(1998) 02 DEL CK 0032

In the Delhi High Court

Case No : CW 2111/95 and CMs 6630/96, 8530/97

Jaspal Kaur APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 13-02-1998

Acts Referred:

Citation : (1998) 2 AD 265 : (1999) 152 CTR 231 : (1998) 44 DRJ 507 : (1998) 232 ITR 87 : (1999) 104 TAXMAN 75

Hon'ble Judges : R.C. Lahoti, J;Dalveer Bhandari, J

Bench : Division Bench

Advocate : Mr.Mukul Rohtagi and Mr. Pradeep Bakshi, for the Appellant; Mr. R.D.Jolly, Senior Standing Counsel and Ms. Premlata Bansal, for the Respondent

Judgement

R.C. Lahoti, J.—By this petition, the petitioners seek quashing of the impugned order dated 27.4.95 (Annexure-I) passed by the Appropriate Authority (under the Income Tax Act, 1961) (respondent No.2) and a direction to it to grant ''No Objection Certificate'' u/s 269-UL(3) of the Income Tax Act, 1961 (hereinafter ''the Act'' - for short).

2. The property forming subject matter of the petition is plot No.115, Sector 36-A, Chandigarh. It is owned by Smt.Anita Surjit Singh, the respondent No.3. On 25.10.89, the respondent No.3 entered into an agreement to sell the plot to the four petitioners herein for a consideration of Rs.15 lacs. On 5.11.89, the petitioners and the respondent No.3 filed a statement (Annexure P-4) u/s 269UC of the Act with the Appropriate Authority, the respondent No.2. On 22/23.1.90 the respondent No.2 passed an order directing the ''filing'' of the statement i.e. consigning the same to the record room without any action thereon. The Appropriate Authority formed an opinion that the plot was allotted by the Chandigarh Administration to the predecessor in title of the vendor subject to certain terms and conditions restraining its alienation for a period of 10 years from the date of completion of construction thereon, which term having not been complied with, the transferor was estopped from transferring the property. The

order of the Appropriate Authority was preceded by certain enquiries having been made with the Estate Officer. To put it in other words, the Appropriate Authority formed an opinion that the transferor being not entitled to transfer the plot for having breached the terms of the original agreement, the object of the agreement was unlawful and as the transfer if materialised would defeat the provisions of law, the same was void. The Appropriate Authority concluded :-

"The statement in Form 37-I based on unlawful and void agreement is also to be treated as invalid. The question of acting on such an invalid statement by way of passing a purchase order or by way of issuing NOC or in any other manner does not arise. The statement in Form No.37-I, has, Therefore been filed as such."

3. It appears that the petitioners did not lay a timely challenge to the above said order and instead on 25.4.90 filed a fresh statement in Form No.37-I before the Appropriate Authority which statement is nothing, but a mere duplicate or repetition of the same Form 37-I which was filed on 25.10.89. On 8.6.90, the appropriate authority passed an order u/s 269UD(1) of the Act ordering the purchase by the Central Government of the plot forming subject matter of agreement. This order was challenged by the petitioners before Delhi High Court by filing CW 1970/90.

3.1 During the pendency of the above said petition, on 17.11.92 came the pronouncement of the Supreme Court in C.B. Gautam Vs. Union of India and Others, which held inter alias that an order of purchase of property by the Central Government without compliance with principles of natural justice was vitiated.

3.2 On 28.11.90 had come the pronouncement of the High Court of Delhi in Tanvi Trading & Credit Pvt.Ltd. & Ors. Vs. The Appropriate Authority & Ors. (1990) 188 ITR 623 with which we will deal a little later.

3.3 On 17.1.95, the petitioners moved an application before the High Court seized of their CW (NO.1970/90) inviting attention of the High Court to the law laid down by the Supreme Court in the case of C.B. Gautam (supra) and to the decision by Delhi High Court in the case of Tanvi Trading & Credits Pvt. Ltd. (supra) and seeking adjudication of the petition in the light of the law so laid down. The Delhi High Court passed an order on 23.1.95 taking note of the law laid down by the Supreme Court in C.B. Gautam case (supra), setting aside the impugned order dated 8.6.90 and remanding the case to the Appropriate Authority for decision afresh. The High Court also observed - "the petitioners shall be entitled to raise whatever objections they may have under the law."

4. When the petitioners appeared before the Appropriate Authority pursuant to the order of the High Court, one of the pleas raised by them was that the Appropriate Authority had only two alternatives available to it u/s 269UD of the Act : either to pass an order of pre-emptive purchase or to issue N.O.C.; the Appropriate Authority did not have a third alternative such as one of adjudicating upon the validity or legality of the agreement entered into between the parties. If

an order of preemptory purchase was not passed within the prescribed time, then the Appropriate Authority had only one option and that was to issue NOC.

5. The Appropriate Authority formed an opinion that the order dated 22/23.1.90 was not challenged by the petitioners by pursuing their remedy there against and instead they had chosen to file a fresh statement in Form 37-I and Therefore the petitioners could not claim any benefit from loss of time calculated by reference to the date of filing of the earlier statement i.e. 25.10.89. The Appropriate Authority also formed an opinion that the value of the plot was understated by more than 15%. Consequently the Appropriate Authority ordered the purchase of the plot by the Central Government. By the impugned order dated 27.4.95, the Authority exercised the power vested in it u/s 269UD(1) and ordered purchase of the property by the Central Government.

6. Out of the several pleas raised by the petitioners in the present petition one which has been most vehemently pressed by the learned counsel for the petitioners need only be dealt with. It is submitted that the scheme of the provisions contained in Chapter XX-C of the Act clearly suggests that a statement in Form 37-I has to be filed within 15 days of the date of the agreement. u/s 269UD, on satisfaction of the Appropriate Authority on the availability of the grounds for exercising the jurisdiction vested in it, it may order for purchase by the Central Government of the immovable property involved at an amount equal to the amount of the apparent consideration within a period of two months from the end of the month in which the statement in Form-I was received by the Appropriate Authority. If such an order is not made and a period of two months is allowed to elapse then the only jurisdiction which remains available with the Appropriate Authority is to issue NOC to the proposed sale. The appropriate authority ought not to and cannot enter into the question of legality or validity of sale between parties to the statement and thereby adjudicate upon such questions as to which jurisdiction is not vested in the Appropriate Authority by the Act. The order dated 22/23.1.90 is void and no nest in law. The period of two months having elapsed on 31.1.90, the Appropriate Authority was statutorily obliged to issue the NOC and all the proceedings held by the Appropriate Authority thereafter, including the refiling by the petitioners of the statement in form 37-I on 25.4.90, are all without jurisdiction and nullity in the eyes of law and hence liable to be ignored.

7. The learned senior standing counsel for the respondents has defended both the impugned orders dated 25.10.89 and 27.4.95 submitting that an agreement to sell contemplated by Chapter XX-C is a valid agreement to sell which would imply an agreement which does not violate any provision of law. If the agreement has been entered into in order to breach the provisions of law of the land then the same is not capable of being enforced and the Appropriate Authority would be justified in ignoring the statement in Form 37-I, based on an agreement which is illegal or void.

8. The question centres around the interpretation of the provisions of Chapter XX-

C so as to determine and find out the scope of authority conferred on the Appropriate Authority and the nature of orders which can appropriately be passed by it.

9. On behalf of petitioners, implicit reliance has been placed on the Division Bench decision of this Court in Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, . Therein the Appropriate Authority had formed an opinion that it was not certain as to which portion of the land would be surrendered to the State Government in view of the orders having been passed under the Urban Land Ceiling Act declaring 680.26 sq.mtrs of land as surplus. The agreement was not capable of being made certain and was void u/s 29 of the Indian Contract Act. Further the agreement was a contingent contract depending upon the orders of the competence authority under the Urban Land Ceiling Act and an NOC could not be issued in respect of an agreement which was void or contingent at best. The Appropriate Authority concluded that the statement in Form No.37-I was pre-mature and invalid. It was ordered to be filed. The second attempt of the petitioners to secure the NOC also failed on more or less the same reasoning. The Division Bench having analysed the relevant provisions of law, B.N.Kirpal, J. (as his Lordship then was) spoke for the Division Bench as under :-

When no other order of purchase is passed, then the provisions of Section 269UL come into operation.

When no order at all is passed u/s 269UD(1), then the provisions of sub-section (3) of Section 269UL come into play. This sub-section, inter alia, provides that where no order for purchase has been passed, then the appropriate authority shall issue a certificate of no objection referred to in sub-section (1) of section 269UL. The language of section 269UL(3) is mandatory and this also shows that the only order which can be passed u/s 269UD is an order of purchase and no other order. If an order of purchase is not passed, then it is imperative and obligatory on the appropriate authority to issue the certificate under 269UL(3). We do not find any provision in this Chapter which can enable the appropriate authority to create a situation whereby neither the Government decides to purchase nor does it issue a certificate u/s 269UL(3).

The certificate issued u/s 269UL would, in effect, only indicate that the Government is not interested in purchasing the property. The certificate so issued does not pronounce on the legality or validity or validity of the transaction. If the transaction is otherwise illegal or invalid, it will be for some other authority, in another forum, to decide on the same. As far as the appropriate authority is concerned, the certificate which is issued has relation only to the question whether the Government is interested in purchasing the property or not."

9.1 On behalf of the Appropriate Authority, it was contended that if a certificate u/s 269UL(3) was issued the effect thereof would be that the authority would have pronounced upon the legality or validity of the proposed sale. This contention was repelled as an ''unfounded apprehension''. The Division Bench held as under :-

The certificate issued u/s 269UL would, in effect, only indicate that the Government is not interested in purchasing the property. The certificate so issued does not pronounce on the legality or validity of the transaction. If the transaction is otherwise illegal or invalid, it will be for some other authority, in another forum, to decide on the same. As far as the appropriate authority is concerned, the certificate which is issued has relation only to the question whether the Government is interested in purchasing the property or not."

9.2 A writ of certiorari was issued quashing the impugned order of the Appropriate Authority followed by a writ of mandamus directing it to issue a no objection certificate in terms of Section 269UL(3).

9.3 As against the above said decision of the Delhi High Court, the Appropriate Authority went in appeal to the Supreme Court. By the time the matter came up for hearing before the Supreme Court, it appears that the requisite NOC had already been issued to the writ petitioners. Their Lord-ships noted the said subsequent event but at the same time dismissed the petition on merits by making the following speaking order :-

"We agree the two alternatives are open under the scheme of the legislation :- (1) the Union of India through the appropriate authority could buy the property, or (ii) in the event of its decision not to buy, it has to issue a "No objection certificate" leaving it open to the parties to deal with the property. In that view of the matter, the High Court was right in its conclusion. The SLP is dismissed."

[See Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others,]

10. In our opinion the decision of Delhi High Court as confirmed by the Supreme Court clinches the issue. However, the learned counsel for the respondents has tried to distinguish the Delhi High Court decision by submitting that the Tanvi Trading''s case (supra) was one where the contract was held to be void in the realm of law of contracts by Appropriate Authority which approach did not find favor with the High Court. It was not a case where the agreement was rendered void on account of a statutory bar created by any law on entering the agreement. The learned senior standing counsel heavily relied on a Division Bench decision of Bombay High Court in Madhukar Sunderlal Sheth and others Vs. S.K. Laul and others, . Therein the property forming subject matter of agreement to sell belonged to a public trust which could not be validly transferred unless the permission of the charity Commissioner under the provisions of Bombay Public Trust Act was obtained. The Division Bench held that the statement (in Form 37-I) must refer to an agreement of sale which is capable of being put into effect. Such an agreement of sale as to property belonging to public trust which may not be validly sold without the permission of the charity

commissioner cannot be acted upon by the income tax authorities without approaching the Charity Commissioner. We will deal with the Bombay view a little later.

11. We have already noted and dealt with the decision of Delhi High Court in the case of Tanvi Trading & Credits (P) Ltd. (supra) confirmed by the Supreme Court. A review of the decided cases shows that the following principles are well settled :

(i) when there is a proposal for sale, the Appropriate Authority has only two options available to it - (i) either to purchase the property by exercising the right u/s.269UD; or (ii) if it is not inclined to purchase the property, to issue no objection certificate. There is no third option open [Iol Limited Vs. S.C. Prasad and others, Appropriate Authority Vs. Naresh M.Mehta (1993) 200 ITR 772 ; Kelvin Jute Co. Ltd. and Another Vs. Appropriate Authority and Others, Ramanlal B.Pandya Vs. UOI; Ghaziabad General Industries Pvt. Ltd. and Another Vs. Appropriate Authority and Others,]

(ii) time limit of two months specified in S.269UD(1) first provision (within which the appropriate Authority has to act) cannot be extended [Appropriate Authority, GOI VS. Naresh M.Mehta; Irwin Almedia & Ors. Vs. Union of India; and I.O.L. Ltd. (supra).

(iii) If no order is passed within the prescribed time of two months, it automatically follows that a certificate u/s 269UL(3) must be issued [Mount Plaza Builders Pvt. Ltd. Vs. Appropriate Authority and others, ; Moi Engineering Ltd. and Another Vs. Appropriate Authority and Others, and I.O.L. Ltd. (supra).

(iv) The only question which the Appropriate Authority can decide is whether the property is undervalued or not. The Appropriate Authority cannot go beyond the terms of the agreement; it cannot question the validity of the agreement to transfer immovable property, the legality of the transaction or the title of the vendor [Satwant Nakang Vs. Appropriate Authority, Income Tax Department, New Delhi, ; Ranchhodbhai Galabhai Patel and Another Vs. Union of India, ; Mount Plaza Builders (P) Ltd. (supra); Moi Engineering Ltd. (supra); Irwin Almedia & Ors.(supra); Appropriate Authority Vs. Naresh N.Mehta (supra); IOL Ltd. (supra); Ramanlal B. Pandya (supra).

12. Madras High Court''s decision in T. Amudha and others Vs. Members, Appropriate Authority and others, needs a special mention. The agreement to sell was entered into on 9.8.1989 and the statement under S. 269UC was filed on 23.8.1989. The appropriate authority rejected the statement and directed the vendors and the petitioners to file a fresh agreement and statement after setting right certain irregularities and infirmities discussed in the order of the authority. According to the authority, the title over the property was found defective and the statement was deficient and hence not actionable. The authority held the statement dated 23.8.1989 to be no nest in law. This order was challenged by the petitioner before the High Court. The stand taken on behalf of the Department was that the appropriate authority was bound to examine the

question of title to the property in adequate details as any prudent purchaser would do. The High Court set aside the order of the appropriate authority remitting the matter back to it and directing passing of an order afresh. It was held :

"The jurisdiction of the Income Tax Department under Chapter XX-C is very limited. The Income Tax Department cannot make a roving enquiry with regard to the title to the property and they have no jurisdiction at all to apply the partnership law to test the agreement in regard to the various provisions of the Partnership Act, the Transfer of property Act and other personal laws of the land. If the appropriate authority is of the opinion that the agreement is invalid, the only course open to him will be not to make a pre-emptive purchase of the property and it is the look out of the transferor and transferee to sort out the various clauses in the agreement and determine whether it is enforceable or not enforceable and whether the agreement is valid or not. The appropriate authority has no jurisdiction to decide and say that the agreement is ab initio void and contrary to the principles of the Partnership Act. If the Department is not willing to purchase the property on the ground of invalidity of title or on account of any other invalidity, the only course open to it is to grant a No objection Certificate and leave the matter to be decided by the parties and it is for the parties to face the consequences and it is not for the appropriate authority to take upon itself to decide the issue."

13. What is the object sought to be achieved by the Parliament by enacting Chapter XX-C? Proliferation of black money was evident in the transfer of Immovable properties. One way of tackling the problem of tax evasion is to confer on the Govt the pre-emptive right to acquire Immovable property undergoing a transfer for consideration above certain value if the transaction be outwardly undervalued. The object is to induce the transferee and transferors to declare the full amount of consideration in the agreement for transfer. It is essentially a theory of preemption which has been statutorily extended. Though the object and purpose of introducing Chapter XX-C is laudable and in the interest of economy of the nation, it is an inroad on the citizens right to enter into deals of their property. Therefore, the court has to see that the authorities conferred with such sweeping power act within the four corners of law. Neither by adding words to the letter of law, nor by attributing any assumed intention to the Parliament, the court can hold in favor of the authority having been vested with any jurisdiction beyond what has been conferred by the Parliament. The authority under the Income Tax Act is creature of the statute; it must play within the field created by law, strictly as per the prescribed rules of the game and certainly not beyond; nor can it over-play. Jurisdiction to decide on the legality or validity of a transaction evidenced by an agreement to sell or on the title of the vendor is neither ancillary nor necessary concomitant to the power to order the Central Government to purchase the property and hence cannot be deemed to have been conferred on the appropriate authority by necessary implication.

14. Vesting of such a serious power - power to acquire property of a citizen - in any authority must be held to be directly circumscribed by the limitations imposed. The time limit of two months from the end of the month in which the statement referred to in Section 269UC is received by the authority, as prescribed by the proviso to sub-section (1) of S. 269UD is mandatory. The authority must act either within the said period of two months or never. We are also very clear in our mind that Appropriate Authority cannot appropriate to itself and exercise such powers and wield such jurisdiction as the Income Tax Act, 1961 has chosen not to confer on it. Judging and pronouncing upon the legality or validity of any transaction or the title of the Vendor is a jurisdiction vested in the Courts or Tribunals specifically created for the purpose. Such a jurisdiction has certainly not been conferred upon the appropriate authority.

15. For the foregoing reasons, the impugned order dated 27.4.95 cannot be sustained.

16. Madhukar Sunder Lal & Ors. (supra) proceeds on its own peculiar facts. The property forming subject matter of the agreement of sale was subject to the approval of the Charity Commissioner and the Reserve Bank without which it could not be sold. It was submitted before the Division Bench that if Section 269UD could be brought into operation before the sanction of the Charity Commissioner was obtained, the consequences of an agreement for sale of the property of a public trust for a consideration less then the market value of the property may be vested on the public trust. The Income Tax authorities would pay the apparent consideration which is less than the market value to the public trust to acquire the property and the beneficiaries of the public trust would be losers. That would lose the protection which Section 36 of the Bombay Trust Act gave them. Their Lordships were persuaded to hold that the approval by the Charity Commissioner preceding the agreement of sale would ensure the reasonableness of the agreement of sale and that would have to be borne in mind by the Income Tax Authorities while exercising their power u/s 269UD. Their Lordships held that the question of consideration has to be considered by the Income Tax authorities in the context of the special circumstances which accompany a sale by a public trust.

16.1. The clear statutory prohibition against the sale of immovable property of a public trust without the approval of the Charity Commissioner ultimately prevailed with their Lordships upholding the view of the Appropriate Authority. Delhi High Court decision in Tanvi Trading & Credits Pvt.Ltd. and Bombay High Court decision in Irwin Almedia & Ors. (supra) were brought to the notice of the Division Bench but were distinguished as not applicable to the facts of that case. However, the decision of the Supreme Court upholding Delhi High Court''s decision by a speaking order was not brought to the notice of the Division Bench deciding Madhukar Sunder Lal Seth''s case (supra).

16.2 In our opinion, the above said D.B. decision of Bombay High Court proceeds on its own peculiar facts and cannot be of general application so as to govern the present case.

17. For the foregoing reasons, the petition is allowed. The impugned order dated 27.4.95 passed by the Appropriate Authority is hereby quashed and set aside. As a period of two months from the date of filing of the statement on 25.10.89 has already elapsed, the appropriate authority shall issue to the petitioners within four weeks from today, a no objection certificate in terms of Section 269UL(3). No order as to the costs.

