
(1994) 03 GUJ CK 0022

In the Gujarat High Court

Case No : Special Civil Application No. 7233 of 1993

Laxmi Charan Co-operative Housing Society and Another

APPELLANT

Vs

Appropriate Authority and Others

RESPONDENT

Date of Decision : 03-03-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 269UA, 269UC, 269UD, 269UD(1), 269UD(2)

Citation : (1995) 211 ITR 1031

Hon'ble Judges : R.K. Abichandani, J;M.B. Shah, J

Bench : Division Bench

Advocate : K.S. Nanavati, for the Appellant; B.J. Shelat and S.N. Soparkar, for the Respondent

Judgement

1. It is the contention of the petitioner-society that by an agreement of sale dated February 22, 1991, the petitioner-society sought to purchase the land being sub-plot No. B of final plots Nos. 700/1 and 700/2 of Ellisbridge Town Planning Scheme No. 3/5 (varied) admeasuring 4,264 sq. yards together with residential and other buildings standing thereon for a consideration of Rs. 1,06,60,000 (rupees one crore six lakhs and sixty thousand only) calculated at the rate of Rs. 2,500 per sq. yard on the terms and conditions stipulated in the said agreement. A statement in Form No. 37-I under the Income Tax Rules was filed with the office of the appropriate authority of the Income Tax Department of March 8, 1991, together with annexures thereto and a copy of the agreement of sale dated February 22, 1991. The appropriate authority acting u/s 269UD(1) of the Income Tax Act, 1961, exercised the power to purchase the said property and for the purpose of payment of consideration to the transferors u/s 269UF(1) read with section 269UA(b), made certain adjustments after which it arrived at a net figure of sale consideration payable by the Government at Rs. 88,27,441 (rupees eighty-eight lakhs twenty-seven thousand four hundred and forty-one only) as per its order dated May 16, 1991 (annexure "B" to petition). That order is challenge by filing this petition. In paragraph 26(a) of the petition, the

petitioners have prayed that the respondents be directed to give back the land mentioned above at and for the price of Rs. 1,06,60,000 as per the terms and conditions of agreement of sale dated February 22, 1991. It is also prayed that the order dated May 16, 1991, passed by the appropriate authority of the Income Tax Department u/s 269UD(1) be quashed and set aside.

2. We make it clear that at the time of hearing of this matter, learned counsel for the petitioners had confined his arguments only to the second part of the prayer, that is to say, that the order dated May 16, 1991, passed by the appropriate authority be quashed and set aside. In support of his contention, Mr. Nanavati, learned counsel for the petitioners, has raised the following contentions :

(1) The impugned order is passed without giving an opportunity of hearing to the petitioners and, therefore, is illegal and void. The said order directly interferes with the rights of the petitioners to purchase the property pursuant to the agreement dated February 22, 1991, and it adversely affects the civil right of the petitioners. Therefore, the respondents were bound to follow the principles of natural justice.

(2) Section 269UD(1) imposes a statutory obligation on the authority to record reasons. It is implicit that such reasons should be part of the order or the decision. In the present case, the reasons are separately recorded and are not communicated to the petitioners. Therefore, the operative order is violative of the principles of natural justice and is also against the mandatory provisions.

(3) The impugned order suffers from the vice of malice in law, inasmuch as the authorities have failed to apply their mind to the relevant considerations and have taken into consideration the irrelevant factors.

(4) The observation made by the Supreme Court in the case of C.B. Gautam Vs. Union of India and Others, would not mean that even though the order passed by the authority is in breach of the principles of natural justice and of the statutory provisions, yet the said order should not be set aside as it is well-settled law that an opportunity of hearing has to be given to the person interested or affected by the decision rendered by the authority in exercise of statutory powers. The Supreme Court could not have intended to deprive the persons who were not parties before the court or to the proceedings of their right to challenge the illegal and void order.

(5) On the facts and in the circumstances of the case acceptance of money by the petitioner-society cannot act as a bar to the petitioner claiming of relief. The petitioner has accepted the refund of earnest money but that would not preclude the petitioner from challenging the action which is otherwise in breach of the principles of natural justice and is arbitrary and violative of article 14. In any case, whether the petitioners have acquiesced or waived their right is a pure question of fact and cannot be gone into in the absence of any pleadings as no affidavit-in-reply is filed by the respondents.

3. As against this, Mr. Shelat, learned counsel appearing for the Department, and Mr. Soparkar, learned counsel appearing for the purchaser of the property at the public auction, vehemently submitted that, -

(i) in the case of C.B. Gautam Vs. Union of India and Others, the Supreme Court has specifically directed that as far as completed transactions are concerned, viz., where after the order for compulsory purchase u/s 269UD of the Income Tax Act was made and possession has been taken over, compensation was paid to the owner of the property and accepted without protest, those transactions shall not be invalidated because of the judgment;

(ii) the petition is also required to be dismissed because the vendors have accepted the decision given by the appropriate authority and have accepted the consideration from the Department. If the petitioners are aggrieved by the said conduct of the vendors, it would be open to them to take appropriate action against vendors, but the present petition at the behest of the petitioners is not maintainable;

(iii) the petitioners have intentionally not joined the vendors as party-respondents to these proceedings even though they are necessary parties to this petition;

(iv) there is unexplained delay in filing this petition and no reasons are stated by the petitioners for condoning the said delay;

(v) the petitioners have accepted the amount of earnest money from the Department, as admitted by the petitioners on June 28, 1991. Therefore, the present petition which is filed in July, 1993, requires to be rejected on the ground of delay, laches and acquiescence.

4. For deciding the dispute, it would be necessary to refer to the following admitted facts :

(a) On May 16, 1991, the appropriate authority, Ahmedabad, has passed the impugned order (annexure "B") for purchasing the property in question for the net consideration of Rs. 88,27,441.

(b) The said order was communicated to the vendors and the petitioners on the same day.

(c) The possession of the land was taken by the Department on June 5, 1991.

(d) The sale consideration was paid to the vendors in June, 1991.

(e) To the petitioners Rs. 20,00,000 were paid on June 20, 1991 (as admitted by learned counsel for the petitioners). The petitioners have accepted the said amount without any protest. It is the say of the petitioners in paragraph 5 of the petition as under :

"The society, therefore, quietly prayed for time and again for return of the amount of Rs. 20 lakhs with interest but after lapse of good deal of time, only

the principal amount has been paid and accepted by the petitioner-society. This was not a voluntary act of acceptance but it was their helplessness because it is difficult for the common people to knock at the doors of the courts to seek justice."

(f) On October 23, 1991, the said property was put to auction sale by the Department, the petitioners have annexed as annexures "H", "I" and "J", which are the catalogues dated October 23, 1991, March 24, 1993, and June 16, 1993, whereby the property in question was sought to be sold by public auction. The petitioners have further stated that the property was placed for public auction on five occasions during more than two years. On March 26, 1993, the petitioners wrote a letter (annexure "K") to the Chief Commissioner of Income Tax to return the property to the petitioners. At the time of hearing of this matter, the petitioners have produced on record other letters which are referred to in annexure "K". In the first letter dated November 27, 1992, it is specifically mentioned that the public auction of the land in dispute be kept in abeyance because of the recent Supreme Court decision as they were trying to obtain a copy of the said judgment.

(g) On April 30, 1993, the petitioners filed Special Civil Application No. 3937 of 1993 challenging the action of the respondents in acquiring the property. The court has issued notice returnable on June 7, 1993. In paragraph 11 of the petition, it is stated that as the auction sale for the land in question was to take place on June 16, 1993, the petitioners withdrew the petition with liberty to file a fresh petition. The petitioners have further stated that they had withdrawn the petition in order not to come in the way of the sale taking place on June 16, 1993, and in the belief that on June 16, 1993, the property would not be sold. It is contended that no offer to purchase the property at the price fixed was received by the Department on June 16, 1993.

(h) On July 3, 1993, the petitioners obtained a report from the registered valuer regarding the fair market value of the property.

(i) On July 22, 1993, this petition is filed.

(j) As per the auction of the property by tender bids held on January 20, 1994, the property is sold to respondent No. 3, Deepmala Co-operative Housing Society Ltd., for a sum of Rs. 1,71,72,000. At that time, the petitioners had offered the sum of Rs. 1,51,01,000. Out of the six offers their offer was the lowest.

5. From the facts stated above, it is apparent that the petitioners have accepted the order dated May 16, 1991, without any grievance. The order was communicated to them on the very same day. After receipt of the order, as contended by them, they requested the Department to refund the earnest money paid by them to the vendors. They accepted the said amount without any protest on June 28, 1991. At this stage, we would note that in the agreement of sale dated February 22, 1991, which is executed by the vendors in favour of the petitioners, clause 8 provides as under :

"8. The vendors and the purchaser shall approach the appropriate authority u/s 269UC of the Income Tax Act, 1961, and shall file the necessary Form No. 37-I with the said authority within fifteen (15) days from this day and shall obtain "No Objection Certificate" from the appropriate authority for the transfer of the said property. In case the appropriate authority passes an order u/s 269UD(1) of the said Act for the purchase of the said property, the purchaser will be entitled to receive from the Income Tax Department Rs. 20,00,000 (rupees twenty lakhs only) and in that case the vendors shall not object to the said payment and the vendors shall inform the appropriate authority to make direct payment of the said sum of Rs. 20,00,000 (rupees twenty lakhs only) to the purchaser out of the amount to be paid by the said authority to the vendors."

6. It is also not disputed that in pursuance of the aforesaid clause, the vendors have informed the appropriate authority to make direct payment of the said sum of Rs. 20,00,000 to the Petitioners. In our view the conduct of the petitioners clearly reveals that when the impugned order was passed. they were not having any grievance against it.

7. Apart from the fact that the petitioners have accepted the earnest money from the Department without any murmur, they were fully aware that on October 3, 1991, the said property was put to auction sale by the Department. After knowing the fact that the property was put to auction, the petitioners have not bothered to challenge it. This conduct also on the part of the petitioners clearly reveals that the petitioners have accepted that the order dated May 16, 1991, was valid and they have not thought it fit that it required to be challenged till the Supreme Court decided the question in the case of C.B. Gautam Vs. Union of India and Others, .

8. Further, even after the decision of the Supreme Court, the petitioners first challenged the impugned order by filing Special Civil Application No. 3937 of 1993. In that matter, the court had issued notice returnable on June 7, 1993. It seems that the matter was adjourned to June 15, 1993. On that day, the petitioners withdrew the petition and the ground mentioned in paragraph 11 of this petition for withdrawal of the petition is as under :

"The petitioner submits that when the Special Civil Application No. 3937 of 1993 came up for hearing, the auction sale was to take place on June 16, 1993. Therefore, on June 15, 1993, when the petition was being heard, in order not to come in the way of the sale taking place on June 16, 1993, and in the belief even on 16th the property would not be sold the petitioners withdrew the petition with liberty to file a fresh petition."

9. This conduct of the petitioners of withdrawing the petition on June 15, 1993, so as to enable the respondents to hold public auction of the lands in question on June 16, 1993, clearly indicates that the petitioners never intended to challenge seriously the impugned order. If really the petitioners were interested in challenging the action, there was no question of withdrawing the petition so as to

enable the respondents to auction the property or in order not to come in the way of sale taking place on June 16, 1993. In our view, such conduct of the part of the petitioners would disentitle them to any relief under article 226 of the Constitution because in the present case the petitioners have not only accepted the impugned order and accepted refund of the earnest money from the Department but further they have permitted the Department to hold the public auction as stated by them on June 16, 1993, and in order not to come in the way of holding the public auction they have withdrawn the petition filed by them. The aforesaid conduct on the part of the petitioners shows that they had willingly and voluntarily permitted the Department to operate the impugned order and to hold the public auction for the sale of the lands in question. On this ground alone, in our view, the petitioners are not entitled to have any relief in the writ petition under article 226 of the Constitution.

10. Apart from the aforesaid conduct on the part the petitioners, apparently there is delay in filing this petition for challenging the impugned order dated May 16, 1991. For a long period of two years, the petitioners waited without making any grievance with regard to the impugned order. The Department paid the entire amount of sale consideration to the vendors in June 1991, and refunded the earnest amount to the petitioners in June, 1991, yet for a period of two years, the petitioners never thought that the order was required to be challenged. The present petition is filed on July 22, 1993. No reasons are assigned for the delay in filing this petition. Presuming that the period taken for filing the previous petition (Special Civil Application No. 3937 of 1993) can be excluded, yet with regard to the delay from June, 1991, onwards till the filing of this petition, the petitioners have not bothered to explain it in any manner. Hence, this petition is barred by time. It is true that there is no period of limitation prescribed for filing the petition under article 226 but at the same time, it is well-settled law that it should be filed as early as possible unless prevented by some justifiable reasons. No reasons are pointed out by the petitioners for contending that there was unavoidable delay in filing this petition. Hence, on the ground of delay also no relief is required to be granted to the petitioners.

11. Further, from the aforesaid conduct of the petitioners and the facts stated above, it can be stated that the petitioners have acquiesced and accepted the impugned order passed by the appropriate authority. Therefore, also, it would be just and proper not to grant relief to the petitioners in a petition under article 226. For this purpose, learned advocate, Mr. Soparkar, has rightly relied upon the following paragraph from the decision of the Supreme Court in the case of Major Chandra Bhan Singh Vs. Latafat Ullah Khan and Others,

"This fact was specifically brought to the notice of the High Court, but it ruled it out by merely saying that the "fact that the petitioners had wrongly filed a review application which was allowed by the Competent Officer would not confer jurisdiction on the Competent Officer to review his orders if the statute had not made any provision for it". That was begging the question, and could not

possibly meet the objection of the present appellants. If we may say so with respect, what the High Court failed to appreciate was that while it was true that want of jurisdiction to review the order of August 31, 1955, could not be cured by wavier it would not necessarily follow that the court was obliged to grant certiorari at the instance of a party whose conduct was such as to disentitle it for it. The High Court was exercising its extraordinary jurisdiction and the conduct of the petitioners was a matter of considerable importance."

12. Further, apart from the acquiescence and conduct of the petitioners, in view of the directions given by the Supreme Court stated below, in the case of C.B. Gautam Vs. Union of India and Others, it would not be open to us to invalidate the impugned order for not communicating the reasons or giving opportunity of hearing to the petitioners (vendees). Admittedly, the order for compulsory purchase was made, possession of the land was taken on June 5, 1991, compensation was paid to the owners of the property in June, 1991, and the owners have accepted it without any protest. Not only that, the earnest money was refunded to the petitioners as per the terms of the agreement by the Department on June 28, 1991. In such a situation in unambiguous terms the Supreme Court has stated as under (at page 562):

"We may clarify that, as far as completed transactions are concerned, namely, where, after the order for compulsory purchase u/s 269UD of the Income Tax Act was made and possession has been taken over, compensation was paid to the owner of the property and accepted without protest, we see no reason to upset those transactions and hence, nothing we have said in the judgment will invalidate such purchases. The same will be the position where public auctions have been held of the properties concerned and they are purchased by third parties. In those cases also, nothing which we have stated in this judgment will invalidate the purchases."

13. In spite of the aforesaid directions, Mr. Nanavati, learned counsel for the petitioners, submitted that it cannot be held that because of the said directions the petitioners can be precluded from contending that the impugned order is void because it is passed in breach of the principles of natural justice or that the mandatory provisions of sub-section (2) of section 269UD are not followed by the appropriate authority in not communicating the reasoned order to the petitioners. He further submitted that it is well-settled law that in the case of a quasi-judicial order, the authorities are required to follow the principles of natural justice of giving an opportunity of hearing and passing a reasoned order and that too of communicating it. In our view, this contention is without any substance because these very contentions were required to be dealt with by the Supreme Court and the Supreme Court has dealt with the same in the judgment. In the judgment, it is specifically mentioned that on behalf of the petitioners, it was contended that there is no provision in Chapter XX-C for any opportunity being given to the intending purchaser or intending vendor of the immovable property concerned to show cause against the compulsory purchase of the property, there

is no provision even for giving them a notice of the intention of the appropriate authority to order purchase of the property; the mere requirement of recording reasons is not sufficient in the absence of any requirement that they must be set out in the order of purchase or communicated to the transferor or the transferee. On behalf of the Union of India, it was pointed out by the learned Attorney-General in his submission that the decision to purchase the property is required to be taken by three high officers who have adequate knowledge in the matter and hence the lack of provision in the Chapter for any appellate or revisional powers made no difference; that a requirement for the communication of reasons was not necessary, Chapter XX-C did not provide for such communication and the fact that recording of reasons was required and that the aggrieved parties could get the reasons by filing a writ petition were adequate to meet the requirements of article 14. These contentions are dealt with by the Supreme Court and the court held as under (at page 551) :

"In this regard, a plain reading of the provisions of the said Chapter clearly shows that they do not contain any provision for giving the concerned parties an opportunity to be heard before an order for compulsory purchase of the property by the Central Government is made."

14. After considering the various decisions, the court further held as under (at page 553) :

"It must, however, be borne in mind that courts have generally read into the provisions of the relevant sections a requirement of giving a reasonable opportunity of being heard before an order is made which would have adverse civil consequences for the parties affected. The would be particularly so in a case where the validity of the section would be open to a serious challenge for want of such an opportunity.

It is true that the time-frame within which the order for compulsory purchase has to be made is a fairly tight one but, in our view, the urgency is not such as would preclude a reasonable opportunity of being heard or to show cause being given to the parties likely to be adversely affected by an order of purchase u/s 269UD(1). The enquiry pursuant to the explanation given by the intending purchaser or the intending seller might be a somewhat limited one or a summary one but we decline to accept the submission that the time-limit provided is so short as to preclude an enquiry or show cause altogether.

In the light of what we have observed above, we are clearly of the view that the requirement of a reasonable opportunity being given to the concerned parties, particularly, the intending purchaser and the intending seller must be read into the provisions of Chapter XX-C. In our opening, before an order for compulsory purchase is made u/s 269UD, the intending purchaser and the intending seller must be given a reasonable opportunity of showing cause against an order for compulsory purchase being made by the appropriate authority concerned."

15. The court held that it may be permissible to record the reasons separately,

but the order would be an incomplete order unless either the reasons are incorporated therein or are served separately along with the order on the affected party. The relevant discussion on this aspect is as under (at page 555) :

"The recording of reasons which led to the passing of the order is basically intended to serve a two-fold purpose :

(1) that the "party aggrieved" in the proceeding before the authority acquires knowledge of the reasons and, in a proceeding before the High Court or the Supreme Court (since there is no right of appeal or revision), it has an opportunity to demonstrate that the reasons which persuaded the authority to pass an order adverse to his interest were erroneous, irrational or irrelevant, and

(2) that the obligation to record reasons and convey the same to the party concerned operates as a deterrent against possible arbitrary action by the quasi-judicial or the executive authority invested with judicial powers.

Section 269UD(1), in express terminology, provides that the appropriate authority may make an order for the purchase of the property "for reasons to be recorded in writing". Section 269UD(2) casts an obligation on the authority that it "shall cause a copy of its order under sub-section (1) in respect of any immovable property to be served on the transferor". It is, therefore, inconceivable that the order which is required to be served by the appropriate authority under sub-section (2) would be one which does not contain the reasons for the passing of the order or is not accompanied by the reasons recorded in writing. It may be permissible to record the reasons separately but the order would be an incomplete order unless either the reasons are incorporated therein or are served separately along with the order on the affected party. We are of the view that the reasons for the order must be communicated to the affected party."

16. In view of the aforesaid discussion, it is apparent that the court was required to consider the provisions of section 269UD and after considering the contentions raised by the parties, the court arrived at the conclusion that the courts have generally read into the provisions of the relevant sections a requirement of reasonable opportunity of being heard before an order is made the absence of which would have adverse civil consequences for the parties affected. The court further held that a mere recording of reasons was not sufficient but the said reasons are required to be communicated to the parties affected. After giving this interpretation, the court further considered the consequence which would follow because of the aforesaid decision. On this aspect, the court held as under (at page 561) :

"The next question is as to the consequence to follow. In view of the fact that the object of the provisions of Chapter XX-C is a laudable object, namely, to counter evasion of tax in transactions of sale of immovable property, we consider it necessary to limit the retrospective operation of our judgment in such a manner as not to defeat the acquisitions altogether."

17. and gave the directions as stated above. In view of the aforesaid clear mandate by the Supreme Court, in our view, in the present case, there is no question of setting aside the impugned order passed on May 16, 1991, as the said order is accepted by the vendors without any protest and] is implemented by the authorities in June, 1991. Further, the petitioners have accepted the said order without any protest from June, 1991, till June, 1993.

18. Hence, this petition is required to be rejected on the ground of delay in filing the petition and acquiescence and acceptance of the impugned order by the petitioners and also in view of the directions given by the Supreme Court that in cases where vendors have accepted the impugned order and the order passed by the authority is implemented, the order is not required to be set aside on the ground that hearing was not given to the petitioners or that reasons were not communicated.

19. In this view of the matter, it is not necessary for us to consider the other contentions raised by the petitioners as well as by learned counsel Mr. Soparkar appearing for the purchaser of the property at the auction that in the absence of the transferors being parties to this petition, the petition is required to be rejected and no order for setting aside the impugned order can be passed without joining the vendors as parties.

20. In the result, this petition is rejected. Rule discharged with costs.