
(2008) 11 BOM CK 0009
In the Bombay High Court

Mrs. Vinaben C. Parikh and Others

APPELLANT

Vs

Appropriate Authority and Others

RESPONDENT

Date of Decision : 24-11-2008

Acts Referred:

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

Citation : (2008) 11 BOM CK 0009

Hon'ble Judges : P.B. Majumdar, J;J.P. Devadhar, J

Bench : Division Bench

Judgement

J.P. Devadhar, J.—In this petition the order passed by the Appropriate Authority on 22-9-1994 u/s 269UD(1) of the Income Tax Act, 1961 (the Act for short) is challenged.

2. Relevant facts are that the petitioners are co-owners of a plot bearing Plot No. 22, C.T.S. No. 18, Hindu Friends Co-operative Housing Society Ltd., Natwar Nagar, 5th Road, Jogeshwari (E), Mumbai (the plot for short). By an agreement dated 21-5-1994 the petitioners gave to the respondent No. 5 the development rights in respect of the plot in question on the terms and conditions more particularly set out therein. According to the Appropriate Authority the area of the plot in question is 860 sq. mtrs. and the F.S.I, available thereon is 9257 sq. ft. As per the agreement, the respondent No. 5 was to give built-up area of 4508 sq. ft. to the petitioners and for the balance F.S.I, of 4749 sq. ft. the respondent No. 5 was to pay to the petitioners Rs. 34,60,000.

3. On an application filed u/s 37-1 of the Act, (sic-Form No. 37-1) the Appropriate Authority issued a show-cause notice on 10-9-1994 for purchase of the property u/s 269UD(1) of the Act. In the said show cause notice, three sale instances were cited on the basis of which it was considered that the transaction in question was undervalued and accordingly it was proposed to purchase the plot in question u/s 269UD(1) of the Act.

4. The petitioner opposed the show-cause notice by filing affidavit-in-reply and

pointed out that the sale instances set out in the show-cause notice are not comparable. The petitioners relied upon the sale instances in the vicinity of the plot in question and contended that there is no undervaluation so as to purchase the plot in question u/s 269UD(1) of the Act. Written submissions were also filed. The Appropriate Authority by the impugned order dated 22-9-1994 purported to purchase the property u/s 269UD(1) of the Act. Challenging the aforesaid order, the present petition is filed.

5. Ms. Rajani Iyer, learned senior advocate appearing on behalf of the petitioners submitted that the sale instances relied upon in the impugned order are not at all comparable and on the basis of the sale instances relied upon by the petitioners which are comparable, it is clear that there is no undervaluation and, therefore, the order impugned in the petition is liable to be quashed and set aside. In this connection learned Counsel for the petitioners relied upon a judgment of this Court in the case of Vimal Agarwal Vs. Appropriate Authority and others, and a judgment of the Gujarat High Court in the case of Laboni Developers Vs. Appropriate Authority and Others, . Reliance is also placed on the unreported judgment of this Court in Writ Petn. No. 570 of 1993 Govardhandas Odhavji Dhakan and Another Vs. Appropriate Authority, .

6. Mr. Ashokan, learned Counsel for the respondents on the other hand supported the order passed by the Appropriate Authority. He submitted that the order impugned in the petition has been passed by three senior most officers after careful consideration of the oral submissions made by the petitioners. He submitted that the sale instances referred to in the impugned order are comparable instances and, therefore, no interference is called for.

7. We have carefully considered the rival submissions. In our opinion, the sale instances relied upon by the Appropriate Authority cannot be considered as comparable instances. Out of three sale instances relied upon by the Appropriate Authority, two sale instances relates to a flat/land situated at Kandivli (East) and Borivali respectively. By no stretch of imagination the property situated at Jogeshwari (East) can be compared with the property situated at Kandivli (East) or at Borivali. Not only the distance between the two properties is too far for being compared but even the location of the plot in question is not comparable. The fact that the plot in question abuts the slum area is not disputed. Moreover, the plot in question is far away from the Jogeshwari railway station and the finding of the Appropriate Authority that the locality of the plot in question is inhabited by affluent people is contrary to the valuation report wherein it is stated that the plot in question is inhabited by middle class people.

8. Similarly, the third instance relied upon by the Appropriate Authority is also not comparable as it relates to sale of a gala in an industrial zone at Jogeshwari (East). In our opinion, consideration for sale of an industrial gala cannot be compared with the sale instance of a residential plot. Thus, the sale instances relied upon by the Appropriate Authority cannot be said to be comparable instances.

9. Once it is held that the sale instances relied upon by the Appropriate Authority are not comparable, then it cannot be said that the consideration shown in the agreement is less than the fair market value by 15 per cent. If there is no undervaluation, then there is no question of purchasing the property u/s 269UD(1) of the Act.

10. Apart from the above, the agreement for sale entered into by and between the petitioners and the respondent No. 5 has various restrictions regarding the height of the buildings to be constructed on the plot in question and also the persons to whom the flats could be sold. Moreover, there are sale instances relied upon by the petitioners relating to the sales at Jogeshwari (East) on the basis of which it cannot be said that there was any undervaluation with a view to evade tax.

11. For all the aforesaid reasons, the impugned order dated 22-9-1994 cannot be sustained and the same is liable to be quashed and set aside. Accordingly, the rule is made absolute in terms of prayer Clause (a) with no order as to costs.