

(2017) 03 PAT CK 0001

In the Patna High Court

Case No : 1906 of 1996

M/S Magadh Stock Exchange Association

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 01-03-2017

Acts Referred:

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

Citation : (2017) 03 PAT CK 0001

Hon'ble Judges : Smt. Anjana Mishra, Sudhir Singh

Bench : DIVISION BENCH

Advocate : Manik Vedsan, Rajesh Mohan, Rishi Raj Sinha

Judgement

1. The challenge in the present writ application is to an order dated 27th September, 1995 passed by an appropriate authority constituted under Chapter XX C of the Income-Tax Act, 1961.

2. The facts leading to the said order are that the petitioner entered into an agreement on 15th November, 1989 to purchase 7th Floor in the Ashiana Plaza at Budh Marg, Patna having 6830 Sq. ft. area. The total agreed consideration was Rs.25,62,100/- out of which the petitioner is stated to have paid Rs.10,24,840/- and the balance of Rs.15,37,260/- was to be paid in three equal installments.

3. The parties to the said agreement furnished Form No.37- I on 30th November, 1989 signed by the transferor and the petitioner disclosing total apparent consideration as Rs.25,62,100/-. On the basis of such declaration filed, an order of purchase was passed on 25th January, 1990. Such order was challenged by the petitioner in CWJC No.879 of 1990. This Court granted ad- interim stay on 09.02.1990. The order passed on the said date read as under:- "Issue notice to respondent nos.2 and 4 through registered post directing them to show cause as

to why any appropriate direction be not issued at the stage of admission itself, for which requisites must be filed by 13th February, 1990, failing which the application shall stand rejected without further reference to a Bench.

A counter affidavit should also be filed on behalf of the Income Tax Department.

The learned Standing Counsel shall keep the records showing reasons, which have been recorded for an action under Section 269 U.D. of the Income Tax Act, 1961.

We are informed that Section 269 U.D. is under consideration by the Supreme court and several writ applications filed before different High Courts have been transferred to the Supreme Court. As such, in the meantime, we pass the following interim orders, as has been passed in some other writ applications:-

(i) The operation of the order of the appropriate authorities under section 269 U.D. (1) of the Income Tax Act shall remain stayed.

(ii) The Income Tax authorities shall not be required to pay either to the seller or to the purchaser the amount of the purchase price of the property until further orders or to the deposit with the prescribed authority.

(iii) The provisions regarding limitation as contained in section 269 U. G. and U. H. shall not operate against Income Tax Department; and

(iv) The seller, i.e. respondent no.4, M/s Ashiana Housing & Financial (India) Ltd., shall be at liberty to proceed with the construction of the project in question including sought to be sold to the petitioner, but they are restrained from transferring, alienating or parting with the possession of the floor in respect of which they have entered into agreement with the petitioner. Petitioner as well as respondent no.4 is restrained from creating any encumbrance in respect of that property.

4. Put up for admission on 8th March, 1990, within first ten cases." The stay was vacated on 03.12.1990. It is thereafter, the petitioner filed CWJC No.51 of 1991 claiming writ of mandamus to revest the property agreed to be purchased by the petitioner. Both the writ petitions were decided by a Division Bench of this Court on 13th July, 1995. The claim of revesting of the property was declined when it was said to the following effect:- "6. I will first dispose of the contentions of Mr. Shahi on the question of revesting. Under section 269-UF of the Act, where an order for the purchase of any immovable property by the Central Government is made under sub-section (1) of section 269UD, the Central Government is required to pay by way of consideration for such purchase, an amount equal to the amount of the apparent consideration. Under sub-section (1) of section 269UG this consideration is required to be tendered to the person or persons entitled thereto within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government under sub-section (1), or, as the case may be, sub-section (6) of section 269UE. Where there is failure on the part of the Central Government to comply with the

provisions of sub-section (1) of section 269UG or sub-section (2) or sub-section (3) thereof, then the order made under sub-section (1) of section 269UD would stand abrogated and the immovable property would stand revested in the transferor after the expiry of the said period. On a plain reading of the aforesaid provisions, it is crystal clear that the consideration money, as provided under section 269 UF of the Act, is payable to the transferor. In the case in hand by an interim order of this Court dated 9.2.90 it has been directed that the income-tax authorities shall not be required to pay either to the seller or to the purchaser the amount of purchase price of the property. The said stay order stood vacated on 03.12.1990. The Department has paid a sum of Rs.15,37,260 [sic Rs.25,61,560] to the transferor and, therefore, it is difficult for us to accept the contention of Mr. Shahi that there has been any infraction of the provisions of sub-section (1) of section 269UG. In this view of the matter, the question of revesting of the property under section 269UH does not arise. The submission of Mr. Shahi on this score is, accordingly, rejected."

5. However, the order of purchase dated 25th January, 1990 was set aside on 13th July, 1995 for the reason that no opportunity of hearing was granted to the parties in view of the Constitution Bench judgment reported as (1993) 1 SCC 78, C. B. Gautam versus Union of India and others. It is thereafter, a show cause was issued to the petitioner on 9th August, 1995 and the order of purchase was passed by the appropriate authority on 27th September, 1995. It is the said order of purchase which is subject matter of challenge in the present writ petition.

6. When the matter came up for hearing before the Division Bench on 3rd September, 1996, the matter was referred to the Larger Bench doubting the correctness of the order dated 13th July, 1995 on the ground that sub-section (1) of Section 269 UG contemplates tender of amount of consideration "to the person or persons entitled thereto". It can not necessarily mean the transferor or the transferors only. Transferee is also a person entitled to that part of the amount of consideration which he paid to the transferor in terms of the agreement of purchase. Since the transferee, the present petitioner has paid sum of Rs.15,24,840/-, therefore, the petitioner is entitled to the amount paid by him and the finding recorded by the earlier Division Bench that the person or persons entitled thereto would only mean to transferor or transferors would require re-consideration.

7. Before this Bench, the learned counsel for the petitioner has raised two fold arguments. Firstly, that the order of purchase has been passed by the appropriate authority on 27th September, 1995 which is beyond the period prescribed as the ad-interim order of stay was vacated on 3rd December, 1990. The order in C.B. Gautam's case (supra) permitting the High Court to pass order will not be helpful to the Revenue as the Revenue had opportunity to pass an order in terms of the order passed by this Court.

8. It is further contended that the petitioner is entitled to revesting of the property as the Revenue has not paid the entire sale consideration inasmuch as

the extra work of Kota Stone of Rs.30,000/- has not been paid nor the security at the rate of Rs.3 per sq. ft has been paid. Since the full sale consideration amount has not been paid, therefore, the petitioner is entitled to re-vesting of the property.

9. In reply to the supplementary affidavit filed on 10th April, 1996, it was, inter alia, stated that initial possession of the property on 7th Floor of Ashiana Plaza at Budh Marg, Patna, was given to the Department on 21.12.1990 and no final possession of the property appears to have been given. It is also pointed out that total consideration payable as per Form 37-I amounts to Rs.25,62,100/-. It is also pointed out that the builder was entitled to extra cost on completion of the extra work which was not done by the vendor. In any case, the same cannot be treated as consideration money.

10. The provisions which are relevant for the purposes of the present writ petition are as under:- "269UB.- (1) The Central Government may, by order, publish in the Official Gazette.-

(a) constitute as many appropriate authorities, as it thinks fit, to perform the functions of an appropriate authority under this Chapter ; and

(b) define the local limits within which the appropriate authorities shall perform their functions under this Chapter. 269UD. (1) Subject to the provisions of sub-sections (1A) and (1B), the appropriate authority, after the receipt of the statement under sub- section (3) of section 269UC in respect of any immovable property, may, notwithstanding any thing contained in any other law or any instrument or any agreement for the time being in force, make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration:

Provided that no such order shall be made in respect of any immovable property after the expiration of a period of two months from the end of the month in which the statement referred to in section 269UC in respect of such property is received by the appropriate authority.

Section 269UF. (1) Where an order for the purchase of any immovable property by the Central Government is made under sub-section (1) of section 269UD, the Central Government shall pay, by way of consideration for such purchase, an amount equal to the amount of the apparent consideration.

269UG. (1) The amount of consideration payable in accordance with the provisions of section 269UF shall be tendered to the person or persons entitled thereto, within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government under sub- section (1), or, as the case may be, sub-section (6), of section 269UE :

Section 269UH. (1) If the Central Government fails to tender under sub-section (1) of section 269UG or deposit under sub- section (2) or sub- section (3) of the said section, the whole or any part of the amount of consideration required to be

tendered or deposited thereunder within the period specified therein in respect of any immovable property which has vested in the Central Government under sub-section (1) or, as the case may be, sub-section (6) of section 269UE, the order to purchase the immovable property by the Central Government made under sub-section (1) of section 269UD shall stand abrogated and the immovable property shall stand re-vested in the transferor after the expiry of the aforesaid period :..."

(Emphasis supplied)

11. We have heard learned counsel for the parties at length and find no merit in the present petition. The payment of Rs.25,61,560/- was made after the initial purchase order was passed on 25th January, 1990 which order has since been set aside being in violation of the principles of natural justice in the light of the judgment of the Hon'ble Supreme Court in C.B. Gautam's case (supra). On a clarification petition, the Supreme Court clarified that the period of two months referred in Section 269 UD (1) shall be reckoned with reference to date of disposal of each of such pending matters either before this Court or before the High Court as the case may be. However, it was clarified whereby if stay order inhibiting the authorities from taking further proceedings are vacated, the period referred to in the proviso to Section 269- UD (1) shall be reckoned with reference to the date of such vacating of the stay orders. The first argument raised by learned counsel for the petitioner is that the order of purchase passed by the appropriate authority on 27th September, 1995 is beyond the period prescribed by law, i.e. after the period of two months after end of the month under which the statement under Form 37-I was submitted as the order vacating the order of stay was passed on 3rd December, 1990.

12. We do not find any merit in the said argument. An order of purchase was already passed on 25th January, 1990 in terms of Section 269 UD (1) of the Act. The said order was set aside by this Court only on 13th July, 1995 when relying upon C.B. Gautam's case (supra) it was held that the order of purchase could not have been passed without complying with the principles of natural justice. Before the stay was vacated on 3rd December, 1990, an order of purchase was already passed. Therefore, there could not have any second purchase order in anticipation of the order of Supreme Court that the principles of natural justice were required to be complied with. The requirement of compliance of principles of natural justice was laid down by the Hon'ble Supreme Court in C.B. Gautam's case (supra). The order of purchase was thereafter set aside on 13th July, 1995 and fresh order of purchase has been passed on 27th September, 1995 within two months of the end of the month in which order was passed on 13th July, 1995 which is in consonance with the clarificatory order passed by the Supreme Court.

13. Therefore, in our opinion, it cannot be said that the order dated 27th September, 1995 was passed after the expiry of the period fixed in 269 UD.

14. The second argument is that there is right of re-vesting of the property with the petitioner as the total sale consideration was not paid. We do not find any merit in the said argument as well. The schedule of payment attached with the agreement dated 15th November, 1989 contemplates extra cost of Rs.30,000/- towards providing Kota stone is payable before taking final possession. Admittedly, the Revenue has paid a sum of Rs.25.62 lakhs to the transferor before taking possession.

15. The transferor has raised grievance of short payment before an appropriate authority when it is stated to the following effect: "The total consideration required to be paid was Rs.26.27 lakhs while actually the Central Government had paid Rs.25.62 lakhs and, therefore, there is a short fall of Rs.66,000/- which has neither been paid nor deposited and, therefore, for such short payment, the property gets re-invested into transferor and no order for pre-emptive purchase can be passed."

16. The said objection has been dealt with by the appropriate authority to the effect that as per Form 37 I and also Schedule attached to the agreement to sale, the apparent consideration is what has been ordered to be paid and not Rs. 26.27 lakhs as claimed by the transferor.

17. Still further, such an objection was raised by the transferor in respect of short payment, but the transferor has not challenged the order of the appropriate authority. The order of appropriate authority is final qua the transferor. Once the apparent consideration as per the agreement is Rs.25,62,100/- is as in Form 37-I, therefore, the price to be paid is the agreed price. The extra cost for the Kota stone has not been disputed by the transferor after the order was passed by the appropriate authority on 27th September, 1995. Thus, the transferee cannot make any grievance in respect to that payment as payment was not made to it.

18. The question which has been referred to the Larger Bench whether the payment of Rs.25,61,560/-made by the Revenue was required to be paid to the transferee on account of the fact that the entire sale consideration was paid to the transferor, therefore, the petitioner is entitled to re-vesting of the property.

19. We do not find any merit in the argument as well. In the detailed show cause filed by the petitioner before the appropriate authority, there was no objection raised that the amount paid by the petitioner was required to be paid by the Revenue to the petitioner or that the petitioner has paid the amount as stated in the present writ application. The agreement was executed on 15th November, 1989 and Form 37-I was filed on 30th November, 1989. Therefore, in the absence of the factual basis before the appropriate authority that any amount was paid by the petitioner, the appropriate authority was not required to examine the consequences of non- payment of such amount by the Revenue to the petitioner.

20. It is no doubt true that in terms of Section 269 UG, the amount of consideration is required to be tendered to the person or persons entitled thereto

which would include the transferee provided the transferee proves that certain payments were made by it in pursuance of the agreement to sale executed.

21. Since no dispute was raised before the appropriate authority regarding non-payment of alleged payment made by the transferee, therefore, it cannot be said that payment made by the Revenue to the transferor is any way illegal and therefore, the petitioner is entitled to re-vesting of the property. We may also say that in terms of Section 269UH, if the amount is not paid within the time fixed, the property shall re-vest after the expiry of the aforesaid period. We find that re-vesting can be claimed only by the transferor and not by the petitioner, who is a transferee in terms of Section 269 UH (1) of the Act. The sale in favour of the petitioner in pursuance of agreement dated 15th November, 1989 would not be deemed to be complete on account of intervening action of the Revenue in terms of Chapter XX-C of the Act.

22. Thus, we do not find any merit in the present writ application. The same is, thus, dismissed.