

(1994) 12 BOM CK 0046
In the Bombay High Court
Case No : Writ Petition No. 692 of 1993

Mrs. Nirmal Laxminarayan Grover

APPELLANT

Vs

Appropriate Authority and Others

RESPONDENT

Date of Decision : 02-12-1994

Acts Referred:

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

Citation : (1997) 223 ITR 572 : (1995) 2 MhLj 775

Hon'ble Judges : H.W. Dhabe, J;G.D. Patil, J

Bench : Division Bench

Advocate : Shashank V. Manohar, for the Appellant; P.N. Chandurkar and V.C. Daga, for the Respondent

Judgement

H.W. Dhabe, J.—The petitioner who has agreed to purchase the suit property from respondent No. 3 as per the agreement of sale dt. 24th Feb., 1992, has challenged in this writ petition the order passed by the Appropriate Authority under s. 269UD(1) of the IT Act, 1961 (for short "the Act"), by which the Appropriate Authority has directed compulsory purchase of the suit property belonging to respondent No. 3 for an apparent consideration of Rs. 13,25,343.

2. The facts are that the petitioner is a permanent resident of Nagpur whereas respondent No. 3 is a resident of Bombay. Respondent No. 3 is acting as managing trustee of the trust of Ashish and Salil Pradhan (Hit) Private Trust. It is in the capacity of a managing trustee of the above trust and also as a constituted attorney of the beneficiaries of the said trust that she entered into an agreement of sale with the petitioner on 24th Feb., 1992, in respect of sale of land belonging to the said trust admeasuring 6,000 sq. ft. equivalent to above 557.17 sq. mts. from and out of a total area of 2,508.39 sq. metres of Survey No. 210/7 (part) in Civil Lines, Nagpur, for a consideration of Rs. 13,50,000. At the time of entering into the above agreement with the petitioner on 24th Feb., 1992, the petitioner paid an amount of Rs. 1,00,000 by way of earnest money to respondent No. 3 and the balance consideration of Rs. 12,50,000 was to be paid by the petitioner

at the time of the execution and registration of the sale deed which as per the agreement of sale dt. 24th Feb., 1992, was to be executed within three months thereof, i. e., up to 24th May, 1992. Parties were under obligation to obtain, inter alia, the no objection certificate under s. 269UL(3) of the Act without which the sale deed could not be registered in view of the provisions of s. 269UL(1) of the Act.

3. It is material to see that the Finance Act, 1986, has introduced Chapter XX-C in the Act providing for compulsory purchase by the Central Government of immovable properties in certain cases of transfer. The main object in introducing Chapter XX-C in the Act is to check proliferation of black money in real estate transactions and to enforce the declaration of the true market value of the immovable property in question which is the subject-matter of transfer between the parties so as to prevent evasion of taxes.

A brief examination of the scheme of Chapter XX-C of the Act shows that the expression "agreement for transfer", "apparent consideration", "Appropriate Authority", "immovable property" and "transfer" are defined in cls. (a), (b), (c), (d) and (f), respectively, of s. 269UA of the said Chapter. Sec. 269UB empowers the Central Government to constitute an "Appropriate Authority" by an order published in an Official Gazette. Sec. 269UC(1) of the Act provides that notwithstanding anything contained in the Transfer of Property Act, 1882, or in any other law for the time being in force, no transfer of any immovable property of such value exceeding five lakh rupees as may be prescribed shall be effected, except after an agreement for transfer is entered into between the person who intends to transfer the immovable property in question, i. e., the transferor, and the person to whom it is proposed to be transferred, i. e., the transferee, in accordance with the provisions of s. 269UC(2) of the Act at least four months before the intended date of transfer. Rule 48K of the IT Rules, 1962, provides that the value of any immovable property for the purpose of s. 269UC(1) referred to above shall be the apparent consideration of the immovable property in question exceeding Rs. 10,00,000 which in other words means that the Appropriate Authority under the Act cannot direct compulsory purchase of the immovable property whose value is below the said apparent consideration.

Sub-s. (2) of the said s. 269UC then casts an obligation upon the parties to reduce the agreement of sale in the form of statement, which form is prescribed as Form No. 37-I under r. 48L of the IT Rules, 1962. The parties to the agreement of sale are thereafter required to submit the statement in the aforesaid Form No. 37-I to the Appropriate Authority within the prescribed time as provided in s. 269UC(3) of the Act r/w r. 48L(2) of the IT Rules, 1962.

Sub-s. (1) of s. 269UD of the Act, which is material for our purpose, then provides that after the receipt of the statement from the parties to the agreement of sale in the prescribed Form No. 37-I as required by s. 269UC(3) of the Act r/w r. 48L of the IT Rules, 1962, the Appropriate Authority may make an order for the purpose by the Central Government of such immovable property at

an amount equal to the amount of its apparent consideration notwithstanding anything contained in any other law or any instrument or any agreement for the time being in force for the reasons to be recorded in writing. However, as per the proviso to the said sub-s. (1) of s. 269UD of the Act, no such order is to be made in respect of any immovable property after the expiry of a period of two months from the end of the month in which the statement referred to in s. 269UC in respect of such property is received by the Appropriate Authority.

The above provisions of sub-s. (1) of s. 269UD of the Act were as they stood prior to its amendment by the Finance Act, 1993, which introduced certain amendments in s. 269UD of the Act. By the said Finance Act, 1993, the words "subject to the provisions of sub-ss. (1A) and (1B)", were inserted at the commencement of sub-s. (1) of s. 269UD of the Act and the words, "for reasons to be recorded in writing" were deleted from the said sub-s. (1) of s. 269UD of the Act w.e.f. 17th Nov., 1992. Sub-s. (1A) inserted in s. 269UD of the Act by the Finance Act, 1993, w.e.f. 17th Nov., 1992, requires the Appropriate Authority to give a reasonable opportunity of being heard to the transferor, the person in occupation of the immovable property if the transferor is not in occupation of the same, the transferee and to every other person who may be interested in the property. Sub-s. (1B), also inserted in s. 269UD of the Act by the Finance Act, 1993, with effect from the above date, requires the Appropriate Authority to specify the grounds on which the order of compulsory purchase is passed by it under sub-s. (1) of s. 269UD of the Act.

Further, as per the second proviso introduced by the said Finance Act, 1993, in sub-s. (1) of s. 269UD of the Act, the period of two months within which the order of compulsory purchase is to be made by the Appropriate Authority is enlarged and is made three months w.e.f. 1st June, 1993.

As regards the question of computation of the period of limitation referred to in the first and the second provisos to sub-s. (1) of s. 269UD of the Act, the third proviso inserted by the Finance Act, 1993, provides that it should be computed from the date of receipt of the statement in the prescribed Form No. 37-I from the parties to the agreement of sale by the appropriate authority. The last proviso also inserted by the Finance Act, 1993, in sub-s. (1) of s. 269UD of the Act then provides that if there is any stay granted by any Court against the passing of an order of compulsory purchase by the Appropriate Authority, the period of three months prescribed by the second proviso should be computed with reference to the date of the vacation of the said stay order.

The above amendments in s. 269UD of the Act are introduced in view of the judgment of the Supreme Court in the case of C.B. Gautam Vs. Union of India and Others, , which report also contains the clarificatory order of the Supreme Court passed on 27th Nov., 1992, regarding the said judgment.

Sec. 269UE(1) of the Act provides for vesting of the immovable property in the Central Government in terms of its agreement of transfer referred to in s.

269UC(1) of the Act. Such property vests in the Central Government on the date on which an order for its compulsory purchase is made by the Appropriate Authority under s. 269UD(1) of the Act. Such vesting is subject to the encumbrance of a bona fide holder of such encumbrance upon the property in question or its bona fide lessee as provided in the proviso to sub-s. (2) of s. 269UE of the Act. However, if the encumbrance upon such property in question or the lease-hold interest upon the same is specified in the agreement of transfer with a view to defeat the provisions of the Chapter XX-C of the Act, the Appropriate Authority can declare such encumbrance or leasehold interest thereon as void in which case the property in question vests in the Central Government free from such encumbrance or leasehold interest.

Sub-s. (1) of s. 269UF of the Act provides for payment of consideration for such compulsory purchase by the Central Government to the owner of the property in the amount equal to the amount of the apparent consideration determined under s. 269UA(b) of the Act r/w r. 48-I of the IT Rules, 1962. It may be seen that as per the definition of the expression "apparent consideration", the consideration payable by the Central Government to the owner of the property in question whose compulsory purchase is directed by the Appropriate Authority is the consideration which is specified in the agreement of sale between the parties and which is discounted at the prescribed rate of interest for calculating the value as on the date of agreement of transfer for the whole or part of the consideration to be paid to the transferee after the date of the agreement of transfer. Rule 48-I of the IT Rules, 1962, prescribes the rate of interest of 8 per cent per annum for calculating the discounted value of the consideration agreed to between the parties under the agreement of sale.

Sub-s. (1) of s. 269UG of the Act requires the Central Government to pay to the person or persons entitled to the amount of consideration payable in accordance with s. 269UF of the Act within one month from the end of the month in which the property in question vests in the Central Government subject to set off of any liability or dues payable by such person or persons under the Act, the WT Act, the GT Act, the ED Act, or the Companies (Profits) Surtax Act. In case of dispute about the apportionment of the consideration amongst the persons claiming entitlement to the same, the Central Government is required under s. 269UG(2) of the Act to deposit the said consideration with the Appropriate Authority within the period specified in s. 269UC of the Act. In case of failure to pay or deposit the consideration as the case may be within the period stipulated in s. 269UG(1) of the Act, the property in question which has vested in the Central Government reverts in the transferor after the expiry of the aforesaid period as provided in s. 269UH(1) of the Act.

Sub-s. (1) of s. 269UL of the Act restrains the registering officer under the Registration Act from registering any document purporting to transfer any immovable property for consideration exceeding Rs. 10,00,000 unless the parties to the agreement of transfer furnish to him a no objection certificate from the

Appropriate Authority for transfer of such immovable property. As provided in sub-s. (3) of s. 269UL of the Act, the Appropriate Authority has to grant such no objection certificate for transfer of an immovable property in question if it does not pass an order for its compulsory purchase under s. 269UD(1) of the Act or if the immovable property in question reverts in the transferor and the order of compulsory purchase stands abrogated as envisaged by s. 269UH of the Act.

4. After having thus considered the scheme of Chapter XX-C of the Act, turning to the facts in the instant case, it may be seen that the petitioner and respondent No. 3 filed the statement in Form No. 37-I as required by the provisions of s. 269UC of the Act r/w r. 48L of the IT Rules, 1962, for obtaining a no objection certificate from the Appropriate Authority to the transfer of the suit property described hereinabove as per the agreement of sale dt. 24th Feb., 1992, in favour of the petitioner, i. e., the transferee, regarding which there was an agreement of transfer on 24th Feb., 1992, referred to hereinbefore. However, after receipt of the said statement in the prescribed Form No. 37-I, from the parties, without giving any show-cause notice or any opportunity of being heard to the petitioner and respondent No. 3, the Appropriate Authority, all of a sudden passed an order on 24th April, 1992, directing compulsory purchase of the suit property for apparent consideration of Rs. 13,25,343. The petitioner, therefore, challenged the said order in this Court in Writ Petition No. 1096 of 1992.

This Court by its judgment rendered on 11th Dec., 1992, quashed the said order dt. 24th April, 1992, passed by the Appropriate Authority for non-compliance with the principles of natural justice and remanded the matter back to it for passing a fresh order in the light of the judgment of the Supreme Court in the case of C. B. Gautam (*supra*). It may be seen that in order to save s. 269UD(1) of the Act from being challenged on the ground that it is invalid being arbitrary, discriminatory and violative of art. 13 of the Constitution, the Supreme Court has in the judgment in C. B. Gautam's case (*supra*), read in sub-s. (1) of s. 269UD of the Act the requirements of the principles of natural justice to be observed by the Appropriate Authority before passing an order of compulsory purchase of the property in question thereunder. The Appropriate Authority was thus required to give a show-cause notice to the transferor and the transferee and to give them an opportunity of being heard before the order of compulsory purchase was passed by it under s. 269UD(1) of the Act.

After remand of the proceedings to the appropriate authority, it gave show-cause notices dt. 28th Jan., 1993, to the petitioner and respondent No. 3 stating therein that the apparent consideration shown in the agreement of sale of the suit land was Rs. 13,50,000 and that in view of the judgment of this Court dt. 11th Dec., 1992, in WP No. 1096 of 1992 referred to above, they would be given an opportunity of being heard. They were thus asked to show cause as to why the suit property should not be purchased under Chapter XX-C of the Act. The petitioner and respondent No. 3 were required to submit their replies to the show-cause notice by 15th Feb., 1993, in the notice of the Appropriate Authority

at Ahmedabad and they were asked to attend the said office on 16th Feb., 1993, for personal hearing, if they so desired.

Accordingly, the petitioner submitted her reply on 13th Feb., 1993, contending that there was no under valuation in the sale transaction in question and that the suit property was being purchased at its market value. It was also pointed out that the consideration for the suit property agreed to between the parties was fair and reasonable and that in fact the rate of valuation fixed as per the land rates maintained by the Nagpur Corporation and by the stamp authorities for levy of stamp duty and the registration charges upon documents relating to transfer of title was much lower than the market rate calculated for the suit property on the basis of the consideration agreed to between the parties. It was pointed out that for the area in question the said land rate fixed was Rs. 1,500 per sq. mt., i. e., Rs. 145 per sq. ft., whereas the land rate for the suit transaction worked out to Rs. 225 per sq. ft.

Further, it was pointed out by the petitioner in her reply to the show-cause notice that there was encroachment upon some portion of the suit land regarding which a dispute was going on and for which reason its market value would be lower than its real market value. The plea was also raised that since there were two co-owners, i. e., the beneficiaries, the share of each would be less than Rs. 10,00,000 and as such the provisions of compulsory purchase in Chapter XX-C of the Act would not be attracted to the instant sale transaction. Along with the reply to the show-cause notice the petitioner had also submitted documentary evidence in the shape of a valuation report and certain sale deeds to show that the suit transaction was for fair market value. It was also pointed out in her reply to the show-cause notice by the petitioner that before issuing the show-cause notice, the Appropriate Authority must come to the tentative or prima facie view that the property was undervalued and that it should incorporate in its show-cause notice the material or the reasons on the basis of which it comes to such a tentative or prima facie view in the absence of which the noticee does not have an opportunity to meet its case. The petitioner, therefore, demanded the reasons from the Appropriate Authority for its prima facie view that the suit property was undervalued.

After receipt of the above reply of the petitioner to the show-cause notice issued by the Appropriate Authority and after hearing the learned advocate for the petitioner who appeared before it, the learned Appropriate Authority by its order dt. 23rd Feb., 1993, passed an order for compulsory purchase of the suit land for a net consideration of Rs. 13,25,343 payable to respondent No. 3 by the Central Government including a sum of Rs. 44,178 ordered to be deposited in the Appropriate Authority's account as per its finding in para 7 of its order relating to the question of vacant possession regarding encroachment of about 200 sq. ft. upon the suit land by the owner of the adjoining plot. The reasons for compulsory acquisition were recorded by the Appropriate Authority separately on the same date, i. e., 23rd Feb., 1993.

A perusal of the reasons recorded by the Appropriate Authority would show that the suit land was situated in the Civil Lines area which was purely a residential locality of the people belonging to the upper middle class. The permissible FSI for the suit land was one and its permissible user was for residential purpose. After considering the question of its location, the Appropriate Authority determined the discounted value of the apparent consideration of Rs. 13,50,000 shown in the agreement of sale dt. 24th May, 1992, in accordance with the provisions of s. 269UA(b) r/w r. 48-I of the IT Rules, 1962, which provides for a rate of interest of 8 per cent per annum for determining the discounted value of the apparent consideration given in the agreement of sale. It has calculated the discounted value of the consideration for the sale transaction at Rs. 13,25,343 as shown in para 4 of the reasons. The rate, therefore, worked out was Rs. 221 per sq. ft.

The Appropriate Authority then worked out the land rate of land in the same locality of Civil Lines which was treated as a comparable sale instance by it. Its particulars are given by it in para 5 of the reasons. It appears from the particulars that the agreement of sale in the sale instance was dt. 26th Dec., 1990, and the area of the land agreed to be sold was 4,839.5 sq. ft. out of plot No. 2 in Shri Vallabh Co-operative Housing Society, Civil Lines, Nagpur. Its apparent consideration was Rs. 15,00,000 and the discounted rate per sq. ft. worked out was Rs. 304.20 with permissible FSI of 1. Since the property in the sale instance was sold one year two months earlier than the suit property, considering the 12 per cent increase in the land rate per annum, the rate of the land in the sale instance was worked out to Rs. 348 per sq. ft. As the difference was thus more than 15 per cent in the light of the judgment of the Supreme Court in the case of C. B. Gautam (supra), the Appropriate Authority was of the view that the suit land was significantly undervalued and there was thus a case for its pre-emptive purchase.

As regards the case of the petitioner based upon the land the land rate maintained by the Nagpur Corporation and the stamp authorities, the Appropriate Authority rejected the said case on the ground that its main object was other than determining the market rate. As regards the two sale instances dt. 23rd Nov., 1989, and 23rd Nov., 1991, pointed out by the petitioner as comparable sale instances, the Appropriate Authority observed that the time gap between the instant sale transaction and the sale transaction in the first sale instance dt. 23rd Nov., 1989, was considerable and as regards the second sale instance dt. 23rd Nov., 1991, it observed that since the property therein was purchased by the tenant in occupation, he would naturally pay the price which is less than the market price in view of his tenancy rights. The Appropriate Authority thus rejected both the sale instances relied upon before it by the petitioner. The Appropriate Authority thus passed an order for compulsory purchase of the suit land for a net consideration of Rs. 13,25,343 payable by the Central Government to respondent No. 3 including the sum of Rs. 44,178 which was directed to be deposited in the account of the Appropriate Authority in view of the dispute about encroachment upon the said land by the owner of the

adjoining land in the light of the findings of the Appropriate Authority in para 7 of its order dt. 23rd Feb., 1993. Feeling aggrieved by the order dt. 23rd Feb., 1993, passed by the Appropriate Authority, the petitioner has preferred the instant writ petition in this Court.

5. Originally there were only two respondents to this writ petition viz., the Appropriate Authority and the Union of India, who filed the return opposing the writ petition. However, by the order dt. 11th March, 1993, the transferor of the suit land was added as a party respondent, i. e., respondent No. 3 in the instant writ petition. In her written submissions respondent No. 3 has stated that she is not concerned with the challenge of the petitioner to the order of compulsory purchase passed by the Appropriate Authority regarding her suit property and that she accepts the said order of compulsory purchase passed under Chapter XX-C of the Act. In fact as pointed out by the Appropriate Authority in the reasons given by it on 23rd Feb., 1993, respondent No. 3 had tentatively accepted the original purchase order dt. 24th April, 1992, passed under s. 269UD(1) of the Act as per her letter dt. 14th May, 1992.

Respondent No. 3 has then stated in her written submissions that the petitioner's challenge to the order passed by the Appropriate Authority should not be allowed to cause prejudice to her interest particularly by reason of the delay involved in the Court proceedings.

She has, therefore, claimed in her written submissions that if the impugned order of compulsory purchase passed by the Appropriate Authority is affirmed, respondents Nos. 1 and 2 should be directed to pay interest to her at 20 per cent per annum and in case the said impugned order of the Appropriate Authority is set aside, the petitioner should be directed to pay her the interest at the rate of 24 per cent, per annum particularly when, according to her, there is an interim stay of the impugned order of the Appropriate Authority granted by us pending decision in the instant writ petition as a result of which she cannot get the balance of the consideration either from the respondents or the petitioners.

6. Learned counsel for the petitioner has raised the following contentions before us :

(i) That since there are two co-owners of the suit land, viz., the two beneficiaries the share of each is below Rs. 10,00,000, and, therefore, the provisions of compulsory purchase in Chapter XX-C of the Act are not attracted.

(ii) That no opportunity was given to the petitioner to meet the case of the Appropriate Authority for pre-emptive purchase of the suit property since the material or the information relating to the sole sale instance relied upon by it for its view that the suit property was grossly undervalued was not disclosed to her in the show-cause notice given to her. The impugned order of the Appropriate Authority is thus vitiated for non-compliance with the basic principles of natural justice.

(iii) That the sale instance relied upon by the Appropriate Authority was not a comparable sale instance on the basis of which it could be held that there was under valuation of the suit property and that the consideration of Rs. 13,50,000 agreed to between the parties in the instant case did not represent the true and fair market value of the suit land.

(iv) The Appropriate Authority did not properly consider the material placed by the petitioner before it to show that the consideration agreed to between the parties represented the true and fair market value of the suit land, viz., the two sale instances from the Civil Lines area itself and the rates of valuation fixed and maintained by the Nagpur Corporation and the Registering Officers of the Government.

7. We shall first consider the contention raised on behalf of the petitioner on the merits, viz., whether the sale instance relied upon by the Appropriate Authority would show that the suit land is grossly undervalued and whether it is a comparable sale instance or not. As regards this question, the petitioner has urged in para 9-A of the writ petition introduced by the amendment that the land admeasuring 4,839.5 sq. ft. out of the plot No. 2 in Shri Vallabh Co-operative Housing Society, Civil Lines, Nagpur, was purchased by Shri Satish Kale, who was already holding the adjoining plot No. 3 admeasuring 936.97 sq. mt. By reason of the purchase of the above area from plot No. 2, the total area of plot Nos. 2 and 3 owned by Shri Satish Kale became 1,385.57 sq. mt. because of which the FSI of his land increased to 1.25. In support of the above fact, the petitioner has placed on record the letter of the Assistant Engineer, Building Department, Nagpur Municipal Corporation, Nagpur, dt. 17th March, 1993, addressed to Shri Satish Kale, Civil Lines, Nagpur, which shows that according to bye-law No. N. 1.1.3 of the building bye-laws and D. C. Rules for Nagpur City, the FSI is 1.25 if the plot area exceeds 1,000 sq. mt. The above facts in para 9A of the petition are not disputed by respondents Nos. 1 and 2 in their return.

The submission on behalf of the petitioner on the basis of the above facts is that since Shri Satish Kale was the owner of the adjoining plot and since he was benefited by the increase in FSI he paid higher value for purchase of the area admeasuring 4,839.5 sq. ft. of plot No. 2. The said purchase by him, therefore, according to the petitioner does not reflect the true and fair market value of the said land. The above submission made on behalf of the petitioners is well founded. In assessing the value of the land, its special value to an owner of an adjoining property to whom it may have some very special advantage is a factor which has to be taken into consideration, because such a buyer is likely to pay a higher price for the said land than a prudent buyer would otherwise pay. The above factor is, therefore, recognised as a plus factor in favour of the acquired land under the Land Acquisition Act in determining its market value. (see para 13 of the judgment of the Supreme Court in the case of *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, . In the instant case as rightly urged on behalf of the petitioner there is a special advantage to the owner

of the land in the sale instance by purchase of the adjoining land in plot No. 2 because it increases its FSI to 1.25. The transaction in the sale instance in which the buyer has paid a higher value for the land purchased by him, because of the above special advantage to him cannot, therefore, furnish a good guide for determining the market value of the suit land.

Moreover, there is no material to show that in a period of one year and two months, the market value of the land in the Civil Lines area would appreciate and that too to the extent of 12 per cent per annum. Even the Appropriate Authority has not followed uniformity in giving such appreciation in land rates in the Civil Lines area itself as in other cases in this group of writ petitions, i. e., Writ Petition No. 715 of 1993, Writ Petition No. 1260 of 1993 and 1264 of 1993 with 2088 of 1993, the appreciation given by it without there being any material on record is 10 per cent per annum. In fact, in the order passed by the Appropriate Authority, which is the subject-matter of challenge in Writ Petition No. 1264 of 1993 and the connected Writ Petition No. 2088 of 1993 decided today, the same sale instance which is relied upon by it in the instant case is taken as a comparable sale instance for the suit land in the said case which is also situated in Civil Lines, Nagpur. The rate of appreciation, however, given to the same sale instance is at the rate of 10 per cent per annum and not 12 per cent.

8. It may be seen that r. 48-I of the IT Rules, 1962, has prescribed the rate of interest of eight per cent per annum for calculating the discounted value of the consideration agreed to between the parties under their agreement of sale. In other words, it would mean that the appreciation in the market rate of the land from the date of the agreement of sale considered under the said Rules is eight per cent per annum. If without any material on record to show to what extent the appreciation in the value of the land is during the time gap between the transaction in the sale instance and the transaction of the suit land, if a mere hypothetical appreciation is to be taken, there appears to be no justification for not taking the same rate of appreciation which is taken under r. 48-I for calculating the discounted value of the consideration as on the date of the agreement of sale. It is not thus safe to rely upon the above sale instance for determining the question whether the valuation of the suit land is grossly understated. At any rate when such a hypothetical rate of appreciation is taken, some allowance has to be made while applying the test of difference of 15 per cent or more for probable errors while determining the question whether the suit land is grossly undervalued or not.

It has to be borne in mind that even as per the circular styled as Instruction No. 1/A 88 of the CBDT referred to in C. B. Gautam's case (*supra*), and the affidavit filed on behalf of the said Board in the said case, the main objective of Chapter XX-C of the Act is to check proliferation of black money in real estate transactions and to enforce declaration of the true market value of the immovable property in question which is the subject-matter of transfer between the parties so as to prevent evasion of taxes. The said instructions further show

that the provisions of Chapter XX-C of the Act are not intended to harass bona fide and honest purchasers or sellers of immovable properties. Para 3 of the said instructions, in particular, shows that it is only for good reasons that the right of pre-emptive purchase has to be exercised by the Department. The said instructions also provide that the rule of difference of 15 per cent and above between the sale transaction in question and the true or fair market price of the immovable property in question as determined by the Department is not a rigid rule and a reasonable margin for probable errors in estimation needs to be kept in view.

If the above instructions of the CBDT referred to in para 14 of the judgment of the Supreme Court in C. B. Gautam's case (*supra*), are kept in view, it is difficult to hold that the Department has made out good reason for compulsory purchase of the suit property and to show that the sale transaction in question is not a bona fide transaction between the parties.

9. It is also difficult to appreciate how the Appropriate Authority while considering the question of gross under valuation works out the land rate by discounting the land rate agreed to between the parties, particularly where the rate of the land in the sale instance is not determined on the basis of its discounted value. So far as the payment of consideration by the Central Government for its compulsory purchase of immovable property is concerned, the Central Government may pay the apparent consideration as determined by calculating the discounted value of the consideration agreed to between the parties, i. e., in accordance with s. 269UA(b) of the Act r/w r. 48-I of the IT Rules, 1962, as it is statutory. But then it has to be seen that as per the agreement between the transferor and the transferee, even though the balance of consideration is to be paid at a future date, the consideration agreed to between them is on the date of the agreement of sale, which in other words represents the market value as determined as on that date, i. e., the date of agreement of sale. It is further difficult to see how such a market rate can appreciate within a period of three months after which the balance of consideration has to be paid.

10. Turning next to the sale instances cited by the petitioner, i. e., by her valuer in his valuation report enclosed with her reply to the show-cause notice show that the land rate of the suit land represents its true and fair market value, it is necessary to see that although the Appropriate Authority has rejected the sale instance dt. 23rd Nov., 1989, of the Civil Lines area itself relied upon by the petitioner on the ground that there is considerable time gap, the sale instance dt. 26th Dec., 1990, relied upon by it is also much prior to the sale transaction in question in the instant case which is dt. 24th Feb., 1992. Although, as we have held above, there is no material to show how the appreciation at the rate of 12 per cent per annum is given to the transaction in the sale instance for the time gap between it and the sale transaction of the suit land, there is no reason why similar or at any rate some appropriate increases should not have been given by

the Appropriate Authority to the land rate in the transaction in the above sale instance dt. 23rd Nov., 1989, for its comparison with the suit transaction as it had done in the case of the sale instance relied upon by it. The finding of the Appropriate Authority that there is a considerable time gap between the aforesaid sale instance dt. 23rd Nov., 1989, and the suit transaction and, therefore, the said sale transaction dt. 23rd Nov., 1989, cannot be taken as a comparable sale transaction is clearly arbitrary and perverse. Since the sale instance dt. 23rd Nov., 1989, was from the Civil Lines area of Nagpur itself, the Appropriate Authority should have considered the same by giving appropriate appreciation for value of the land for the time gap between the transaction in the said sale instance dt. 23rd Nov., 1989, and the suit transaction for comparing their land rates.

As regards the aforesaid sale instance in which the sale deed is dt. 23rd Nov., 1989, it is material to see that the valuer in his valuation report has observed that the plot therein has a prime location, i. e., it is on the main road whereas the suit plot is in an inner lane. The plot rate, according to him, is Rs. 175 per sq. ft. For the time factor, he added 25 per cent (i. e., more than 12 per cent increase granted by the Appropriate Authority to sale instance relied upon by it) to the above value of Rs. 175 per sq. ft. of the plot and the rate thus worked out by him for the land in the said sale instance dt. 23rd Nov., 1989, is Rs. 219 per sq. ft. on the date of the agreement of sale of the suit plot, i. e. 24th Jan., 1992. In fact if 12 per cent increase per year which is made applicable by the Appropriate Authority to the sale instance relied upon by it is given, the rate of the above sale instance relied upon by the petitioner would work out to a rate lower than the rate of Rs. 219 per sq. ft. It may then be seen that if the allowance is made for the prime location of the land in the said sale instance dt. 23rd Nov., 1989, the market rate for the suit land should be still less than the rate for the land in the said sale instance dt. 23rd Nov., 1989. However, the discounted rate which is worked out by the Appropriate Authority for the suit land is Rs. 221 per sq. ft. which is more than the above rate of the land in the sale instance dt. 23rd Nov., 1989. It is, therefore, difficult to see how the land rate of the suit land is grossly understated.

11. As regards the second sale instance upon which reliance is placed in the valuation report of the valuer submitted by the petitioner along with her reply to the show-cause notice, the said sale instance is rejected by the Appropriate Authority on the ground that it is a sale to the tenant in occupation. It is true that a tenant in occupation of the land is most likely to pay the price of the land in his occupation, which is lower than its market price. But then in rendering such a finding the Appropriate Authority has acted in an arbitrary manner because in the sale instance relied upon by it, the purchaser of the land was the owner of an adjoining land who was to benefit by the purchase of the said land by getting a higher FSI for the land, in which case, he was most likely to pay a price which was more than the market value of the land purchased by him. The Appropriate Authority should have in all fairness rejected the said transaction as

not being a comparable sale transaction as it has done in regard to the above sale transaction in relation to the tenant in occupation relied upon by the petitioners.

It is, however, pertinent to see that the sale agreement in the second sale instance is dt. 23rd Nov., 1991, which is very proximate in point of time to the suit transaction which is dt. 24th Feb., 1992, i. e., just after about three months. The said sale instance is about the plot in Civil Lines, Nagpur, itself which is close to the suit land. Its area is 7,500 sq. ft. and the consideration for its sale is Rs. 14,00,000. The land rate worked out by the valuer for the above second sale instance is Rs. 186.66 per sq. ft. It is pertinent to see that the valuer has actually given the rate of Rs. 210 per sq. ft. to the suit land on the date of the agreement, i. e., 24th Feb., 1992, i. e., just after three months of the transaction in the above sale instance dt. 23rd Nov., 1991, which should, therefore, normally take care of the lower value offered by the tenant in occupation of the land in the above sale instance. What is material to be seen is that although the valuer has taken into consideration the disadvantageous factor of the tenant in occupation offering a lower rate for the land in the above sale instance dt. 23rd Nov., 1991, which is close to the suit transaction time-wise and vicinity-wise, the Appropriate Authority did not at all take into consideration the advantageous factor of the land purchased by the owner of the adjoining land in the sale instance relied upon by it by giving to the transaction therein, the appropriate discount in comparing its rate with the rate of the suit land.

Even otherwise excluding the aforesaid second sale instance dt. 23rd Nov., 1991, on the ground that the land therein is purchased by the tenant in occupation, the first sale instance dt. 23rd Nov., 1989, cited by the petitioner clearly shows that the rate of the suit land is not grossly understated. It may be seen that in determining the rate of Rs. 210 per sq. ft., the valuer of the petitioner had taken into consideration the above two sale instances referred to by him and the location, size, shape and the permissible FSI (FSI allowed is only one). The valuation report of her valuer submitted by the petitioner to the Appropriate Authority thus deserved consideration. The rate offered by the petitioner for the suit land, viz., Rs. 225 per sq. ft. whose discounted rate is worked by the Appropriate Authority is Rs. 221 per sq. ft. cannot thus be said to be grossly understated.

12. We have pointed out above that the sale instance selected by the Appropriate Authority of the land purchased by Shri Satish Kale cannot reflect its proper market value because he was an adjoining owner who wanted to purchase the adjacent land for his own benefit, i. e., for getting higher FSI of 1.25. He would, therefore, offer a higher price for the said adjoining land in the sale instance relied upon by the Appropriate Authority. This is clear from the first sale instance cited by the petitioner in which the sale of the land is by Mr. A. S. Bobde, Advocate to Tata Iron and Steel Co. which land is situated in Civil Lines itself. The said land has a prime location as it is on the main road. If the said land is sold at

the rate of Rs. 175 per sq. ft., it is difficult to see how in one year's time, i. e., on 26th Dec., 1990, when the sale agreement of the land in the sale instance relied upon by the Appropriate Authority has taken place, the discounted rate would shoot up to Rs. 304.20 per sq. ft. This would thus clearly demonstrate that for his own benefit, i. e., to get more FSI the owner of the adjoining land has offered a higher rate for purchasing the land in the sale instance relied upon by the Appropriate Authority. For this reason also the sale instance relied upon by the Appropriate Authority cannot be said to reflect the true market value of the land therein, i. e., the land purchased by Shri Satish Kale from Shri Vallabh Co-operative Housing Society, Civil Lines, Nagpur.

13. There is another angle to the question of the alleged under valuation of the suit property which should have been looked into properly by the Appropriate Authority. The petitioner who was the purchaser of the suit land was aware of the fact that there was encroachment of the owner of the adjoining plot to the extent of 200 sq. ft. upon the suit land which fact she had brought to the notice of the Appropriate Authority in her reply to the show-cause notice. There was thus a dispute about possession and ownership of the encroached land. Therefore, although respondent No. 3 transferor had agreed to put the petitioner in vacant possession of the suit land, she could not have done so about the encroached land unless her dispute about the same with the owner of the adjoining land was resolved. In view of the above factor, about the encroachment upon the suit land, which would cause delay in giving possession of the said land to the petitioner, if not total loss of the same, if the owner of the adjoining land were to succeed, the consideration agreed to between the parties may not reflect the true market value of the suit land. But then this factor has to be borne in mind while considering the question whether the suit land is grossly undervalued because it would give a good reason why the suit land has not fetched its proper market value, if at all, as held by the Appropriate Authority, its value is understated.

A perusal of the finding of the Appropriate Authority in para 7 of the order shows that it has not considered the question from this angle but has considered it only for the purpose of withholding the payment of the value of the encroached land to respondent No. 3 till the said dispute was resolved and the Central Government through its appropriate department was put in possession of the said land since respondent No. 3 in her agreement of sale dt. 24th Feb., 1992, with the petitioner had agreed to give vacant possession of the suit land free from encumbrances on the date of execution and registration of the sale deed. This is yet another infirmity in the order of compulsory purchase passed by the Appropriate Authority in the instant case.

It is thus necessary to see that the IT Department must make genuine efforts to find proper material or proper sale instances which are comparable time-wise and location-wise with the sale transaction of the property in question under the agreement of sale before proposing its pre-emptive purchase, so that the bona

fide purchasers are not harassed and the bona fide transactions are not hampered as in the instant case where because of the reliance placed by the Appropriate Authority upon the sale instance which does not compare with the suit transaction, the parties to the transaction are required to suffer because of the delay in completion of that transaction caused by the Court proceedings. The Appropriate Authority must keep in mind the instructions issued by the CBDT referred to above in which the object of compulsory purchase of the immovable properties, which is pointed out, is to prevent proliferation of black money in real estate transactions and evasion of taxes by gross under valuation of the immovable property in question. It is, therefore, necessary that recourse to compulsory purchase of the immovable property in question under Chapter XX-C of the Act should be taken only in clear cases of gross under valuation from which the inference must clearly flow that it is done for evasion of taxes.

14. As regards the principles relating to the comparable sale instances, the said principles are well settled by the judgments of the Supreme Court regarding the determination of market value of the acquired land under the Land Acquisition Act which principles can usefully be resorted to in determination of the question of gross under valuation of the market value of the property in question which are the subject-matter of compulsory purchase under Chapter XX-C of the Act. As pointed out hereinbefore, the sale instance relied upon by the Appropriate Authority cannot be said to be a comparable sale instance and, therefore, cannot furnish a good guide for determining the market value of the suit land.

15. However, as regards the contention raised on behalf of the petitioner that the market rate fixed for the area in question at the relevant time in the land rates fixed by the Nagpur Municipal Corporation, Nagpur, as well as by the stamp authority for the purposes of levy of stamp duty on registration of the documents was Rs. 1,500 per sq. metre, i. e., Rs. 145 per sq. ft. and, therefore, the rate of Rs. 225 per sq. ft. agreed to between the parties for purchase of the suit land was more than the market rate for such land, it may be seen that the rates of properties maintained by the above authority or officers for the purpose of checking evasion of stamp duty upon transfer deeds are not pursuant to the provision in any statute, relating even to stamp duty. At any rate it cannot be a basis for determination of the market value for acquisition of or for compulsory purchase of any land where the usual test is of a prudent buyer and a prudent seller determined by the evidence of sale transaction, if available in the vicinity of the land in question whose market rate is to be determined possessing the same or more or less similar advantageous features. This is the view taken by the Supreme Court in the case of *Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others*, . The submission on behalf of the petitioners based upon the rates of properties maintained by the State Government for the purpose of checking evasion of stamp duty on transfer deeds cannot, therefore, be accepted. However, that would not mean that the Department has correctly determined the market value of the suit plot.

16. There is also force in the contention raised on behalf of the petitioner that in the absence of the particulars of the material or the reason(s) being disclosed in the show-cause notice for entertaining a tentative or a prima facie view that the value of the suit land is grossly understated in the agreement of sale between the parties, the transferor and the transferee have no real opportunity to meet the case of the Appropriate Authority or the IT Department concerned in that regard and hence there is non-compliance with the basic principles of natural justice. The show-cause notice issued by the Department for pre-emptive purchase by the Central Government under Chapter XX-C of the Act must disclose how the tentative or prima facie conclusion is arrived at by the Appropriate Authority that the property sought to be compulsorily purchased is significantly undervalued, which means that if any particular sale instance (s) is/are relied upon to show how the property in question is significantly undervalued, it is necessary for the Appropriate Authority to refer to the said details in the show-cause notice so that the transferor and/or the transferee have real and proper opportunity to meet the case of the Department. It is necessary to see that issuing a show-cause notice is not merely an empty formality which is incorporated in s. 269UD(1) of the Act to save it from its invalidity but the opportunity to show cause has to be real and substantial which means that the transferor and the transferee concerned must know as to why the Appropriate Authority is holding that their immovable property under the agreement of sale is significantly undervalued.

When an obligation is cast upon an authority to give a notice to show cause before reaching any final conclusion against the person affected by its action, the purpose and the requirement of such a show-cause notice is two-fold (i) the noticee must get an opportunity to meet the case against him and (ii) he must have an opportunity to set forth his own case to show why an order adverse to him should not be passed. In this regard, de Smith in his *Judicial Review of Administrative Action* (Fourth Edn.) has observed at page 196 as follows :

"Natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed, so that they may be in a position -

- (a) to make representations on their own behalf; or
- (b) to appear at a hearing or inquiry (if one is to be held); and
- (c) effectively to prepare their own case and to answer the case (if any) they have to meet".

It must be then seen that the conclusions of the authority at the stage of giving a show-cause notice are always prima facie or tentative conclusions for if it is not so, its ultimate order would suffer from its bias, i. e., its pre-determined mind. However, because its conclusions at the stage of show-cause notice are only prima facie or tentative conclusions, it would not mean that they are not required to be disclosed in the show-cause notice. The above stand taken by the

respondents in their return is thus wholly misconceived and is untenable. In fact, it betrays the ignorance of the respondents about the basic tenets of the principles of natural justice which we have referred to above as requirements of a proper show-cause notice.

17. As regards the contention on behalf of the respondents that the obligation to disclose the reasons or the relevant material to the transferor and the transferee upon which the Appropriate Authority has based its prima facie view that the property in question is grossly undervalued needs to be dispensed with on the ground that there is restraint of the time frame within which the order of compulsory purchase has to be passed, it may be seen that for the purpose of passing an order of compulsory purchase and even before issuing a show-cause notice, the Appropriate Authority has to make and makes an enquiry and collects material within the time frame to determine whether the property in question is grossly undervalued or not. When it does so and reaches a prima facie view within the time frame upon the above question of gross-under valuation, the time restraint in taking action under s. 269UD cannot be a reason for not disclosing the said material in the show-cause notice which is a must in view of the judgment of the Supreme Court in C. B. Gautam's case (supra).

18. As regards the other reason given by the respondents for dispensing with the requirement of giving reason(s) or material in the show-cause notice on the basis of which a prima facie or tentative conclusion is reached by the Appropriate Authority that the property in question is grossly undervalued, viz., that the enquiry contemplated by the Supreme Court before taking action under s. 269UD(1) of the Act is summary or a limited enquiry, it may be seen that when the principles of natural justice are engrafted upon s. 269UD(1) of the Act, its basic requirement, as hereinbefore referred to, is that the transferor and the transferee must have a fair and proper opportunity to meet the case of the Department about the under valuation of their property in question and to have also a fair and proper opportunity to put forth their case to show how the consideration agreed to between them represents the fair market value of the property in question or if not so, to put forth reasons therefor. The enquiry envisaged by s. 269UD(1) of the Act is summary in nature in the sense that no elaborate procedure of enquiry, i. e., leading elaborate evidence, etc., is contemplated by it. However, surely it cannot mean that because the enquiry is summary in nature its very basic requirement, viz., the observance of the minimal principles of natural justice referred to above is dispensed with. Otherwise, such an enquiry would become an empty formality and would not be meaningful and effective.

19. It may be seen that as pointed out hereinbefore in regard to the reasons of time restraint even in a summary or limited inquiry, the Appropriate Authority or the concerned IT Department has to make and in fact makes an enquiry and collects material on the basis of which it comes to a tentative conclusion on the question whether the property in question is grossly undervalued or not. If such

an enquiry is essential even in a summary or limited enquiry, there is no reason why the material collected through such an enquiry should not be disclosed to the transferor and the transferee before taking a final view in the matter. Since the material on the basis of which the Appropriate Authority holds the prima facie view that the property in question is grossly undervalued has to be thus in its possession before taking action under s. 269UD(1) of the Act, the question of time-frame and summary nature of enquiry has no relevance to the question of incorporating in the show-cause notice the particulars of the material in the possession of the Appropriate Authority on the basis of which it entertains a view that the property in question is grossly undervalued.

20. The petitioner is, therefore, clearly prejudiced in her defence since the relevant material upon which the prima facie view of the Appropriate Authority that the property in question is undervalued is based is not disclosed in the show-cause notice given to her. The impugned order of the Appropriate Authority passed pursuant to such a defective show-cause notice is thus illegal and is vitiated for not being in consonance with the basic principles of natural justice.

21. In the light of the view taken by us above, it cannot be held that the Appropriate Authority has proved by clear and cogent material on record that the suit land is significantly undervalued, which is a criteria laid down by the Supreme Court for compulsory purchase of immovable property under s. 269UD of the Act in C. B. Gautam's case (supra). The impugned order of the Appropriate Authority cannot thus be sustained and is liable to be set aside. In the above view, which we have taken, it is not necessary for us to decide the other contention raised on behalf of the petitioner, viz., whether the provisions of compulsory purchase in Chapter XX-C of the Act are not attracted in the facts of the instant case since the share of each of the two beneficiaries, i. e., transferors is below Rs. 10,00,000 which requirement for compulsory purchase under the said Chapter is laid down in r. 48K of the IT Rules, 1962.

22. Learned counsel for respondents Nos. 1 and 2 has urged before us that, if the show-cause notice given to the parties is defective, the proceedings should be remanded to the Appropriate Authority for a fresh enquiry and decision according to law after a proper show-cause notice is given to the parties containing the reasons or the material on the basis of which the Appropriate Authority is of the view that the property in question is grossly undervalued. We cannot accept the above submission made on behalf of the respondents because judicial notice can be taken of the fact that by passage of time prices of land appreciate and it would be unjust to the vendor to peg him down to a price to which he has agreed at the time of the agreement of sale dt. 3rd June, 1992. That is also the reason why s. 269UD(1) of the Act requires the Appropriate Authority to pass an order within two months (after amendment three months) from the end of the month, in which the statement of particulars are submitted by the parties concerned in the prescribed Form No. 37-I as required under s. 269UC of the Act r/w r. 48L of the IT Rules, 1962. Moreover, on the merits, we

have shown how the land rate of Rs. 225 per sq. ft. (or its discounted rate of Rs. 221 per sq. ft.) for the suit land is not grossly understated in the sense that its fair market rate would be more by 15 per cent or above as compared to the said land rate. The above submission made on behalf of the respondents cannot thus be accepted.

23. The next question to be considered is whether respondent No. 3, i. e., the transferor, is entitled to interest as claimed by her. The case pleaded for interest by respondent No. 3 is that she was not interested in the question whether the petitioner or the Appropriate Authority would purchase her suit land for the consideration agreed to by her in her agreement of sale dt. 24th Feb., 1992, and, therefore, when the order for compulsory purchase was issued on 24th April, 1992, by the Appropriate Authority originally, i. e., before it was set aside and the proceedings were remanded to it, respondent No. 3 had immediately written a letter to it on 14th May, 1992, that she had no objection to the compulsory purchase of her suit land by the Central Government. What is, therefore, submitted in her written submissions is that in view of the interim orders passed by this Court in the earlier writ petition and the instant writ petition, there is delay caused in the payment of the balance of the consideration to her although she had no objection whether the suit property was purchased either by the petitioner or respondents Nos. 1 and 2. According to her, in view of the interim orders, she is also prevented from selling the suit property to third parties.

The submission thus is that she should be entitled to get suitable interest upon the same as prayed for by her because of pecuniary loss caused to her due to delay in payment of the balance consideration to her. It is also submitted on her behalf that judicial notice should be taken of the fact that the prices of the immovable properties are appreciating continuously and if the suit land is sold today, its market value would be much more than what was agreed to between the parties in the agreement of sale entered into as far back as 24th Feb., 1992, and as such respondent No. 2 would suffer a great pecuniary loss to her.

In support of the above submission, learned counsel for respondent No. 3 has relied upon the judgment of the Supreme Court in the case of *Mrs. Rajalakshmi Narayanan Vs. Mrs. Margret Kathleen Gandhi and others*, . The judgment of the Supreme Court no doubt supports the above contention raised on behalf of respondent No. 3. The Supreme Court has in similar circumstances directed that on equitable considerations, if the transferee were to succeed in his writ petition and the order of compulsory purchase passed by the Appropriate Authority were to be set aside, he should pay interest to the transferor at the rate of 20 per cent per annum from the date of the interim order till the date the balance of consideration agreed to is paid to him or if the order of the Appropriate Authority were to be affirmed, the Central Government should pay him interest at the rate of 15 per cent per annum from the said date of the interim order till the apparent consideration is paid to him by the Central Government. The Supreme Court has been observed by way of clarification that the question whether the interest

should be paid to the owner of an immovable property who has entered into an agreement to sell the same which cannot be completed by reason of an order of purchase under s. 269UD of the Act, and at what rate, will have to be decided in the facts and circumstances of each case. It has further observed that by way of a general principle, where a seller has raised no objection or obstruction either to purchase of his property by an order under s. 269UD of the Act or to the completion of sale pursuant to the agreement entered into by him in that regard, but is unable to get the purchase price by reason of the said order and the stay order or orders passed by a Court, interest at an appropriate rate can, if equity so requires, be paid to him.

24. Learned counsel appearing for the petitioner has, however, urged before us that delay is caused in view of the illegal order passed by the Appropriate Authority which she was required to challenge in this Court. Even though the order of compulsory purchase passed by the Appropriate Authority may be illegal, respondent No. 3 is not responsible for the same. In view of the interim order obtained by the petitioner on 21st March, 1993, the suit property would not vest in the Central Government. The Central Government has, much less, taken possession of the same. There is thus no question of any privity of any kind between the Central Government and respondent No. 3 which can be established only when the order of the Appropriate Authority is ultimately affirmed.

There is, therefore, no question of the Central Government being fastened with the liability to pay any interest to respondent No. 3. If the order of the Appropriate Authority is set aside, the title and possession has thereafter to vest in the petitioner on execution of the sale deed in his favour by respondent No. 3. The petitioner can, therefore, claim only costs against respondents Nos. 1 and 2. If, however, the petitioner has suffered any damages, it may be open to him to take appropriate proceedings, if permissible against the Central Government in which case it would be open to it to raise appropriate defences to the plea for damages against it made by the petitioner particularly when the Appropriate Authority has acted under the provisions of law which permit it to pass orders of compulsory purchase of the immovable properties significantly undervalued so as to evade taxes. The contention raised on behalf of the petitioner that since the order of compulsory purchase is set aside, the interest payable to respondent No. 3 should be charged to respondents Nos. 1 and 2 cannot be accepted.

Following the judgment of the Supreme Court cited *supra*, since it is clear in the facts and circumstances of the instant case also that respondent No. 3 had not raised any objection or obstruction to the compulsory purchase of her suit property by an order passed by the Appropriate Authority under s. 269UD(1) of the Act, or to the completion of sale as per the agreement in that regard with the petitioner, equity requires that she should be compensated by payment of interest to her because in view of the interim orders passed by this Court, respondent No. 3, has not uptill now received the purchase price of her suit land

although there is no fault on her part.

25. As regards the question of rate of interest payable by the petitioner, just as respondent No. 3 is not responsible for the delay in payment to her of the purchase price, the petitioner also cannot be fully blamed because but for the order of the compulsory purchase passed by the Appropriate Authority, she would have paid the balance consideration within the time stipulated under the agreement of sale. Further, it is necessary to see that although respondent No. 3 has claimed interest at the rate of 24 per cent per annum the appreciation of value of the land during this period consumed by Court proceedings would not have been to the extent of 24 per cent per annum. In this regard, it may be seen that the Appropriate Authority has itself proposed appreciation of value for the land in the sale instance in the instant case at the rate of 12 per cent per annum and in other cases in this group even less i. e., 10 per cent per annum. However, the fact remains that had the payment been made to respondent No. 3 in proper time, on its proper investment, she would have earned interest at the rate higher than the above rate. Balancing, therefore, the above equities of the case, we are of the view that respondent No. 3 should be paid interest at the rate of 15 per cent per annum upon the balance consideration of Rs. 12,50,000 till the said payment is made to her by the petitioner.

26. As regards the date from which respondent No. 3 should be paid the interest, it may be seen that according to cl. 4 of the agreement of sale, the sale-deed was to be executed and the balance consideration was to be paid up to 24th May, 1992. Pursuant to the first order of the compulsory purchase issued by the Appropriate Authority on 24th April, 1992, respondent No. 3 had immediately informed it on 14th May, 1992, that she had no objection to the compulsory purchase of the suit land by the Central Government. However, since the order of compulsory purchase dt. 24th April, 1992, was challenged in this Court by the petitioner and was set aside and the proceedings were remanded, after which fresh order for compulsory purchase impugned in this writ petition was passed, in our view, respondent No. 3 should be paid interest at the above rate from 1st June, 1992, i. e., the month next after her communication to the appropriate authority that she had no objection to the compulsory purchase of the suit land.

27. In the result, the instant writ petition is allowed. The impugned order of the Appropriate Authority dt. 23rd Feb., 1993, is set aside. Costs quantified at Rs. 1,000 payable by respondents Nos. 1 and 2 are awarded to the petitioner. The petitioner is, however, directed to pay to respondent No. 3 interest at the rate of 15 per cent per annum upon the balance consideration of Rs. 12,50,000 for purchase of the land for which she has entered into an agreement of sale with her on 24th Feb., 1992. The interest shall be paid from 1st June, 1992, till the date of the payment of the balance consideration to respondent No. 3 by the petitioner.

28. Rule in the above terms with costs as above.