
(2003) 05 DEL CK 0006

In the Delhi High Court

Case No : Civil Writ Petition No. 1399 of 1992

K.L. Suneja and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-05-2003

Acts Referred:

Income Tax Act, 1961 — Section 269UC, 269UD, 269UL(3)

Citation : (2003) 184 CTR 86 : (2004) 109 DLT 573 : (2004) 72 DRJ 690 :
(2004) 266 ITR 204 : (2003) 133 TAXMAN 77

Hon'ble Judges : Madan B. Lokur, J;D.K. Jain, J

Bench : Division Bench

Advocate : Non, for the Appellant; R.D. Jolly and Rashmi Chopra, for the Respondent

Judgement

D.K. Jain, J. : 1. By this writ petition the petitioners pray for quashing of an order dt. 20th/21st Nov., 1990, passed by the appropriate authority under Chapter XX-C of the IT Act, 1961 (for short "the Act"), and a direction to the said authority to grant "No objection certificate" u/s 269UL(3) of the Act.

2. Briefly stated, the background facts giving rise to the petition are as follows :

On 20th Sept., 1990, the petitioners entered into an agreement with respondent No. 3 for purchase of a property, bearing No. H-15, Maharani Bagh, New Delhi, for a total consideration of Rs. 66 lakhs. As required u/s 269UC of the Act, on 28th Sept., 1990, the petitioners and the said respondent filed a statement in Form 37-I, prescribed under the IT Rules, with the appropriate authority for issuance of "No objection certificate", in order to enable respondent No. 3 to execute the sale deed in favor of the petitioners. The appropriate authority after obtaining some further information/documents from the petitioners and respondent No. 3, passed the impugned order, ordering the filing of the said statement on the ground that it had been brought to its notice that the High Court of Delhi had restrained respondent No. 3 from alienating, encumbering or parting with possession of the property and since the said order had not been

vacated when the agreement to sell was entered into, respondent No. 3 was not competent to sell the property; sign and verify the statement in Form 37-I. Consequently, the statement filed being invalid, no action could be taken thereupon.

3. Aggrieved by the said communication, the present writ petition was filed.

4. The order is assailed by the petitioners on the ground that the appropriate authority has no jurisdiction to go into the question of legality or validity of the agreement to sell executed between the petitioners and respondent No. 3 and, Therefore, the impugned order is void ab initio. It is also pleaded that since the period of two months from the date of filing of the application had elapsed, the appropriate authority was obliged to issue the requisite "No objection certificate".

5. No one appears for the petitioners. We have, accordingly, heard Mr. R.D, Jolly, learned senior standing counsel for the Revenue.

6. The issue raised in the writ petition is no more rest Integra. In Jaspal Kaur Vs. Union of India, , a Division Bench of this Court, speaking through, R.C. Lahoti, J. (as his Lordship then was), taking note of a large number of decided cases on the issue, including Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others, culled out the following principles to be kept in view while dealing with a statement filed under the said Chapter.

(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(ii) if it is not inclined to purchase the property, to issue a no-objection certificate. There is no third option.

(ii) The time-limit of two months specified in Section 269UD(1), first proviso (within which the appropriate authority has to act), cannot be extended.

(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, (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.

7. Thus, it is now well settled that on a statement being filed u/s 269UC of the Act, the appropriate authority has two options available to it, namely: (i) either to purchase a property by exercising the right of pre-emptive purchase by making an order u/s 269UD or; (ii) if it is not inclined to purchase the property, to issue a "No objection certificate". It has no third option. It cannot also go into the question of validity of the agreement to transfer the property or the legality of the transaction or the title of the vendor.

8. In that view of the matter, the writ petition deserves to be allowed. We order accordingly, quash the impugned order dt. 20th/21st Nov., 1990, and make the

rule absolute. We further direct that since a period of two months from the date of filing of the statement in Form 37-I has already elapsed, the appropriate authority shall issue to the petitioners a "No objection certificate" in terms of Section 269UL(3) of the Act within six weeks from today. There will, however, be no order as to costs.