(2019) 07 BOM CK 0116

In the Bombay High Court

Case No : Writ Petition No. 1994 Of 2018

New White Rose Chs Ltd — APPELLANT

Vs

Appropriate Authority And 5 Ors — RESPONDENT

Date of Decision : 23-07-2019

Acts Referred:

Income Tax Act, 1961 — Section 269UA, 269UB, 269UC, 269UD, 269UE, 269UF, 269UG, 269UH, 269UC(1), 269UC(3), 269UC(4), 269UF(1), 269UG(1), 269UG(2), 269UG(3), 269UE(1), 269UE(6), 269UD(1), 269UA(i)(d), 269UA(ii)(d), 269UD(1), 269UD(2), 269UD(1A), 269UN, 199(2)

Citation : (2019) 07 BOM CK 0116

Hon'ble Judges : Akil Kureshi, J;S.J. Kathawalla, J

Bench : Division Bench

Advocate : Sanjeev M. Gorwadkar, Yusuf Baugwala, Gaurav Gangal, Sana Y. Baugwala, Akhilesh Kumar Sharma, Sachin M. Bandkar

Final Decision : Disposed Off

Judgement

Akil Kureshi, J

1. This petition is filed by a Cooperative Housing Society claiming to be the owners of land admeasuring 359.80 sq. yards bearing CTS No. C/1233,

Survey No. 282, Hissa No. 3, Sherly Ranjan Road, Bandra (W) (hereinafter referred to as ""the said land"") on which a residential complex is

constructed and the members of the Cooperative Society are the purchasers of the flats from the developer . They claim to be the purchasers for

value without notice. The Income Tax Department claims ownership over the said land by virtue of vesting of title in terms of Section 269UE of the

Income Tax Act, 1961 (""the Act"" for short). The purchaser has challenged an order dated 21.10.1994 passed by the Appropriate Authority under

Section 269UD of the Act and further communication dated 2.8.2017 issued by the Appropriate Authority threatening to take forcible possession of

the land in question with the assistance of the Police authority. This piquant situation has arisen in following background:-

2. The case has a checkered history. This Writ Petition is a sequel to Writ Petition No. 2475 of 1994 which was filed by erstwhile owner of the land

(respondent No. 6 herein) and the proposed purchasers (respondent Nos. 3 to 5 herein). At the outset, we may record that learned counsel for the

petitioner had placed before us the complete compilation of the said Writ Petition No. 2475 of 1994 with accompanying documents which are taken on

record and marked ""X"" for identification. We would be referring the facts and documents from the present petition as well as those stated in Writ

Petition No. 2475 of 1994 to the extent they are relevant for our purpose.

3. Respondent No. 6 herein was erstwhile owner of the said land. It appears that on the said land, there was a tin shed which was in occupation of

five tenants. Respondent Nos. 3 to 5 herein intended to purchase the said land. They offered a sum of Rs. 1.40 Crores by way of sale consideration to

purchase the land. Respondent No. 6 agreed to sell the same on such terms. Memorandum of Understanding (""MOU"" for short) was, therefore

executed between the parties on 18.7.1994. The said MOU records that there is a structure standing on the said land and the property is occupied by

the tenants. All the details of their names, room numbers and rent paid were indicated in Annexure A to the MOU. The vendor had agreed to sell his

right, title and interest in the said property to the purchaser for a total consideration of Rs. 1.40 Crores. Rs. 14 Lacs was paid by way of earnest

money at the time of execution of MOU. Remaining sum of Rs. 1.26 Crores would be paid within 30 days from the receipt of 'No Objection

Certificate' from the Appropriate Authority under the Act and on providing marketable title and handing over possession of the said land. Paragraph 4

of the MOU envisaged that the purchasers would be put in possession of the property on ""as is where is basis"". But paragraph 5 of the MOU

specified that the property was tenanted and it would be the responsibility of the vendor to have the tenants evicted and put the purchasers in

possession of the property against the payment of the balance agreed consideration. The original owner, thereafter, applied to the Income Tax

Department for necessary 'No Objection' for sale of the land on which the

Appropriate Authority passed order dated 21.10.1994 under Section

269UD of the Act. The Authority was of the opinion that the fair market value of the property would be not less than 1,74,36,000/-. As per the MOU,

the vendor had agreed to sell the same for consideration of Rs. 1.40 Crores. The difference between the fair market value and the declared apparent

consideration was more than 15%. Accordingly, the Government would pay a sum of Rs. 1.40 Crores to vendors and purchasers. Pursuant to such

order, the Deputy Commissioner of Income Tax issued a communication dated 25.10.1994 directing the original owner and the proposed purchasers to

handover the possession of the property within 15 days failing which further steps would be taken and conveying that the property vests in the

Government.

4. The said order passed by the Appropriate Authority was challenged by the purchases and the original owner jointly before this Court in Writ

Petition No. 2475 of 1994 on various grounds. The valuation accepted by the Appropriate Authority was questioned. On this petition, an order came to

be passed by the Division Bench on 21.10.1994 granting ad-interim order in terms of prayer clause (c) pending admission. This prayer clause (c) of

the petition reads as under:-

(c) Pending the hearing and final disposal of the petition, this Hon'ble Court may be pleased to prohibit and restrain by an order or injunction, the

Respondents, their officers and agents from proceeding further by way of taking possession of said property or otherwise in pursuant of the said

orders of the first Respondent dated 21.10.1994 and 25.10.1994 being Exhibit 'E' & 'F' respectively.

5. In terms of this interim order, pending final disposal of the petition, thus, the Department was restrained from proceeding further by way of taking

possession of the said land pursuant to the order dated 21.10.1994. This petition was admitted and interim order continued. On 14.7.2016, this petition

came to be dismissed in following manner:-

1. Mr. Bhujale, learned Counsel appearing in support of the petition states that the petitioners are not interested in pursuing this petition further.

2. In view of the above, the petition is dismissed. No order as to costs.

6. When these events were taking place, parallely certain developments which are of significance for our purpose took place. In order to take note of

these developments, we have to go back in time. During the pendency of the above petition, on 6.9.2004, the original owner executed an agreement

for development (hereinafter referred to as the â??development agreementâ?) with M/s. N.I. Developers, a partnership firm. This development

agreement was registered on 8.9.2004. Under the agreement, the original owner assigned all his rights in favour of the new purchasers for a sale

consideration of Rs. One Crore. The developer would be entitled to take all steps for developing the property. This development agreement, however,

does not refer to the previous transaction of agreement to sale in favour of the original purchasers or the proceedings under Chapter XXC of the Act.

Keeping total silence about the order passed by the Authority under Section 269UD of the Act and the pending petition filed by the original owner and

the erstwhile purchasers before this Court, the said development agreement came to be executed.

7. Acting on the basis of the such development agreement, M/s. N.I. Developers submitted plans for construction of residential building known as

New White Rose CHS Ltd before the Municipal authorities. The Authorities approved the plan on or around 8.12.2005. M/s. N.I. Developers enrolled

the members and constructed the building. The petitioner society was registered on 8.8.2014. The constructed building of six floors containing 13 units

comprising of 12 flats and 1 shop was conveyed to the petitioner society vide conveyance deed dated 23.12.2016 executed under the provisions of the

Maharashtra Ownership of Flats Act.

8. On or around 5.8.2017, the petitioner society received a letter dated 2.8.2017 issued by the Appropriate Authority addressed to Anoj Bhimsen More

and other legal heirs of the erstwhile owner Bhimsen Bhikaji More with a copy marked to the Secretary of the society. In such letter, the background

of the litigation under the act was referred at length. The legal heirs of the deceased original owner were called upon to supply the details of the

document executed in favour of M/s. N.I. Developers. The members of the petitioner society in the meantime had purchased the flats and started

residing there with their families. They claimed that they were not aware about the past proceedings under the Act. Upon receipt of the said letter,

they approached the High Court vide Chamber Summons (L) No. 372 of 2017 for being impleaded as parties. They also moved Notice of Motion (L)

No. 659 of 2017 for recall of the order of disposal of Writ Petition No. 2475 of 1994 by order dated 14.7.2016. On 18.11.2017, the Division Bench of

this Court disposed of such proceedings in following manner:

Mr. Gorwadkar, learned Senior Counsel appearing in support of the Chamber Summons and the Notices of Motion, seeks to withdraw all the three

applications, with liberty to take such proceedings in law as are available to the petitioner. Liberty as prayed for granted.

2. All the applications i.e two Notices of Motion and Chamber Summons are withdrawn with the aforesaid liberty.

Thereupon, this independent petition has been filed by the society.

9. In support of the petition, learned counsel for the petitioner raised following contentions:-

(i) That the petitioner is bonafide purchaser for value without notice. The members of the petitioner society have invested their hardearned money for

acquiring their residential units. They had no knowledge about the proceedings under Chapter XXC of the Act and the orders passed with respect to

the property. He submitted that the Income Tax Department had taken no steps for getting its name registered in the property records. The erstwhile

owner had executed a registered development agreement in favour of M/s. N.I. Developers who had constructed the building in question. The

Department cannot now take a stand that the land having vested in the department, the society acquired no legal title;

(ii) That the Department had not paid the apparent sale consideration to the original owner / proposed purchasers and therefore vesting of the land in

the Department had not taken place;

(iii) That the order passed by the Appropriate Authority under Section 269UD of the Act suffers from various lacuna. The valuation report presented

by the original owner was not considered. The fact that the property was tenanted was totally ignored. The valuation of non-comparable properties

was cited for coming to the conclusion that fair market value of the property was higher than the apparent sale consideration.

10. On the other hand, the learned counsel for the Income Tax Department opposed the petition contending as under:

(i) That the petitioner society has no locus standi to challenge the order passed under Section 269UD of the Act. The original owner and the proposed purchasers had filed the Writ Petition challenging the said order which was withdrawn. The petitioner having failed in getting the said order recalled,

cannot maintain separate Writ Petition;

(ii) That the land in question had vested in the Income Tax Department by virtue of statutory provisions. The original owner could not have executed

any development agreement in respect of such land since he had lost the title to the land. His fraudulent act would not pass any title in favour of M/s.

N.I. Developers and consequently, in the petitioner society.

(iii) That in the agreement itself, executed by erstwhile owner in favour of the proposed purchasers, he had undertaken to evict the tenants at his cost

and to put the purchasers in vacant possession of the land in question. He had in fact, written a letter to the Income Tax Department in June 1997

agreeing to withdraw the petition before the High Court and to handover peaceful vacant possession to the Department upon releasing of the

consideration of Rs. 1.40 Crores. In response to the said letter, the Department had written to the original owner on 15.7.1997 showing its willingness

to release the consideration upon the petitioner withdrawing the petition and agreeing to hand over vacant possession. The said original owner did not

act on this suggestion. The petitioner cannot make a grievance about non-releasing of the sale consideration which was deposited with the Appropriate

Authority as required under the law.

11. Respondent No. 9, one of the heirs of deceased respondent No. 3 - Yusuf Mohammed Khan who was one of the original purchasers had

appeared through his Advocate and contended that the original owner had played a fraud on the purchasers also. He contended that his father expired

in the year 2005 and therefore, the petition could not have been withdrawn in the year 2016 without the instructions from the legal heirs of the

deceased. He pointed out that the original purchaser had paid an earnest money of Rs. 14 Lakhs to the original owner which they have so far not

received either from the owner or from the Department.

12. At the outset, we may deal with the petitioner's challenge to the order dated 21.10.1994 passed by the Appropriate Authority under Section

269UD of the Act. For several reasons, we are of the opinion that the petitioner has no right to challenge the said order. We may recall the genesis of

the said order was an agreement for sale of the said land by the original owner

Bhimsen Bhikaji More to three prospective purchasers Mr. Yusuf

Mohammed Khan and two others. When this agreement was executed on 18.7.1994, Chapter XXC in the Act was in force. The 'No Objection' from

the Income Tax Department was necessary before the sale deed could be executed. The parties to the agreement, therefore, filed necessary

documents and declarations before the Income Tax Authorities. On the basis of valuation reports and other relevant material, the Appropriate

Authority was of the opinion that the apparent sale consideration of Rs. 1.40 Crore declared in the agreement was substantially lower than the fair

market value and the difference between the fair market value and the declared apparent consideration was more than 15%, permitting the

Department to exercise powers under Section 269UD of the Act. This order was challenged jointly by the original owner and the prospective

purchasers in Writ Petition No. 2475 of 1994. In such petition, the Court had granted injunction restraining the Department from taking possession

pursuant to such order. This petition was disposed off on 14.7.2016 recording the statement of the counsel for the petitioners that the petitioners were

not interested in pursuing the petition further. The petition was, therefore dismissed. Thus, the original owner as well as the prospective purchasers

who were aggrieved by the said order and therefore had locus standi to challenge the same and had also challenged the same did not pursue the

petition. The petitioner herein is not a successor in title of any of the petitioners of Writ Petition No. 2475 of 1994. The petitioner obviously does not

claim to be a legal heir of any of the petitioners therein, nor can the petitioner be seen as succeeding in title to the said property. The petitioner's claim

to the property, as we have noted, is through the transactions of the members with subsequent developer namely M/s. N.I. Developers. M/s. N.I.

Developers derived his right to develop the property under the MOU executed in its favour by the erstwhile owner on 6.9.2004. When this agreement

was being executed, the erstwhile owner of the land had lost his title to the land since by virtue of the order dated 21.10.1994 under Section 269UD of

the Act, the land had vested in the Government. The original owner, therefore had no authority to execute the said agreement of development dated

6.9.2004. The development agreement therefore, did not pass on the title in land in favour of M/s. N.I. Developers. The petitioner who claims the title to the land through M/s. N.I. Developers, therefore, cannot step into the shoes of any of the original petitioners of Writ Petition No. 2475 of 1994 so

as to sustain the challenge to the impugned order. This is precisely why this Court did not permit the petitioner to revive the said petition which stood

dismmissed on the statement of the counsel for the original petitioners. Independently also, the petitioner cannot maintain a stand alone petition. The

petitioner not having acquired any title or right in the property, cannot be allowed to challenge the validity of the order under which the erstwhile owner

lost his title, merely because the members of the petitioner society have purchased the flats constructed on such land and therefore, feel themselves

aggrieved by the order of the Appropriate Authority. Term ""person aggrieved"" has a particular conotation in legal parlance. Not any or every person

who faces adverse consequences of an order or action, can be allowed to question the legality thereof. In order to be able to sustain a legal challenge

to an action or an order, the petitioner must have a locus standi which in the present case, we find completely lacking.

13. With this, we may go to the other aspects of the matter namely the petitioner's challenge to the order dated 2.8.2017 passed by the Income Tax

Officer calling upon the heirs of the original owner Bhimsen Bhikaji More to provide necessary details of the transactions executed by the said

deceased Bhimsen Bhikaji More and further calling upon them to handover peaceful possession of the property in question failing which the

Department would initiate further action for eviction. In this context, we may first peruse the legal provisions contained in Chapter XXC of the Act.

The said Chapter was inserted by the Finance Act, 1986 w.e.f. 1.10.1986. Section 269UA is a definitions provision containing various definitions for

purposes of the said Chapter including 'apparent consideration'. Section 269UB pertains to constitution of an Appropriate Authority. Section 269UC

pertains to restrictions on transfer of immovable property which provides that transfer of immovable property exceeding the value of the prescribed

amount would not be effected except after an agreement which would be presented before the Authorities. The Appropriate Authority thereupon

could pass an order under Section 269UD of the Act exercising option of purchasing such property by the Central Government for an amount equal to

the amount of apparent consideration. Section 269UD of the Act reads as under:-

Order by appropriate authority for purchase by Central Government of immovable property.

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 anything 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 :

Provided further that where the statement referred to in section 269UC in respect of any immovable property is received by the appropriate authority

on or after the 1st day of June, 1993, the provisions of the first proviso shall have effect as if for the words ""two months"", the words ""three months

had been substituted :

Provided also that the period of limitation referred to in the second proviso shall be reckoned, where any defect as referred to in sub-section (4) of

section 269UC has been intimated, with reference to the date of receipt of the rectified statement by the appropriate authority :

Provided also that in a case where the statement referred to in section 269UC in respect of the immovable property concerned is given to an

appropriate authority, other than the appropriate authority having jurisdiction in accordance with the provisions of section 269UB to make the order

referred to in this sub-section in relation to the immovable property concerned, the period of limitation referred to in the first and second provisos shall

be reckoned with reference to the date of receipt of the statement by the appropriate authority having jurisdiction to make the order under this sub-

section :

Provided also that the period of limitation referred to in the second proviso shall be reckoned, where any stay has been granted by any court against

the passing of an order for the purchase of the immovable property under this Chapter, with reference to the date of vacation of the said stay.

(1A) Before making an order under sub-section (1), the appropriate authority shall 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 property, the transferee and to every other person whom

the appropriate authority knows to be interested in the property.

(1B) Every order made by the appropriate authority under sub-section (1) shall specify the grounds on which it is made.

(2) The appropriate authority shall cause a copy of its order under sub-section (1) in respect of any immovable property to be served on the transferor,

the person in occupation of the immovable property if the transferor is not in occupation thereof, the transferee, and on every other person whom the

appropriate authority knows to be interested in the property.

Section 269UE of the Act pertains to vesting of property in Central Government and reads as under:-

Vesting of property in Central Government.

269UE. (1) Where an order under sub-section (1) of section 269UD is made by the appropriate authority in respect of an immovable property referred

to in sub-clause (i) of clause (d) of section 269UA, such property shall, on the date of such order, vest in the Central Government in terms of the

agreement for transfer referred to in sub-section (1) of section 269UC:

Provided that where the appropriate authority, after giving an opportunity of being heard to the transferor, the transferee or other persons interested in

the said property, under sub-section (1A) of section 269UD, is of the opinion that any encumbrance on the property or leasehold interest specified in

the aforesaid agreement for transfer is so specified with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance

or leasehold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrance or leasehold

interest.

(2) The transferor or any other person who may be in possession of the immovable property in respect of which an order under sub- section (1) of

section 269UD is made, shall surrender or deliver possession thereof to the appropriate authority or any other person duly authorised by the

appropriate authority in this behalf within fifteen days of the service of such order on him :

Provided that the provisions of this sub-section and sub-sections (3) and (4) shall not apply where the person in possession of the immovable property,

in respect of which an order under sub-section (1) of section 269UD is made, is a bonafide holder of any encumbrance on such property or a bonafide

lessee of such property, if the said encumbrance or lease has not been declared void under the proviso to sub-section (1) and such person is eligible to

continue in possession of such property even after the transfer in terms of the aforesaid agreement for transfer.

(3) If any person refuses or fails to comply with the provisions of sub-section (2), the appropriate authority or other person duly authorised by it under

that sub-section may take possession of the immovable property and may, for that purpose, use such force as may be necessary.

(4) Notwithstanding anything contained in sub-section (2), the appropriate authority may, for the purpose of taking possession of any property referred

to in sub-section (1), requisition the services of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

(5) For the removal of doubts, it is hereby declared that nothing in this section shall operate to discharge the transferor or any other person (not being

the Central Government) from liability in respect of any encumbrances on the property and, notwithstanding anything contained in any other law for

the time being in force, such liability may be enforced against the transferor or such other person.

(6) Where an order under sub-section (1) of section 269UD is made in respect of an immovable property, being rights of the nature referred to in sub-

clause (ii) of clause (d) of section 269UA, such order shall have the effect ofâ?

(a) vesting such right in the Central Government ; and

(b) placing the Central Government in the same position in relation to such rights as the person in whom such a right would have continued to vest if

such order had not been made.

(7) Where any rights in respect of any immovable property, being rights in, or with respect to, any land or any building or part of a building which has

been constructed or which is to be constructed, have been vested in the Central Government under sub-section (6), the provisions of sub-sections (1),

(2), (3) and (4) shall, so far as may be, have effect as if the references to immovable property therein were references to such land or building or part thereof, as the case may be.

Section 269UF of the Act pertains to consideration for purchase of immovable property by the Central Government. Sub-section (1) of Section 269UF

provides that where an order for the purchase of any immovable property is made under Section 269UD(1) of the Act, the Central Government shall

pay, by way of consideration for such purpose, an amount equal to the amount of the apparent consideration.

Section 269UG of the Act pertains to payment or deposit of consideration. Under sub-section (1) of Section 269UG of the Act,the amount of

consideration payable in accordance with the provisions of section 269UF shall be tendered to the person entitled thereto within a period of one month

from the end of the month in which the immovable property vests in the Central Government. Sub-section (3) of Section 269UG provides that

notwithstanding anything contained in sub-section (1), if the person entitled to the amount of consideration does not consent to receive it, or if there is

any dispute as to the title to receive the amount of consideration, the Central Government shall deposit with the Appropriate Authority the amount of

consideration required to be tendered under sub-section (1) within the period specified therein.

Section 269UH of the Act pertains to revesting of property to the transferor on failure of payment or deposit of consideration and reads as under:-

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 :

Provided that where any dispute referred to in sub-section (2) or sub-section (3) of section 269UG is pending in any court for decision, the time taken

by the court to pass a final order under the said sub-sections shall be excluded in computing the said period.

(2) Where an order made under sub-section (1) of section 269UD is abrogated and the immovable property re-vested in the transferor under sub-

section (1), the appropriate authority shall make, as soon as may be, a declaration in writing to this effect and shallâ?

(a) deliver a copy of the declaration to the persons mentioned in sub-section (2) of section 269UD; and

(b) deliver or cause to be delivered possession of the immovable property back to the transferor, or, as the case may be, to such other person as was

in possession of the property at the time of its vesting in the Central Government under section 269UE.

Section 269UN of the Act provides finality to the order passed by the Appropriate Authority under Section 269UD of the Act.

14. It was in terms of these provisions that the Appropriate Authority had passed an order dated 21.10.1994 under Section 269UD of the Act

exercising the option of purchasing the property for apparent sale consideration of Rs. 1.40 Crores. In terms of Section 269UE of the Act, upon such

order being passed under Section 269UD(1), the property on the date of transfer stood vested in the Central Government. In terms of sub-section (1)

to Section 269UG of the Act, the amount of consideration that becomes payable would be tendered to the persons entitled thereto. In the present case,

the original owner would have received a sum of Rs. 1.26 Crores as against Rs. 14 Lakhs to be refunded to the proposed purchasers. However, the

original owners and the purchasers jointly filed the Writ Petition and challenged the order under Section 269UD(1) itself. The Central Government,

therefore, acted in terms of sub-section (2) of Section 269UG and deposited the amount with Appropriate Authority. The petition filed by the erstwhile

owner and the proposed purchasers has now come to be dismissed. Thereupon, the interim relief granted against taking possession of the property by

the Central Government stood automatically vacated. During pendency of the petition, the erstwhile owner was divested of his title in the land since

the land stood vested in the Government. He, therefore, could not have dealt with such property. His action of executing MOU in favour of M/s. N.I.

Developers in the year 2004, did not amount to transferring any right, title or interest in the property. Any development carried out by M/s. N.I.

Developers pursuant to such MOU on such property was wholly unauthorized.

15. Learned counsel for the petitioner had, however, submitted that since the Government did not pay the apparent sale consideration to the original

owner, the land would revest in him. However, this argument cannot be accepted. Firstly because Section 269UG envisages tendering of the

consideration to the persons entitled to receive the same and if the same is not accepted, depositing it with the Appropriate Authority which in the

present case was done. It is not the case of the petitioner that the original owner and the purchasers had shown willingness to receive the payment.

Their action of challenging the order itself was sufficient indication of their unwillingness to receive the same. It is not even the case of the petitioner

that the amount was not tendered to them. Relevant provisions of Chapter XXC are sufficiently clear. Under Section 269UE(1) of the Act, upon the

Appropriate Authority passing an order under Section 269UD(1), the land would vest in the Government. The question of payment or tendering the

sale consideration would arise later. Since the vesting had taken place before payment of sale consideration, the legislature advisedly provided in

Section 269UH for revesting of the land in the owner if sale consideration or part thereof was not paid or tendered within the time prescribed.

16. We may also refer to an undated letter received by the Department on 23.6.1997 written by the original owner in which it was stated as under:-

We refer to the above matter and send you herewith our proposal for your kind consideration.

We are agreeable to withdraw the above petition and obtain vacant and peaceful possession from the tenants/occupants of the said property and hand

over the same to you in terms of release to us the amount of the consideration Rs. 1,40,00,000/-.

We shall thank you to let us have your confirmation to the above so that necessary steps can be taken by us in that behalf.

In response to such letter, the Deputy Commissioner of Income Tax on 15.7.1997 wrote to the owner as under:-

Please refer to your letter dated Nil regarding withdrawal of the above mentioned Writ Petition.

2. The Appropriate Authority has considered the request made by you and are of the view that they may have no objection to the said proposal, in

case you along with the transferees are ready to handover peaceful and vacant possession of the subject premises to it.

Thus, the original purchaser had conveyed his willingness to withdraw the petition and obtain vacant and peaceful possession from the tenants and

handover the same to the Department upon release of the consideration of Rs. 1.40 Crores. The Department accepted such proposal under letter

dated 15.7.1997 stating that there would be no objection to making such payment if the owner is ready to handover peaceful vacant possession of the

land in question. However, nothing materialized out of this correspondence. We do not find that the stand of the Department flowing from the said

letter dated 15.7.1997 is in any manner conflicting with the orders passed by the Appropriate Authority. The original owner in the MOU dated

18.7.1994 had agreed to sell the land in question for a consideration of Rs. 1.40 Crores. The agreement showed that the property had several tenants.

The owner had undertaken responsibility to vacate such tenants at his own cost, obtain vacant possession of the property and handover the vacant

possession to the purchasers. His letter to the Department written in June 1997 was in tune with this agreement. He showed willingness to withdraw

the petition and hand over vacant possession if Department released the consideration. Department accepted the proposal as was made by the owner.

The concept of revesting of the property in the original owner upon the Department failing to tender or deposit the apparent sale consideration cannot

be applied in the present case.

Learned counsel for Respondent No. 9 who is one of the legal heirs of the original purchasers, however, had objected that the said Writ Petition No.

2475 of 1994 could not have been withdrawn on behalf of the purchasers since his father i.e one of the purchasers had already expired by then. This

contention is completely off the mark since for several years after the death of this purchaser who was one of the petitioners of the said petition, his

legal heirs were not brought on record. Qua the said petitioner, therefore, the petition had abated. There was no question of unauthorized withdrawal

of the petition by the counsel on behalf of the dead person. It was a case where the proceedings qua the deceased had abated. In any case, no such

grievance can be examined at his instance in this petition. He is a respondent in this petition and has not asked for any relief. Further, he has not taken

any steps to have the order of the dismissal of the petition recalled and the petition revived.

17. The situation, therefore, that has arisen is that the members of the petitioner society have purchased their individual residential units from the

Developer who was granted necessary permissions and occupancy certificate by the Municipal Authorities. Thus, the members claim to be bonafide

purchasers for value without notice. On the other hand, the building is constructed on a piece of land, title of which had vested in the Central

Government as far back as in the year 1994. The original owner, therefore, had no authority to deal with the land in question. Very clearly, he

fraudulently executed another development agreement with M/s. N.I. Developers.

18. At the same time, we cannot lose sight of the fact that the Department has also contributed substantially to this complication. It is an agreed

position that after passing the order under Section 269UG of the Act, the Department took no further steps to safeguard its interest in the land. In the

property records, there was no indication of the land having vested in the Government. No claim, no charge, no interest of the Government was

recorded in the property records. The least that the Department could have done was to have its name entered in the property records. Had the same

been done, the documents of transfer of land by the original owner to M/s. N.I. Developers would not have been registered and we are sure,

development permission and subsequent permissions would not have been granted by the Municipal Authorities. Thus, it was because the Department

did not have its name entered in the property records that the original owner fraudulently and perhaps in connivance with the developer could execute

development agreement and the developer could obtain series of permissions from the Municipal Authorities such as development permission,

construction commencement, completion and occupation certificates. While passing the final order, therefore, these aspects shall have to be borne in

mind.

19. We have, however, no doubt that the petitioner society or its members do not have any legal title to the land in question. The erstwhile owner upon

being divested of his title, could not have passed on any valid title in the developer and in turn, the developer could not have passed valid title to the

petitioner society. Despite this, particularly looking to the inaction on the part of the Income Tax Department in safeguarding its rights in the property

by having the appropriate entries made in the property records, we are of the opinion that some conciliation has to be found. We would, therefore, request the CBDT to sympathetically examine these facts and take appropriate decision in terms of its powers under Section 119(2) of the Act. In the context, we may recall that against the apparent consideration of Rs. 1.40 Crores, according to the Appropriate Authority, the market value as on the date of transaction i.e 18.7.1994 was Rs. 1,74,36,000/- Thus, according to the Department, the property was undervalued by a sum of Rs. 24,36,000/-. In other words, if the Department had auctioned the property soon after it was acquired under Section 269UD of the Act, the Department could have reasonably expected to take an additional sum of Rs. 24,36,000/- over and above the base figure of Rs. 1.40 Crores which would in any case be paid over to the original owner and the prospective purchasers in their respective shares. Thus, the Department would have earned a profit of Rs. 24.36 Lakhs. We have noticed that as per the sale agreement dated 18.7.1994, the purchasers had paid sum of Rs. 14 Lacs to the owner. This amount shall also have to be accounted for since the same must be returned to them. Therefore, if the petitioner society agrees to pay a sum of Rs. 39 Lakhs (which would comprise of Rs. 25 Lakhs to be retained by the Department rounded off from Rs. 24.36 Lakhs and Rs. 14 Lakhs to be refunded to the heirs of original purchases) along with simple interest @ 8% p.a. from the date of the order dated 21.10.1994 till actual deposit and a further sum of Rs. 10 Lakhs to the Department (without interest) towards cost of litigation and other costs, in our opinion, the CBDT should consider whether the ownership of the petitioner society and the possession of the residential units by the members of the society can be regularized. For such purpose, the proceedings be placed before the CBDT. If the petitioner society is agreeable to deposit the amounts mentioned above, it may indicate the same to the CBDT within a period of four weeks from today. Such declaration would be accompanied by a formal request for regularization of the ownership and possession. The CBDT would dispose of such application preferably within four months of its receipt. If the petitioner do not show such willingness, the petition would automatically be dismissed.

20. Before closing, we may record that the original purchasers and / or their heirs must receive a sum of Rs. 14 Lacs they had paid to the owner way back in July 1994. Therefore, if the CBDT accepts the request of the society

mentioned in the previous paragraph, from the amount that the society

may deposit with the Income Tax Department, the original purchasers and their heirs may be paid over a sum of Rs. 14 Lacs with interest. If the

petitioner society does not show willingness to deposit such amount, this attempt to find solution will in any way fail and in such circumstances, out of

the amount of Rs. 1.40 Crores deposited by the Government of India with the Appropriate Authority, a sum of Rs. 14 Lacs would be paid over to

them with accrued interest. This would be done after due verification of their identity. It would not be necessary to pay any amount to erstwhile owner

since he has clearly defrauded the Department as well as indirectly the members of the petitioner society.

21. With these directions, Writ Petition is disposed of.

