initiation of the proceeding before the Competent Authority where he had a chance to do so. All the five brothers, namely, (1)

Kumar Bimlanand Sinha, (2) Kumar Tara Nand Sinha, (3) Kumar Durga Nand Sinha, (4) Kumar Jaya Nand Sinha and (5) Kumar Adya Nand Sinha had signed and executed the transfer deed. There is nothing on the record to indicate that Kumar Tara Nand Sinha had the authority on behalf of his other four brothers to transfer the whole property or to act on their behalf except that he had received the entire consideration money on behalf of his brothers. The four other brothers and Kumar Tara Nand Sinha were also the transferors within the meaning of Section 269D and each of them had, therefore, a right to be noticed and heard. In my opinion, the Appellate Tribunal in these circumstances should have remanded the case to the Competent Authority to notice Kumar Bimlanand Sinha, Kumar Durga Nand Sinha, Kumar Jaya Nand Sinha and Kumar Adya Nand Sinha and give them an opportunity to be heard. The Appellate Tribunal, in my opinion, was not right in quashing the entire proceeding for want of notice to the above named four persons. The non-mention of the names of the above-named four persons in the notice tinder Section 269D(1) was, in my opinion, only an irregularity which could be corrected.

22. Having given my anxious consideration to the facts and circumstances of this case, I hold that the Appellate Tribunal had erred in quashing the entire proceeeding initiated by the Competent Authority. I, accordingly, allow this appeal and set aside the judgment of the Appellate Tribunal and remand the case to the Competent Authority with the following directions. The Competent Authority shall now send a notice as required u/s 269D(2) of the Act to the four transferors, namely, Kumar Bimlanand Sinha, Kumar Durga Nand Sinha, Kumar Jaya Nand Sinha and Kumar Adya Nand Sinha, and give them opportunity to show cause and be heard. The Competent Authority shall thereafter pass a fresh order after considering the show cause, if any, filed by the above-named four persons and after hearing them, if they wish to be heard. The proceeding has been sufficiently delayed on account of the cunning device adopted by the transferees--respondents. It will not be now open to them to raise any objection or to be heard before the Competent Authority. It will also not be open to Kumar Tara Nand Sinha, one of the transferors, who had notice of the proceeding, to raise any objection before the Competent Authority. It is expected that the Competent Authority shall dispose of the latter expeditiously and in accordance with law.

B. P. Griyaghey, J.

23. I agree.

