

(1982) 03 DEL CK 0048

In the Delhi High Court

Case No : Civil Writ Petition No. 183 of 1980

JAWAHAR LAL

APPELLANT

Vs

COMPETENT AUTHORITY (I.A.C.), RANGE II, NEW DELHI,
AND OTHERS.

RESPONDENT

Date of Decision : 22-03-1982

Acts Referred:

Citation : (1983) 32 CTR 131 : (1982) 32 CTR 131 : (1982) 137 ITR 605

Hon'ble Judges : Goswamy, J;Goswami, J

Bench : Division Bench

Judgement

GOSWAMY J. - This petition, under art. 226 of the Constitution of India, is directed against the notice dated July 26, 1979 (annex. L), issued under s. 269D(1) of the I.T. Act, 1961, for quashing the directions issued by the Commissioner of Income Tax to that effect.

The petitioner along with respondents Nos. 3, 4 and 5 purchased property bearing No. XIV-219, Gali Post Office, Sadar Bazar, Delhi, by a sale deed dated November 20, 1978, for a consideration of Rs. 1,70,000. The sale deed was registered on November 28, 1978. The property was purchased from a charitable trust known as Sethani Indermani Jatia Charitable Trust, having its office at Seth Ganga Sagar-ki-kothi, Junction Road, Khurja, Uttar Pradesh. Before selling the property, the trustees of the said trust filed an application under s. 7 of the Charitable and Religious Trusts Act, 1920, in the court of the district judge. The district judge, vide his order dated February 24, 1978, allowed the application and observed :

"This property is in the occupation of various tenants from whom the annual rental income is Rs. 25,515.60. Some litigations between the trust on the one side and the tenants on the other are pending in the courts. A sum of Rs. 4,826 is payable as property tax to the Municipal Corporation of Delhi per annum. An expenditure of Rs. 3,600 per annum is incurred by the trust on the collection of rent from the tenants. The litigation expenses amount to R. 5,000 per annum. It

is alleged that the net income of the trust from this property is thus reduced to Rs. 12,000 per annum. The trustees, Therefore, decided, vide resolution dated July 3, 1977, to sell this property. It is alleged that a sale price between Rs. 2,50,000 and Rs. 3,00,000 can be realised by the sale of this property. Notice of this application to the general public was published in the newspapers. It was also pasted on the building proposed to be sold. None has come forward to contest this application.

I am of the opinion that the decision of the trustees is wise and sound in the circumstances brought to light. I would accordingly advise the trustees to sell this property in a manner so as to realise the higher possible sale price available in the market. As at present advised, I would direct them not to sell this property for a price less than rupees two lakhs."

Half of the total property was accordingly sold by the trust to the petitioner and respondents Nos. 3 to 5 for a consideration of Rs. 1,70,000. It appears that certain interested parties including the tenants in the property made certain representations to the Asst. Commissioner of Income Tax who is the competent authority for this purpose under Chap. XX-A of the I.T. Act, 1961 (hereinafter called "the Act"). On receipt of those complaints, the competent authority initiated proceedings under s. 269C of the Act and a letter of inquiry dated March 30, 1979, was issued to the vendees. The necessary information as required in the said letter was furnished by the vendees, vide their letter dated April 6, 1979. A further letter dated April 30, 1979, was sent to the vendees by the competent authority. By the said letter, the vendees were directed to appear before the competent authority on May 5, 1979, at 11.50 a.m. with the following documents in order to determine the fair market value of the property :

- i. a duly attested photostat copy of the original sale deed;
- ii. a duly attested/ Photostate copy of the agreement to the purchase of the above property indicating whether it was registered or not, if any;
- iii. layout plan/building, plan with covered area;
- iv. in the case of the building, mention the year/years of construction and the year of completion with cost of construction;
- v. whether the property is freehold/leasehold (state unexpired period of lease);
- vi. whether the property is owner-occupied or tenanted (full details of rental income with names of the tenants);
- vii. whether the property is for industrial/ commercial/ residential purposes;
- viii. valuation report by the approved valuer for the above property;
- ix. details of sales of any other property on which you want to rely;
- x. name and address of the broker through whom the above property was transferred and the amount of brokerage paid to him; and

xi. your permanent account No. of Income Tax, if any, and the address of the I.T.O. by whom you are assessed.

According to the averments in the petition, the aforesaid letter was received by the vendees at 3.30 p.m. on the date fixed for hearing and as such they sent a telegram asking for adjournment of the case to May 9, 1979. On May 9, 1979, the petitioner along with his advocate appeared before the competent authority and pointed out to him that all the information asked for had already been supplied on April 2, 1979. However, as the valuation report of the said property had not been supplied earlier, the same was produced before him on May 9, 1979. A complete written reply along with the valuation report was filed with the competent authority on May 9, 1979. On May 10, 1979, the competent authority, by an order in writing on the order sheet, stated that he did not consider it necessary to initiate the proceedings. The exact order is :

"No action is necessary."

It is alleged in the petition that in spite of the aforesaid order dated May 10, 1979, the petitioners were surprised to receive a notice under s. 296D(1) of the Act dated July 26, 1979. By the said notice the petitioner and respondents Nos. 3 to 5 were called upon to file objections, if any, to the acquisition of the property in question. The reasons recorded are to the following effect :

"Reasons for initiating acquisition proceedings :

It has come to my notice on a perusal of the sale deed dated November, 1978 and from No. 37G of the Income Tax Rules, 1962, received from the office of the Sub-Registrar, Distt-I/VI Delhi, that a sale has been effected in respect of property No. XIV/219-226 & 239 to 244, Post Office, Street, Sadar Bazar, Delhi, for an apparent consideration (as defined in clause (a) of section 269A of the I.T. Act) amounting to Rs. 1,70,000. I have looked into the instrument of transfer and made enquiries about the facts which are relevant for determining the fair market value (as defined in clause (d) of section 269A of the I.T. Act) of the above-mentioned property as on the date of its transfer. On the basis of data available with me, I have reason to believe that the fair market value of the said property on the date of its sale would not be less than Rs. 2,68,000.

The fair market value of the aforesaid property exceeds the apparent consideration by Rs. 98,000, i.e., 57% of the apparent consideration. In view of the foregoing, I have reason to believe that the above-mentioned property has been transferred for an apparent consideration which is less than its fair market value and that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object of :

(a) facilitating the reduction or evasion of the liability of the transferor to pay tax under the Income Tax Act, 1961, in respect of income arising from the transfer; and/or

(b) facilitating the concealment of income or moneys or other assets which have

not been or which ought to be disclosed by the transferee of the purposes of the Indian Income Tax Act, 1922, or the Income Tax Act, 1961, or the Wealth tax Act, 1957.

Therefore, in accordance with the provisions of section 269C of the Act, I am initiating proceedings for the acquisition of the above mentioned property by the issue of a preliminary notice u/s 269D(1) of the Income Tax Act, 1961."

The aforesaid notice has been challenged on the grounds that once the competent authority had come to the conclusion after a preliminary enquiry that it had decided not to initiate proceedings, the competent authority had no jurisdiction to issue notice under s. 269D(1) and that the notice having been issued under the instructions of the Commissioner of Income Tax is void ab initio as the competent authority had no material before him and had not satisfied himself before issuing such a notice. It is further stated that the Commissioner at best has the supervisory powers over the competent authority and was not competent to direct the competent authority to initiate proceedings which are of a judicial nature. It is further stated that no fresh material had come into the possession of the competent authority after May 10, 1979, and as such the issue of the impugned notice was in excess of jurisdiction.

In the counter-affidavit filed by the competent authority, namely, Shri R. B. L. Aggarwal, IAC, the broad facts as alleged in the petition have not been disputed. It is, however, pleaded in the counter-affidavit that the proceedings under s. 269C were only administrative proceedings and as such the Commissioner was competent to issue instructions to the competent authority. According to the averments in the counter-affidavit up to the stage when the competent authority issues notice under s. 269D(1) of the Act, the proceedings under Chap. XX-A of the Act are of an administrative nature and only after a notice has been issued under s. 269D(1) that quasi-judicial proceedings, if at all, can be said to have commenced. It is further alleged that the proceedings having been commenced within the period of limitation are valid in law.

During the pendency of this petition, one Anil Kumar who is one of the tenants in the property in dispute filed an application for being imp leaded as a party. In his application under O. 1, r.10 of the CPC, he justified the notice under s. 269D(1) of the Act. By order dated July 30, 1981, the application of Anil Kumar was allowed and he was imp leaded as respondent No. 6. He was further permitted to file his counter-affidavit. In the counter-affidavit also he has supported the notice issued under s. 269D(1) of the Act though in my opinion the said Anil Kumar is neither "a person interested" as defined in s. 269A(g) of the Act, nor entitled to be heard in these proceedings. Considering the order dated July 30, 1981, I have Heard Mr. S. T. Desai, advocate, for the said respondent.

The contention of the learned counsel for the petitioner was that the order sheet (annex. M to the petition) itself shows that the notice u/s. 269D(1) was issued on the basis of the directions issued by the CIT, vide his letters dated July 6,

1979, and July 13, 1979, and as such the notice was void ab initio. The order recorded on the order sheet is as follows :

"26-7-1979. Notice u/s 269D(1) issued on the basis of directions issued by the CIT, vide his letters dated 6-7-1979 and 13-7-1979."

In the counter-affidavit filed by the competent authority, it was pleaded that the proceedings were initiated on receipt of the fresh material though the instructions of the Commissioner were not disputed. During the course of arguments, an application was filed by the petitioner for directing the respondents to produce two letters dated June 27, 1979, and July 12, 1979, written by the competent authority to the Commissioner. Notice of the application was accepted by the counsel for the respondents. He originally filed an affidavit claiming privilege but later waived the privilege and filed the copies of the letters. The letters are very revealing. Letter dated June 27, 1979, shows that after the intervention by the Commissioner a reference was made under s. 269L of the Act for a determination of the fair market value of the property in dispute to the valuation cell on May 25, 1979. The report of the Assistant Valuation Officer (valuation cell) dated June 7, 1979, was submitted wherein the fair market value of the property was assessed at Rs. 2,68,000. The competent authority considered the said report in detail and, after giving various reasons for not accepting the report, came to the conclusion :

"It is quite obvious from the facts as mentioned above that the report of the Assistant Valuation Officer is incorrect and unreliable and he has made a high-pitched estimate of the fair market value of the property in question."

From the letter dated 12-7-1979 it appears that after the aforesaid letter, the Commissioner wrote another letter to the competent authority on 6-7-1979, wherein it was observed : "I am not very happy the way this 37G Form has been handled by IAC (Acq). IACs report attacking the valuation cells report is in bad taste. In spite of a large number of complaints in this case forwarded to IAC (Acq.), he ignored them, closed the matter in preliminary inquiry and on top of it, communicated it to the vendee. This process is not being followed by him in all case, nor by other IACS (Acq.). He should be asked to initiate the proceedings."

In the letter the competent authority expressed his stock over the aforesaid observations of the Commissioner. He explained the circumstances in which he had decided to drop the proceedings. He also referred to the guidelines provided by the CBDT on the subject. After giving his complete view-point the concluding portion of the letter is to the following effect :

"Your direction to initiate proceedings, in the circumstances of the case, does not appear to be legally sound. The competent authority, IAC (Acq.), has to record his reasons before initiating proceedings. In the present case, after preliminary enquiry, the proceedings were closed on 10-5-1979. Subsequently on 25-5-1979, reference u/s 269L was made to the valuation cell by Shri D. P. Goyal, IAC

(Acq.), Range II, during my leave period, as per your directions. The report of the Assistant Valuation Officer, valuation cell, dated 7-6-1979 was given by me to Shri D. G. Gupta, Income Tax inspector, for his comments on 11-6-1979. Vide his report dated 16-6-1979 the Income Tax inspector reported that the report of the Assistant Valuation Officer, Valuation Cell, did not seem to be based on proper facts and considerations. Vide my report to you dated 27-6-1979, I have held that the report of the AVD, Valuation Cell, is incorrect and unreliable. Under the circumstances, I wonder as to how I am to record my reasons for initiating acquisition proceedings and issue of notice u/s 269D(1) as directed by you. In case I record in the reasons that the acquisition proceedings are being initiated as directed by the CIT, the proceedings will be void ab initio. In case I record that the proceedings are being initiated on the basis of the valuation report of the AVD, Valuation Cell, the basis of initiating proceedings will be vitiated since, vide my report dated 27-6-1979, I have held the report of the AVD to be incorrect and unreliable. Under the circumstances, you are requested to reconsider your direction to initiated acquisition proceedings and in case you still feel that notice u/s 269D(1) is to be issued in this case, you are requested kindly to give your instructions as to how reasons are to be recorded."

It appears that in spite of the aforesaid letter dated July 12, 1979, the Commissioner issued instructions on July 13, 1979, for initiating proceedings and as a consequence the notice dated July 26, 1979, was issued to the petitioner.

Section 269C of the Act reads as under :

"269C. Immovable property in respect of which proceedings for acquisition may be taken. - (1) Where the competent authority has reasons to believe that any immovable property of a fair market value exceeding twenty-five thousand rupees has been transferred by a person (hereafter in this Chapter referred to as the transferor) to another person (hereafter in this chapter referred to as the transferee) for an apparent consideration which is less than the fair market value of the property and that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object of -

(a) facilitating the reduction or evasion of the liability of the transferor to pay tax under this Act in respect of any income arising from the transfer; or

(b) facilitating the concealment of any income or any moneys or other assets which have not been or which ought to be disclosed by the transferee for the purposes of the Indian Income Tax Act, 1922 (11 of 1922), or this Act or the Wealth-tax Act, 1957 (27 of 1957),

the competent authority may, subject to the provisions of this Chapter, initiate proceedings for the acquisition of such property under this Chapter :

Provided that before initiating such proceedings, the competent authority shall record his reasons for doing so :

Provided further that on such proceedings shall be initiated unless the competent authority has reasons to believe that the fair market value of the property exceeds the apparent consideration Therefore by more than fifteen per cent. of such apparent consideration.

(2) In any proceedings under this Chapter in respect of any immovable property,

(a) where the fair market value of such property exceeds the apparent consideration Therefore by more than twenty-five per cent. of such apparent consideration, it shall be conclusive proof that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer;

(b) where the property has been transferred for an apparent consideration which is less than its fair market value, it shall be presumed, unless the contrary is proved, that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with such object as is referred to in clause (a) or clause (b) of sub-section (1)."

A bare reading of the section makes it clear that before the competent authority can initiate proceedings for the acquisition of any immovable property under s. 269D(1) he must have reason to believe that any immovable property of a fair market value exceeding Rs. 25,000 has been transferred by the transferor to the transferee, that the transfer has been effected for an apparent consideration which is less than the fair market value of the property and that the consideration for such a transfer as agreed to between the parties had not been truly stated in the instrument of transfer with the objects mentioned in cls. (a) and (b) of s. 269C(1) of the Act. It is true that s. 269C(1) of the I.T. Act, 1961, involved the exercise not of judicial or quasi-judicial but administrative powers as held in *Rai Bahadur G.V. Swaika Estate P. Ltd. and Others Vs. M.N. Tewari and Others*, . Although the court exercising its writ jurisdiction cannot question the sufficiency or adequacy of the reasons for formation of the belief by the competent authority, it is certainly entitled to know whether or not all the conditions precedent for the formation of such a belief existed and whether the competent authority had applied his mind to the said relevant conditions. The competent authority is a statutory authority and must act himself and is not permitted to abdicate his powers and responsibility in favor of any one, not even in favor of the Commissioner. In *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, , it was held (p. 1901) :

"In the matter of exercise of the power under rule 6(1), the State Government and the Cane Commissioner are concurrent authorities. Their jurisdiction is co-ordinate. There was some controversy before us whether a Cane Commissioner who had reserved an area for a sugar factory for a particular period can alter, amend, or modify the area reserved in the middle of the period fixed. As seen earlier, 208 villages with which we are concerned in this case were reversed for

the appellant for two seasons, i.e., 1966-67 and 1967-68. The Contention was that the Cane Commissioner could not have interfered with that reservation within that period. The High Court has come to the conclusion that the Cane Commissioner who had the power to make the reservation But it is not necessary for us to pronounce on this question as we are of the opinion that the impugned orders, though purported to have been made by the Cane Commissioner, were in fact, made by the Chief Minister and hence they are invalid. We have earlier seen that the Cane Commissioner was definitely of the view that reservation made in favor of the appellant should not be disturbed but the Chief Minister did not agree with that view. It is clear from the documents before us that the Chief Minister directed the Cane Commissioner to divide the reserved area into two portions and allot one portion to the fifth respondent. In pursuance of that direction, the Cane Commissioner prepared two lists Ka and Kha. Under the orders of the Chief Minister, the Villages contained in list Ka were allotted to the appellant and list kha to the fifth respondent. the Cane Commissioner merely carried out the order of the Chief Minister .It is true that the impugned orders were issued in the name of the Cane commissioner. He merely obeyed the directions issued to him by the Chief Minister. We are unable to agree with the Contention of shri Chagla that though the Cane Commissioner was initially of the view that the reservation made in favor of the appellant should not be disturbed, he changed his opinion after discussion with the Chief Minister. From the material before us, the only conclusion possible is that the Chief Minister imposed his opinion on the Cane Commissioner. The Power exercisable by the Cane Commissioner under clause 6(1) is a statutory power. He alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favor of any one - not even in favor of the State Government or the Chief Minister. It was not proper for the Chief Minister to have interfered with the functions of the Cane Commissioner. In this case, what has happened is that the power of the Cane Commissioner has been exercised by the Chief Minister, an authority not recognised by cl. 6 read with cl.11 but the responsibility for making those orders was asked to be taken by the Cane Commissioner."

To the Same effect are the observation in commissioner of police, Commissioner of Police, Bombay Vs. Gordhandas Bhanji, . the Calcutta High Court in the case of Tube Mill (India) P. Ltd. and Another Vs. Inspecting Assistant Commissioner of Income Tax and Another, , laid down that the tests regarding "reason to believe" in s. 269C are the same as those under s. 147 of the Act. In Commissioner of Income Tax, Madras Vs. T.R. Rajakumari., , the proceedings under s. 147(a) of the Act were annulled on the ground that the notice had been issued on the directions of the Commissioner and the ITO had not entertained a belief that the income had escaped assessment due to the non-disclosure by the assessed of the material facts for the assessment year. It was held that a conditions precedent for initiating reassessment proceeding is the reasonable belief of the ITO that income had escaped assessment and the ITO not having formed the belief was not competent to initiate proceeding even though on facts it was

established that there was a non-disclosure by the assessed. In the well-known case of *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, , it held that though the discretion conferred to order an investigation is administrative and not judicial, if it could be shown that the Board had, in fact, not formed an opinion, its order could be successfully challenged. In *Sarabhai M. Chemicals Private Ltd. Vs. P.N. Mittal* Competent Authority, Inspecting Assistant Commissioner of Income Tax, Acquisition Range-II, Ahmedabad and another, , the Division Bench of the Gujarat High Court held that the jurisdiction under art. 226 at the stage of notice under s. 269D is very restricted, but it is well settled that if any particular authority proposes to take any action without satisfying the conditions precedent prescribed by law for the exercise of the jurisdiction by that authority, then the High Court can interfere even at the earlier stage of initiation of proceedings for the acquisition of immovable property.

Now applying the law as laid down in the various authorities referred to above, it is clear that the notice under s. 269D(I) of the Act was issued by the competent authority on the directions of the Commissioner which is clear from the letters referred to above. The grounds recorded by the competent authority are also of no use to the respondents because the same grounds were available to the competent authority when he had decided to drop the proceedings. The proceedings have obviously been initiated at the instance of the Commissioner and as such are void ab initio.

The letter dated July 12, 1979, itself shows that the Competent Authority has asked the Commissioner for instructions as to how the reasons were to be recorded and had not acted on his own.

For the reasons recorded above, I make the rule absolute and quash the notice dated July 26, 1979, and the proceedings taken in pursuance thereof. The petitioner will be entitled to his costs. Counsels fee Rs. 500.