

(2008) 01 BOM CK 0130

In the Bombay High Court

Case No : Writ Petition No. 2542 of 1992

Methodex Systems (P) Ltd. and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-01-2008

Acts Referred:

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

Citation : (2008) 215 CTR 409 : (2008) 301 ITR 27

Hon'ble Judges : R.S. Mohite, J;F.I. Rebello, J

Bench : Division Bench

Advocate : M.U. Pandey, for the Appellant; R. Ashokan and P.S. Sahadevan, for the Respondent

Judgement

F.I. Rebello, J.—According to the petitioners by an agreement of 28th Nov., 1969 executed with Mrs. Gopibai Gopaldas they took on leave and licence basis Flat No. 54A on the 5th Floor of the building "Mira-Mar" at Napean Sea Road, Mumbai. One Shri Ravindra Sahai was in the employment of Petitioner No. 2 and he was allowed to occupy the said flat. It is the petitioners case that considering the amendment to the Bombay Rent Act giving protection to licensees they became protected tenants. Petitioner No. 1 from 1995 onwards was paying the rent/compensation of the flat to the landlady. Their employee Ravindra Sahai resigned from the employment on 5th March, 1995. Though the employee was called upon to vacate the flat he chose not to vacate. The petitioners, therefore, filed R.A.E. and E. Suit No. 80/490 of 1976 against Ravindra Sahai in the Court of Small Causes for recovery of possession of the flat along with arrears of compensation from 1st May, 1975 till the date of filing of the suit. Ravindra Sahai on 3rd Aug., 1976 filed written statement and claimed ownership of the suit premises. The petitioners then have averred that the petitioner No. 1 was incorporated to takeover the entire assets and liabilities of the petitioner No. 2. Issues were framed by the Court of Small Causes. One of the issues was whether Ravindra Sahai was the owner of the premises and whether he had purchased the flat from the original landlady and whether he was liable to handover

possession of the plaintiffs. According to the petitioners the suit was decreed *ex parte* against Ravindra Sahai on 4th March, 1991.

They made various attempts to execute the decree, but having failed to do so applied to the Court of Small Causes for breaking open the lock in execution of the decree. The Court on receipt of the application which was numbered as Misc. Notice No. 242 of 1991 amongst the respondents was the Union of India. The respondents appeared through their representative and sought time to file affidavit. Thereafter the respondents remained absent in the said proceedings. On 13th Dec., 1991 as the respondents remained absent an order was passed for executing the decree by breaking open the lock, if necessary.

2. It is the petitioners' case that an advertisement appeared in the Times of India on 24th July, 1991 putting up for sale various properties which included the flat which was the subject matter of the proceedings before the Small Causes Court. The petitioners addressed an advocate's letter dt. 21st Aug., 1991 pointing out as to how the advertisement could be given when there was an interim order of injunction issued by the Small Causes Court at Bombay and which was operative. They received a reply on 29th Aug., 1991 stating that at the time of auction on 22nd Aug., 1991 an announcement was made indicating to all the parties who attended the auction that the petitioner No. 2 has moved the Small Causes Court at Bombay praying for restoration of their tenancy and the Court of Small Causes at Bombay has decreed the said suit in favour of the petitioner No. 2.

3. In spite of the order of 13th Dec., 1991 the respondents did not handover possession of the suit premises to the petitioners, but instead on 28th Oct., 1991 purported to handover the possession of the flat to the auction purchaser. On 23rd Jan., 1991 the Court of Small Causes passed an order to break open the lock and put the petitioners in possession. Accordingly the petitioners were put in possession. The auction purchaser according to the petitioners broke open the lock of the flat illegally, consequent to which a criminal complaint came to be filed. The auction purchaser one Mr. Shah filed a Writ Petn. No. 1870 of 1992 before this Court. On 6th Sept., 1992 an order came to be passed by this Court setting aside the auction sale held on 28th Oct., 1991 as it was held in defiance of the prohibitory order passed by the Small Causes Court and a direction was issued to refund to the auction purchaser the purchase price with interest at 18 per cent per annum from 26th Nov., 1991. According to the petitioners the society accepted the petitioners possession and the society has been accepting the maintenance charges and other outgoings.

4. It may be mentioned that subsequent to the purchase of the flat by Sahai by another agreement he had agreed to sell the flat. At the relevant time the provisions of Chapter XX-C of the IT Act applied to all such transfers. Consequently that agreement was filed before the Appropriate Authority. Proceedings were initiated u/s 269UD of the IT Act and the Appropriate Authority came to the conclusion that the flat was undervalued and consequently passed

the order for purchase of the flat.

The present petition was filed by the petitioners seeking a relief amongst others for a writ of mandamus or a writ in the nature of mandamus quashing and/or setting aside the letter dt. 11th Nov., 1992 along with the order dt. 30th Oct., 1991 being contrary to the provisions of law, equity and good conscience. The notice dt. 11th Nov., 1992 is purported to be in exercise of the powers of the respondents u/s 269U(2) of the IT Act, 1961. That notice was issued pursuant to the order dt. 30th Oct., 1990 passed u/s 269UD of the IT Act, 1961.

5. The petitioners as set out earlier are claiming right in the premises as tenants of Ravindra Sahai. Petitioner was put in possession pursuant to the proceedings in execution initiated by the petitioners against the respondents. The respondents were served. They chose not to challenge the order putting the petitioner back in the premises nor have they taken out any other proceedings in the Court of Small Causes for setting aside the order of putting the petitioners in possession.

6. The case of the petitioners is that as they are tenants, it is an encumbrance on the property and considering that the words "free from all encumbrances" in Section 269UE were struck down by the Supreme Court in C.B. Gautam Vs. Union of India and Others, the petitioners are entitled to continue in occupation of the premises until evicted by due process of law.

On the other hand on behalf of the respondents learned Counsel submits that once an order was passed u/s 269UD of the IT Act no Court could have jurisdiction to pass an order contrary to the order of purchase. Even otherwise it is submitted that the judgment in C.B. Gautam (supra) is prospective and it will not affect the order passed before 17th Nov., 1992 which is the date of the judgment.

7. The question for our consideration is whether the respondents could have invoked the power conferred on them u/s 269UE(2) and other provisions to direct the petitioners to vacate the premises. For that purpose the judgment in C.B. Gautam (supra) would have a great bearing. The Supreme Court after considering the language of the section and the contentions urged on behalf of the Union of India by the learned Attorney General to read down the language of Section 269UE(1) held that it is not so possible and observed as under:

In the result the expression "free from all encumbrances" in Sub-section (1) of Section 269UE is struck down and Sub-section (1) of Section 269UE must be read without the expression "free from all encumbrances" with the result the property in question would vest in the Central Government subject to such encumbrances and leasehold interests as are subsisting thereon except for such of them as are agreed to be discharged by the vendor before the sale is completed....

The Court also noted that holders of the encumbrances and leasehold interest

were persons interested as contemplated in Clause (e) of Sub-section (2) of Section 269UA of the IT Act. In para 37 the Court noted that in case of monthly tenancies such tenancy would continue even on an order of purchase by the Central Government being made by the Appropriate Authority concerned u/s 269UD(1). But such tenant will lose the protection given to the tenants under the rent protection laws because such laws are not made applicable to properties owned by the Central Government with the result that their tenancies could be terminated by the Central Government.

8. Our attention, however, is invited to para 43 of the judgment which we shall reproduce and reads as under:

43. We may clarify that as far as completed transactions are concerned, namely, where after the order for compulsory purchase u/s 269UD of the IT Act was made and possession has been taken over, compensation 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 the judgment will invalidate the purchases.

9. Based on this judgment, it is sought to be contended by the respondents that as the proceedings were completed before 17th Nov., 1992 and as the amendment to Section 269UE(1) was also brought into effect from the same date the concluded proceedings cannot be reopened. This is one such case and consequently the petition has to be dismissed.

10. We have considered the said contention. The Supreme Court in the said para has noted that it is in those cases where the order for compulsory purchase u/s 269UD of the IT Act was made and possession has been taken over, the compensation paid to the owner of the property and accepted without protest, those transactions need not be upset. In our opinion this would not apply to the facts of the present case. Admittedly the petitioners have been claiming right in the suit flat as tenant pursuant to the proceedings initiated by them in the Small Causes Court. The petitioners had a decree in their favour on 4th March, 1991. The said para does not deal with the cases of such persons who had encumbrances on the property and who are also interested persons. The reading of the said para would indicate that it is only those cases where the owner accepted the compensation without protest and possession has been taken that the judgment in Gautam's case would not apply. In the instant case the judgment in Gautam would squarely apply. Once that be the case, the notice served on the petitioners u/s 269UE of the IT Act, is clearly without jurisdiction and consequently the petition will have to be allowed. We may, however, make it clear that this would not prevent the respondents considering the observations in Gautam's case to take steps which in law they are entitled to other than the coercive process u/s 269UE for recovery of possession and any other relief.

11. In the light of the above rule made absolute in terms of prayer Clause (b) subject to what we have set out earlier. In the circumstances of the case there shall be no order as to costs.