
(1992) 03 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No. 1681 of 1992

Madhukar Sunderlal Sheth and others

APPELLANT

Vs

S.K. Laul and others

RESPONDENT

Date of Decision : 28-03-1992

Acts Referred:

Income Tax Act, 1961 — Section 269UC, 269UD

Citation : (1992) 198 ITR 594

Hon'ble Judges : Sujata V. Manohar, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S.R. Dastur, for the Appellant; Dr. R. Balasubramanian, for the Respondent

Judgement

Mrs. Sujata Manohar J.

1. This writ petition challenges the letters addressed by the Income Tax Department to the petitioners at exhibits "C", "E" and "G" under which the Department has said that, on going through the agreement of sale, it is found that the sale is subject to the approval of the Charity Commissioner and the Reserve Bank. Without such an approval, the sale cannot take place and hence Form No. 37-I, which is filed, is treated as invalid. The agreement of sale in respect of the immovable property in question is between a public trust which is registered under the Bombay Public Trusts Act, 1950, and the purchasers who are the petitioners. u/s 36 of the Bombay Public Trusts Act, no sale of any immovable property belonging to a public trust registered under the Act" shall be valid without the previous sanction of the Charity Commissioner".

2. Section 269UC of the Income Tax Act, 1961, provides that no transfer of immovable property of value exceeding Rs. 5 lakhs shall be effective except after an agreement of transfer is entered into as prescribed therein, at least three months before the intended date of transfer, the agreement of sale shall be reduced to writing in the form of a statement as set out in sub-sections (2) and (3) and shall be furnished to the appropriate authority, in accordance with rule

48L of the Income Tax Rules. Rule 48L of the Income Tax Rules prescribes Form No. 37-I for furnishing the particulars of such a sale. The scheme, therefore, is that at least three months before the intended date of transfer, Form No. 37-I has to be submitted to the Income Tax authorities so that the Income Tax authorities may exercise their powers u/s 269UD of the Income Tax Act, 1961, if they so desire.

3. The purpose of Chapter XXC (which contains these provisions) is to curb sales of immovable properties for an apparent consideration which is less than the real consideration. Hence, power is given to the Income Tax authorities to purchase the property for the apparent consideration. In the case of a public trust, however, certain special provisions have been enacted under the Bombay Public Trusts Act to ensure that property belonging to a public trust is not sold by the trustees for an apparent consideration which is less than the real value of the property. In other words, it is necessary to ensure that when immovable property of a public trust is sold, the public trust gets the full market value of the property. Hence, section 36 of the Bombay Public Trusts Act makes the sale of immovable property of a public trust invalid without the sanction of the Charity Commissioner. If section 269UD can be brought into operation before the sanction of the Charity Commissioner is obtained, the consequences of an agreement for sale of the property of a public trust for a consideration less than the market value of the property may be visited 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. The beneficiaries of the public trust would be the losers. They would lose the protection which section 36 of the Bombay Public Trusts Act gives them.

4. In our view such is not the intention of sections 269UC and 269UD, nor need the sections be interpreted in this manner. Section 269UC comes into picture when the sale of a property is intended to take place. At least three months before such sale the statement is required to be furnished. This would necessarily imply that the statement must refer to an agreement of sale which is capable of being put into effect. In the present case, the trust property cannot be validly sold without the permission of the Charity Commissioner. Hence, such an agreement of sale cannot be acted upon by the Income Tax authorities. We are not dealing with a situation where there may be disputes between various parties as to their right to the property in question, their right to enter into the agreement of sale, etc. Here is a case where the sale cannot take effect by reason of a statutory bar on such sale without the approval of the Charity Commissioner. Therefore, section 269UC can come into operation only after the approval is granted by the charity Commissioner for such sale. The period of filling such a statement has to be computed with reference to the approval granted by the charity Commissioner for the sale of the property, bearing in mind the public purpose underlying such approval. The Department was, therefore, straight in considering the form in question as invalid.

5. The Charity Commissioner under the Bombay Public Trusts Act, is required to give his sanction bearing in mind the interest, benefit and protection of the trust. He has to apply his mind, inter alia, to the price at which the property is to be sold under the agreement. The Charity Commissioner has the power, in a given case, to come to the conclusion that the price at which the trustees have agreed to sell the property is not the price which would secure adequate benefit to the trust and he may reject the agreement on that ground. Even the terms of the agreement of sale which the trustees may have entered into are liable to be examined by the Charity Commissioner at the time when he grants his sanction. Approval by the Charity Commissioner ensures the reasonableness of the agreement of sale. These factors will also have to be borne in mind by the Income Tax authorities while exercising their power u/s 269UD. The discretionary power under that section cannot be exercised arbitrarily. It will have to be exercised bearing in mind the purpose for which it is conferred. Hence, the submission of the petitioner that if there is delay on the part of the Charity Commissioner in granting sanction, and there is a rise in the property market, the purchaser of such a property will be at a disadvantage, loses its force. 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. The purchaser can also apply, in accordance with law, for early sanction by the Charity Commissioner.

6. The ratio of the decision of the Delhi High Court in the case of Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, , has no application to the present case. The decision of Division Bench of this Court (Pendse and Jhunjhunwala JJ.) dated March 11, 1991, in Writ Petition No. 683 of 1991, Irwin Almeida and others Vs. Union of India and others, , also cannot apply because this is not a case where the Income Tax authorities have purported their right to enter into the agreement. There is clear statutory prohibition in the present case against the sale of immovable property of a public trust without the approval of the Charity Commissioner.

7. In the premises, the petition is dismissed.