
(1995) 09 DEL CK 0109

In the Delhi High Court

Case No : Civil Writ Petition No. 3192 of 1993

Mansarover Builders (P) Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-09-1995

Acts Referred:

Citation : (1995) 129 CTR 168 : (1995) 60 DLT 405 : (1995) 35 DRJ 565 :
(1996) 222 ITR 91

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : Mukul Rohatagi, P.K. Bakshi, Rajendra, R.N. Verma and R.K. Joshi,
for the Appellant;

Judgement

Anil Dev Singh, J.

(1) The house property in question, A-208, defense Colony, New Delhi, belonging to the third respondent stood on a piece of land measuring 285 sq. yards .The land underneath the house was originally acquired by the third respondent's predecessor in-interest from L&DO by means of a lease deed dated January 20,1960, superseded by deed dated October 13, 1978. By virtue of an agreement dated April 7,1993 the - third respondent agreed to sell the property to the petitioner at an apparent price of Rs.57.50 lacs. At the. time of execution of the agreement to sell the petitioner paid a sum of Rs. 8 lacs to the third respondent. Regarding payment of the remaining amount by the petitioner, the agreement provided that a sum of Rs.49 lacs would be paid on receipt of the permission of the Appropriate Authority for the sale of the property and the balance of Rs.50,000.00 at the time of registration of the sale deed. The agreement also required the petitioner to obtain the requisite permission from the Appropriate Authority under Chapter Xxc of the Income Tax Act, 1961 and that of the L&DO within a period of nine months of the signing of the agreement to sell. It further stipulated that the parties shall complete the sale of the property within thirty days of the receipt of all the necessary permissions and

clearances from the Income tax Department and the L & DO. The agreement to sell also postulated handing over of the physical possession of the property, except a room on the ground floor, allegedly let out to one Anand Goswami at a monthly rental of Rs.225.00 , with effect from July 1, 1986, to the petitioner at the time of the registration of the sale deed. The deed further recited that the property was free from all encumbrances.

(2) On April 19, 1993, the petitioner Filed a statement in form 37-1 under Rule 40L of the Income Tax Rules, 1962 together with a copy of the agreement to sell dated April 7, 1993 before the Appropriate Authority. The statement was signed by the third respondent and the director of the petitioner-company. On consideration of the material on the record the Appropriate Authority was prima facie of the view that the ostensible consideration was low. Accordingly a show cause notice dated June 7, 1993 was issued to the petitioner as also the third respondent. In this notice it was stated that after adjusting the salvage value of the structure standing on the instant land amounting to Rs.26,000.00 , the land rate as per apparent consideration worked out to Rs.24,022.00 per sq.mtr. Show cause notice referred to the sale incidents of C-538 defense Colony, and A-20, defense Colony. New Delhi for the purpose of comparison with the transaction in question. It noticed that C-538, defense Colony, having land area of 271.73 sq. Mts. (325 sq. yards) was agreed to be sold as per agreement to sell dated February 2, 1993 for an amount of Rs.88 lakhs. The Appropriate Authority after adjusting the salvage cost of the structure and the time and the location factors worked out the land rate of C-538, which came to Rs.36,969.00 per sq. mtr. The Appropriate Authority also noticed that A-20, defense Colony measuring 181.44 sq.mts. (217 sq. yards) was auctioned on July 26, 1991 for an amount of Rs.55.05 lacs. The Appropriate Authority after adjusting the salvage cost of the structure and time and location factors of the property, worked out the land rate of that property at Rs.31,494.00 per sq.mt. In view of these sale instances the parties to the agreement to sell dated April 7, 1993 were called upon to show cause why orders should not be passed in accordance with sub section (1) of Section 269UD of the Income Tax Act. Pursuant to the show cause notices the parties Filed their replies. While the third respondent the intending vendor, stated in his reply dated June 17, 1993 that the sale price of Rs.57.50 lacs in respect of the property in question was a fair one, the petitioner raised a number of pleas in its reply dated June 21, 1993. The petitioner took the stand that the show cause notice was not signed by the Appropriate Authority; that the instances of the sales referred to in the show cause notice were not relevant; that the rates of C&D blocks of defense Colony were higher by 30% than those of A block as the plots in those blocks were allotted to senior officers of the armed forces while the plots in A Block were allotted to junior officers of the armed forces: that C&D blocks abut on the Ring Road and Lal Bahadur Shastri Marg, facing Lajpat Nagar but A block faces slums of Kotia Mubarkpur and quarters of 4th class employees of Sewa Nagar, that in the circumstances the sale instance of C-538, defense Colony was not comparable and that the price fetched by property .No.A-20,

defense Colony in the auction does not indicate the real market rate. Besides the petitioner relied upon sale instances of immovable properties located at A-2 defense Colony, A-175 defense Colony, D-364 defense Colony and D-319 defense Colony. After the receipt of the replies to the show cause notices the Appropriate Authority gave the petitioner an opportunity to make oral submissions before it, pursuant to which the petitioner appeared and made submissions through counsel and also requested the Appropriate Authority to summon Anand Goswami, who was said to be the tenant of a room in the property in question. The Appropriate Authority inspected the property and also recorded the statement of Anand Goswami. On consideration of the matter, the Appropriate Authority by its order dated June 30, 1993 decided to purchase the property at the ostensible value of Rs-57.50 lacs on the ground that the disclosed value of the property was 15% below its fair market price. While doing so it rejected the stand of the petitioner with respect to the comparable sale instances relied upon in the show cause notice. With regard to the reliance placed by the petitioner on the two out of three sale instances of immovable properties, namely A-2 and A-175, defense Colony, New Delhi the view of the Appropriate Authority was that even these sale instances indicated that instant property was agreed to be sold at an apparent consideration which was less than the apparent sale consideration of these properties. In so far as A-2, Defense Colony was concerned, the Appropriate Authority noted that the date of the agreement to sell was July 31, 1992 and the declared land rate was Rs.22,561.00. On making adjustment of 9% + 5% + 5% + 2% + 2% + 2% + 1% + 1% on account of time gap, shape, joint ownership, and location being near to (i) sewer (nalha), (ii) railway line, (iii) taxi stand, (iv) Gas depot and (v) jhuggies respectively, the Appropriate Authority came to the conclusion that the land rate for the property would work out to Rs. 28,552.00 per sq. mt. which was higher by 19% in comparison to the disclosed apparent consideration of the instant property.

(3) In regard to property No.A-175, defense Colony the Appropriate Authority took cognizance of the fact that the agreement to sell was dated October 29, 1992 and the declared land rate, after adjusting the salvage value of the structure standing thereon, was Rs.25,786.00 per sq. mt. On making further adjustments on account of factors like time gap (plus 5%) and location facing park (plus 5%) the Appropriate Authority came to the conclusion that the land rate worked out to Rs.28,364.00 per sq. mt., which was again 18% above the apparent consideration of the instant property. In regard to the incident of sale of D-319 (which was mentioned as D-139) defense Colony, New Delhi the Appropriate Authority did not dilate on it in view of the submission of the petitioner that the properties in D Block, defense Colony were not comparable with properties in "A" block thereof.

(4) As regards the submission of the petitioner that the show cause notice was not signed by the competent authority, it noted that the show cause notice was issued under its authority as was apparent from the opening sentence of the notice which stated as follows: "Under the instructions of the Appropriate

Authority, Delhi I am to state

(5) The petitioner's plea that one room of the premises was given to one Anand Goswami on rent did not find favor with the Appropriate Authority. It was of the opinion that the rent receipts produced by Anand Goswami were freshly prepared at one go and the dates on receipt numbers 19 and 24 were changed. It also noted that at the time of inspection of the property it was found that the alleged tenanted portion of the property was not a room as mentioned in the agreement to sell but was a temporary tin/asbestos sheet structure covering the open backyard alongside the boundary wall. Before the Appropriate Authority, Anand Goswami admitted that the shop was lying closed since May, 1989. Having regard to the above facts the Appropriate Authority came to the conclusion that the alleged lease of a room was no longer in existence and premises were fully in the possession of the third respondent. Obviously the aforesaid plea was raised by the petitioner to explain as to why the transaction in question fetched a lower price.

(6) Pursuant to the order of compulsory purchase passed by the Appropriate Authority on June 30, 1993, the third respondent wrote to the Income tax department to pay the sale consideration in accordance with the agreement to sell i.e. 8 lacs to the petitioner and the balance amount of Rs. 49.50 lacs to him. On July 30, 1993 the Income tax department issued the requisite cheques and handed "them over to the third respondent. But the petitioner being aggrieved of the order of the Appropriate Authority filed the present writ petition on July 12, 1993, which was admitted on December 14, 1993. At the show cause stage the Division Bench by its order dated September 15, 1993 allowed the Income Tax department to auction the property but interdicted it from confirming the same without its permission. On September 17, 1993 the auction of the property was held by the Income tax Department for which the first respondent, Counter Corporation of India gave the highest bid of Rs. 70.15 lacs, which was confirmed by the department in contravention of the order of the Division Bench dated September 15, 1993. Besides, the possession of the premises was handed over to the fourth respondent. This led to initiation of proceedings in Ccp No. 14 of 1995 against the Chief Commissioner of Income Tax II on January 3, 1995. By means of Cm 335 of 1995 the petitioner pointed out that after demolition of the existing structure construction was being raised by the auction purchaser over the land in question. In the circumstances order staying the construction was passed by this court on January 27, 1995. Thereafter an order was passed on April 24, 1995 directing the fourth respondent to hand back the possession of the property to the first and second respondents. By the same order the apology of the Chief Commissioner for confirming the sale of the property in favor of the fourth respondent and handing over of the possession by mistake was accepted. Accordingly the fourth respondent handed over the possession of the plot to respondents 1 and 2. By a further order dated April 28, 1995 the transaction of sale and return of possession was directed to be subject to the result of the writ petition.

(7) I have heard learned counsel for the parties.

(8) .BEFORE dealing with the submissions of the learned counsel, it will be advantageous to mention the object and purpose of Chapter XXC of the Income Tax Act, 1961 and the procedure to be followed by the Appropriate Authority for passing an order for pre-emptive purchase by the Central Government of immovable properties as culled from the decision of the Supreme Court in C.B. Gautam Vs. Union of India and Others, .

(9) Chapter Xxc was inserted in the Income Tax Act,1961 by Finance Act, 1986. The provisions were brought into effect from October 1, 1986 by a notification dated August 7,1986. In real estate transactions there was need to check the passing of black money from the vendee to vendor. In order to prevent the tax daggars from suppressing the correct value of the property, chapter Xxc was introduced. Where the value of the property exceeds Rs.5 lacs the parties in the Metropolitan city of Delhi are required to First enter into an agreement to sell before concluding the sale. Within 15 days of the entering into the agreement to sell, they are required to file a statement in form 37- I together with the agreement to sell before the Appropriate Authority. The Cen

(10) It also needs to be noticed that if the Appropriate Authority is satisfied that the apparent consideration is less than the fair market value by 15% or more, it can draw a presumption that the under valuation of the property has been done with a view to evade tax, but such a presumption is rebuttable and the intending transferor or proposed transferee can lead evidence to rebut the same. Notwithstanding the fact that the enquiry envisaged by Chapter Xxc of the Income Tax Act is of a summary nature, opportunity to be afforded to the parties likely to be affected by the order of the Appropriate Authority must be a reasonable one as imputation against them has the effect of tarnishing their reputation. In this background the order of the Appropriate Authority now needs to be examined.

(11) It is not disputed by the petitioner that the property C-538 defense colony New Delhi, measuring 271.73 sq. mls. was agreed to be sold under an agreement to sell dated February 2, 1992 for an amount of Rs. 88 lacs. Though the agreement to sell in the instant case was executed Five months after the aforesaid instance of sale, yet there was a substantial difference in their valuation. On adjustment of the lime and the location factors the land value of C-538, defense Colony, has been determined by the Appropriate Authority as Rs.36,969.00 per sq. mt " which is well above 15% as compared to the apparent sale consideration of the instant property. These calculations have not been controverted by the petitioner. The only argument advanced by the petitioner before the Appropriate Authority in regard to the sale instance of C- 538, defense Colony, New Delhi was that the value of the property in C&D blocks in defense Colony cannot be compared to the value of the property in "A" Block. But this argument of the petitioner did not Find favor with the Appropriate Authority. The Appropriate Authority in coming to the conclusion that the apparent sale

consideration of the subject property was less as compared to the fair market price there of by 15%, another sale instance of the property at A-20 defense colony was considered. Here again after adjusting the plus minus factors it was found that the value per sq. mt. works out to be Rs.31,494.00 , which was again a value significantly higher, being over 15% than the apparent consideration in respect of the instant property. Mr. Rohtagi, learned Senior counsel for the petitioner, pointed out that while comparing sale instance of A-20 defense Colony, New Delhi with that of the instant property, A-208 defense Colony, the Appropriate Authority has taken into consideration the fact that A-20 defense Colony is facing the park, while A-208 is not but while dealing with A-175 defense Colony, an instance of sale cited by the petitioner, it observed that A-208, defense Colony is facing the park and A-175, defense Colony is away from it. His submission is that there is an apparent fallacy in the order of the Appropriate Authority. I have considered the submission of the learned counsel for the petitioner. The so called fallacy does not appear to be a fallacy on a close scrutiny of the plan of the colony from which is to apparent that while A-20 is in front of one of the parks, the subject property A-208 defense Colony is in close proximity of another park, though not exactly opposite to it. It is also clear from the plan that property No. A-175 defense Colony is away from any of the parks including the park in proximity of A-208, defense Colony, New Delhi. Therefore while comparing the sale instance of A-175, defense Colony with the transaction of the property in question the Appropriate Authority correctly look into consideration the location of the park vis-a-vis the two properties. The statement of Appropriate Authority must, Therefore, be understood in the aforesaid context.

(12) In so far as the sale of A-2 defense Colony is concerned, some more facts need to be noticed which appear from the files of the Income tax department and the file of Suit No. 648 of 1985. Learned counsel for the petitioner and for the third respondent were also given an opportunity on September 19, 1995 to clarify the position further.

(13) Shri H.R Jaidka acquired the leasehold rights of plot No.A-2, defense Colony from the State vide lease deed dated April 22, 1957. On the demise of Shri H.R Jaidka disputes arose between the members of the family. Suit No.648 of 1985 was Filed by Bisham Dev Jaidka for partition claiming 1/4th share in the properties left behind by Shri H.R.Jaidka. In the suit Smt. Durga Rani, widow of Shri H.R.Jaidka, Rameshwar Rai Jaidka, Brij Bhushan Jaidka, Rajinder Kumar Jaidka, all sons of H.R.Jaidka as, also Smt.Shakuntala Bhalla, daughter of Shri H.R.Jaidka were arrayed as defendants. Apart from A-2 defense Colony there were two other properties which were also the subject matter of the partition suit. While proceedings were pending all the four brothers including the plaintiff executed two agreements to sell dated July 31, 1992 in respect of A- 2, defense Colony, one in favor of Sh J.D.Ciulali and the other in favor of Smt.Sunila Gulati. In the suit the parties entered into a compromise on October 1, 1992. According to the terms of the compromise, to which Bhisham Dev Jaidka (plaintiff), Rameshwar Rai Jaidka, Brij Bhushan Jaidka, Rajinder Kumar Jaidka and

Smt. Shakunlala Bhalla, defendants were parties, A-2 defense Colony fell to the share of four brothers. The Appropriate Authority while giving no objection to the sale of A-2, defense Colony compared it with A-20 defense Colony, having plot area of 181.44 sq. mls, which was auctioned on July 26, 1991 for Rs. 50.50 lacs. It took into account various factors including joint sharing (-5%) in arriving at the value of the land. The Appropriate Authority on taking into consideration the various factors came to the conclusion that the apparent sale consideration of A-2 defense Colony was less than the fair market value of the property by 8.5%. Since the difference between the apparent consideration and fair market value of the property was not a significant one, being less than 15%, the Appropriate Authority gave permission to the sale of A-2, defense Colony. The Appropriate Authority in the instant case while comparing the property in question with A-2 defense Colony, an incident of sale cited by the petitioner, adjusted 5% for joint sharing of the latter property i.e. the same factor which was taken into consideration while comparing A-2 with the "reference property", namely, A-20, Dcfnccl Colony. Departmental Files of A-2 defense Colony show that the intending transferors had made a categorical statement that a compromise had been arrived at between them yet the Appropriate Authority seems to have been of the opinion that joint sharing eroded the value of the property by 5%. It is noteworthy that on July 31, 1992 when the agreement to sell was executed Suit No. 648 of 1985, in which apart from the four brothers, who were the intending transferors Smt. Shakuntala Bhalla was also a party was still pending. The parties in the suit filed an application under Order 23 rule 3 CPC for compromise on September 30, 1992 and the decree in terms of the agreement was passed only on October 1, 1992 i.e. both the events taking place after the agreements to sell had been executed. In any event A-2 defense Colony was sold at a price lower than the fair market value, though the Appropriate Authority was of the opinion that it was not a case of significant difference between the apparent sale price of the property and the fair market price thereof. The difference was of only 8.50%. This being the position the petitioner cannot claim that the value of A-208 defense colony, New Delhi should be judged with reference to the apparent consideration at which A-2 defense Colony was sold i.e. at a price which is 8.50% lower than the fair market price. Even if disadvantage due to joint sharing is ignored, the value of A-2 defense Colony would work out to be 13.50% (8.50% + 5%) which again being below the fair market price would still qualify for being cleared as the apparent value would not be lower than the fair market value by 15%.

(14) Learned counsel for the petitioner also found fault with discounting the value of the property by 2% being in close proximity of the railway line, 1% for being near a gas depot and 2% for being near a taxi stand. A perusal of the writ petition further shows that the petitioner did not specifically raise any objection with regard to the discounting of the value of the property by 5% on account of being in joint ownership and 2% being near a taxi stand and 2% being near a gas depot. The Appropriate Authority does not appear to be wrong in considering

the property to be at a disadvantage while considering its value for it being near a railway line, taxi stand and gas depot. It is a matter of common knowledge that the building near a railway line causes lot of nuisance to the residents. Similarly a taxi stand in close proximity to a residential house may be a source of annoyance to its inhabitants. More often than not the drivers at the taxi stand use the place as their abode. Besides the taxis are washed and repaired at the taxi stand itself. It also adds to noise and pollution levels in the vicinity. The disadvantages of the taxi stand near a residential house may outweigh the advantages thereof. Similarly a gas depot in close proximity to residential houses, apart from being a safety hazard, causes nuisance as it is frequented by large number of people and adds to the noise created by loading and unloading of gas cylinders .

(15) The view of the Appropriate Authority which is an expert body cannot be interfered with lightly. The court cannot be unmindful of the fact that it is not sitting in appeal over the decision of the Appropriate Authority. The jurisdiction of the High Court under Article 226 is a limited one. It can only interfere with the order of the Appropriate Authority if it is perverse, unreasonable and arbitrary. In the present case it cannot be said that no reasonable person could have arrived at the conclusion as was reached by the Appropriate Authority. The Appropriate Authority took into consideration the sale prices of the properties located at C-538 and A-20, defense Colony, New Delhi for holding that the ostensible sale consideration of A-208 defense Colony, is less than the fair market price of the property by 15%. As already pointed out A-20 defense Colony, New Delhi is situate in the same block as the instant property. A- 20 was auctioned on July 26,1991 i.e. more than 1-1/2 years before the subject transaction at a higher value taking into account the relevant factors. Similarly the land value of property C-538 defense Colony which was sold on February 2, 1993 comes to Rs.31,870.00 per sq. mt. Thus I .find no fault with the view of the Appropriate Authority that the apparent value of the instant property as mentioned in the agreement to sell is significantly depressed. In view. of the evidence furnished by the sale of these two properties it cannot be said that the view of the Appropriate Authority was unreasonable. Even where two views are possible the court sitting in writ jurisdiction is precluded from taking a view other than the one taken by the Appropriate Authority. It is well settled that Judicial review under Article 226 is not of the decision rendered by an authority but is of the decision making process. In H. B. Gandhi v. Gopi Nath and Sons . The Supreme Court defining the scope of judicial review held as follows:

"8. But here what was assailed was the correctness of findings as if before an appellate forum. Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review can- not extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an

appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

(16) The same view taken by the Supreme Court in the earlier decision in *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, was expressed in the following words:

"28. It not unoften happens that what appears to be a judicial review for breach of natural justice is, in reality, a review for abuse of discretion. It is true that amongst the many grounds put forward in the show cause notice dated 19-1-1986, quite a few overlap each other and are distinguishable from those urged for the cancellation of the lease itself. Some of the grounds might, perhaps, be somewhat premature. Some of them even if true are so trivial that no authority could reasonably be expected to cancel the permission on that basis. For instance the ground that the permission was applied for and granted in the name of one only of the two lessees would be one such. However, judicial review under Article 226 cannot be converted into appeal. Judicial review is directed, not against the decision, but is confined to the examination of the decision making process. In *Chief Constable of the North Wales Police Vs. Evans* (1982) I W.L.R. 1155 refers to the merits legality distinction in judicial review Lord Hailsham said:

"THE purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court".

(17) Lord Brightman observed:

".....JUDICIAL review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made...."

(18) And held that it would be an error to think:

".....THAT the court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself." When the issue raised in judicial review is whether a decision is vitiated by taking into account irrelevant, or neglecting to take into account of relevant, factors or is so manifestly unreasonable that no reasonable authority, entrusted with the power in question could reasonably have made such a decision, the judicial review of the decision-making process includes examination, as a matter of law, of the relevance of the factors....."

(19) In *State of West Bengal Vs. Atul Krishna Shaw and Another*, , the Supreme Court held that judicial review is not an appeal from a decision but a review of the manner in which decision was arrived at. It was further held that the High Court by a process of judicial review cannot appreciate the evidence and record

its own Findings of fact. In this regard it was observed: 7. Admittedly the High Court did not go into any of the questions raised by the appellant in the writ petition. It summarily dismissed the writ petition. Therefore, what we have to read is only the orders of the Appellate Tribunal and the Assistant Settlement Officer -the primary authority together with the record of evidence. Counsel took us through the evidence to show that the findings recorded by the appellate Judge are based on either no evidence or surmises and conjectures. We have given our anxious consideration to the respective contentions and considered the evidence on record once again. It is indisputably true that that it is a quasi judicial proceeding. If the appellate authority had appreciated the evidence on records and recorded the Findings of fact, those findings are binding on this court or the High Court. By process of judicial review we cannot appreciate the evidence and record our own findings of fact. If the findings are based on no evidence or based on conjectures or surmises and no reasonable man would on given facts and circumstances come to the conclusion reached by the appellate authority on the basis of evidence on record, certainly this court would oversee whether the findings recorded by the appellate authority is based on no evidence or besot with surmises or conjectures. Giving of reasons is an essential element of administration of justice. A right to reason is, Therefore, an indispensable part of sound system of judicial review? Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, hut also a valid discipline for the Tribunal itself. Therefore, statement of reasons is one of the essentials of justice."

(20) Thus it can be concluded that judicial review cannot be treated as an appeal from the decision of a Tribunal. Its scope is limited and is directed to the manner in which the decision was made. The High Court in exercise of its extraordinary jurisdiction cannot sit in judgment over the correctness of the decision but is concerned only with the correctness of the decision making process. It can only interfere if the decision of an authority or a tribunal is not grounded on any evidence or is based on surmises or proceeds on irrelevant factors and is so manifestly unreasonable that no reasonable person would on given facts and circumstances come to the conclusion reached by it. In the instant case. the impugned order docs not suffer from any of the aforesaid maladies and Therefore it cannot be interfered with. The Appropriate Authority on a consideration of relevant factors has come to a conclusion that the apparent sale consideration was below the fair market value of the land by more than 15%. The court can not substitute its own opinion for the opinion of the Appropriate Authority, even though it may seem that the other view may have been more reasonable. The correctness of the decision of the Appropriate Authority cannot be looked into into while judicially reviewing the same.

(21) It is well settled that in order to determine the market value of the land in regard to which pre-emptive right of acquisition has been exercised by the government comparable instances of sale, which provide index of its market value, can be taken into consideration, subject of course to certain adjustments, dependent upon the various factors, namely, lime factor that is to say the point

of time when the land was sold, and the situation factor that is to say the location of the land etc.

(22) The balance sheet of plus and minus factors can be drawn for this purpose and the relevant factors evaluated to determine the fair market price of the land.

(23) In *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, the Supreme Court laid down the broad guidelines for determining the market value of the land under acquisition. In this regard it was held as follows: "3. Before tackling the problem of valuation of the land under acquisition it is necessary to make some general observations. The compulsion to do so has arisen as the trial court has virtually treated the award rendered by the Land Acquisition Officer as a judgment under appeal and has evinced unawareness of the methodology for valuation to some extent. The true position Therefore requires to be capsulated .4. The following factors must be etched on the mental screen: 1) A reference u/s 18 of the Land Acquisition Act is not an appeal against the award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court. 2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the court unless produced and proved before it. It is not the function of the court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate court. 3) The court has to treat the reference as original proceedings before it and determine the market value afresh on the basis of the material produced before it. 4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the court. Of course, the materials placed and proved by the other side can also be taken into account for this purpose. 5) The market value of the land under acquisition has to be determined as on the crucial date of publication of the notification under S.4 of the Land Acquisition Act (dates of Notification under Ss. 6 and 9 are irrelevant). 6) The determination has to be made standing on the date line of valuation (date of publication of notification u/s 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price. 7) In doing so by the instances method, the court has to correlate the market value reflected in the most comparable instance which provides the index of market value. 8) Only genuine instances have to be taken into account (Sometimes instances are rigged up in anticipation of Acquisition of land). 9) Even post notification instances can be taken into account (i) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects, 10) The most

comparable instances out of the genuine instances have to be" identified on the following considerations: i) proximity from time angle ii) proximity from situation angle. 11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in just a position. 12) A balance sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do. 13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors. Plus factors. 1. Smallness of size. 2. Proximity to a road. 3. frontage on a road. 4. nearness to developed area. 5. regular shape. 6. level vis-a-vis land under acquisition. 7. special value for an owner of an adjoining property to whom it may have some very special advantage. 14) The exercise indicated in clauses (II) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors: (for table see below) 15) The evaluation of these factors of course depends on the, facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, taken the factor regarding the size. A building plot of land say 500 to 1000 sq. yds. cannot be compared with a large tract or block of land of say 10000 sq. yards or more. Firstly, while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out small plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up and whether waiting period during which the capital of the entrepreneur would be locked up will be longer or shorter and the attendant hazards. Minus factors 1. largeness of area. 2. situation in the interior at a distance from the road. 3. narrow strip of land with very small frontage compared to depth. 4. lower level requiring the depressed portion to be filled up. 5. remoteness from developed locality. 6. some special disadvantageous factor which would deter a purchaser. 16. Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself. 17. These are general guidelines to be applied with understanding informed with common sense."

(24) Thus for determining the market value of the land under pre-emptive acquisition, the First step would be to identify the comparable instances of sale of the immovable property in the locality. The price at which such sales were effected can be taken as the standard or measure of the market value subject to

suitable adjustment of plus and minus factors. A chart of plus minus factors as laid down by the Supreme Court can be drawn up for this purpose and adjustments can be made accordingly. Therefore having regard to the decision of the Supreme Court in Chimanlal's case (Supra) the Appropriate Authority was right in taking plus minus factors for arriving at the market value of the property in question.

(25) MR.RAJENDRA,LEARNED counsel for the respondents, drew my attention to the method of pricing of the plots by various builders. He also invited my attention to the advertisements issued by them. These advertisements show that the builders are taking into consideration situation of the plot for fixing its price. For a corner plot or plot facing a park or plot having three sides open or a plot having other advantages, the price is higher in comparison to the plots not having such facilities. Therefore evaluating the price of a plot by taking into consideration the aforesaid plus minus factors is an acceptable method.

(26) Two more incidents of sale on which reliance was placed by the petitioner need to be discussed further. The apparent sale consideration of D-319, defense Colony was held by the Appropriate Authority to be less than the fair market price of the property by 7.46% but the difference being within the prescribed limit, the sale was cleared by the Appropriate Authority. However, this does not mean that the apparent sale consideration of D-319 defense Colony represented the fair market value of the property. It is to be noted that the petitioner was also the vendee in respect of D- 319 defense colony. In so far as D-364 defense Colony is concerned the same was sold for an apparent consideration of Rs.92 lacs. The property was having a land area of 335.28 sq-mts. The agreement to sell was dated January 27,1993. The Appropriate Authority found that the apparent sale consideration of D-364 defense Colony was less than the fair market value of the property by 10.56%. In view of this position the ostensible sale consideration of D-364 defense Colony also cannot be considered as determinative of the market value of the subject property.

(27) Learned counsel for the petitioner submitted that the mere fact that the apparent consideration as reflected by the agreement to sell is less than the fair market value by 15% does not show that there has been any attempt to evade tax. As already pointed out, the Supreme Court in C.B.Gautam case, (Supra) has laid down that the provisions of Chapter Xxc can be invoked when the ostensible sale consideration of the immovable property is less than its fair market value by 15% or more. It also laid down that in such a case the Appropriate Authority is entitled to draw a presumption that under valuation has been done with a view to evade tax but the presumption is rebuttable and the intending transferor or prospective transferee can show that there was a bona tide consideration which induced the former to agree to sell the property at less than the fair market value such as property or part thereof was tenanted or seller being in immediate need of money was unable to wait for a buyer who was willing to pay the fair market value of the property or there was some dispute as to the title of the

immovable property etc. In the present case endeavor was made by the petitioner before the Appropriate Authority to show that a part of the property was tenanted obviously to rebut the presumption. The plea regarding part of property being tenanted was not believed by the Appropriate Authority. In the circumstances, Therefore the presumption has not been dispelled by the petitioner. Taking an overall view of the matter including the fact that the property though subject matter of litigation, fetched 70.15 lacs in open auction that too only after four months of the execution of the agreement to sell, It seems to me, Therefore, that the view of the Appropriate Authority that the seeming or visible sale price of the land in question was less than the fair market value of the land by 15% cannot be faulted.

(28) In view of the aforesaid discussion, the writ petition is dismissed. The possession of property No.D- 208 defense Colony, New Delhi will be handed over to the fourth respondent Container Corporation of India Ltd. No costs.