
(2009) 08 BOM CK 0196
In the Bombay High Court
Case No : Writ Petition No. 1033 of 1995

Nitin Doshi

APPELLANT

Vs

S.N.L. Agarwala and Others

RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Income Tax Act, 1961 — Section 269UD

Citation : (2009) 08 BOM CK 0196

Hon'ble Judges : F.I. Rebello, J;D.G. Karnik, J

Bench : Division Bench

Advocate : F.B. Andhyarujina, instructed by Law Point, for the Appellant; R. Ashokan, for respondent nos. 1 to 4, P.J. Pardiwala Nilesh Joshi and J. Sanghvi, instructed by PDS Legal, for the Respondent

Judgement

D.G. Karnik, J.—This petition is directed against the order dated 27th March 1995 passed by the respondent Nos. 1 to 3 (Appropriate Authority) u/s 269UD of the Income Tax Act, 1961 acquiring the property bearing flat No. 56 in "C" Wing of a building known as Mandhana Manor at Mahim (for short "the said flat").

2. The petitioner is a purchaser of the said flat and the respondent No. 5 is 2 the builder and seller. The respondent Nos. 1 to 3 are the members of the Appropriate Authority constituted under Chapter XXC of the Income Tax Act. The respondent No. 5 was engaged in the business of processing of fabric and had a processing unit situated at Mughal Lane, Mahim. As the Bombay Municipal Corporation refused to renew the licence, the processing unit was required to be closed down and the respondent No. 5 shifted its activities to Tarapore. The property at Mahim was sought to be developed by it by constructing a building known as "Madhana Manor". Construction commenced in the year 1993 and the respondent No. 5 started selling various flats in the building under construction. By an agreement dated 22nd December 1994, the respondent No. 5 agreed to sell to the petitioner the said flat admeasuring about 680 sq.ft. (772 sq. ft. built up area) for a consideration of Rs. 22,75,000/-. The agreement provided that the

constructed would be completed within 2 years. The petitioner paid to the respondent No. 5 Rs. 15,00,000/- being about 65% of the total consideration as earnest money on the date of execution of the agreement of sale and the balance of Rs. 7,75,000/- was to be paid on obtaining no objection certificate from the Appropriate Authority. On 30th December 1994, the petitioner filed an application in Form 37I as required u/s 269UC of the Income Tax Act and the Rules. After issuing a show cause notice and after hearing the objections raised by the petitioner and the respondent No. 5 for the proposed acquisition, the respondent Nos. 1 to 3 passed an order on 27th March 1995 proposing to acquire the said flat. That order is impugned in the present petition.

3. The respondent Nos. 1 to 3 held that the total built up area of the said flat was 772 sq.ft. They further held that consideration of Rs. 22,75,000/- when discounted for deferment of payment would give rise to a discounted value of Rs. 22,58,990/- as per Section 269UA(b) of the Income Tax Act. On that basis, the respondent Nos. 1 to 3 held that the consideration for the said flat would work out to Rs. 2926/- per sq.ft. of discounted value. The respondent Nos. 1 to 3 on the basis of the alleged comparative sales held that the market value of the said flat would be at least Rs. 42,46,900/- calculated at the market rate of Rs. 5,500/- per sq. ft. Therefore, according to the respondent Nos. 1 to 3, the said flat was considerably undervalued and was liable for acquisition.

4. We have perused the order of the Appropriate Authority and heard the learned Counsel for the parties. At the hearing before the Appropriate Authority, the petitioner pointed out to it the sale instances of 17 flats in the very building which were effected between 22nd November 1993 and 24th February 1994. The sales in April 1993 were transacted at the rate between Rs. 2261/and Rs. 2284/- per sq. ft. The sales in January 1994 were transacted at the rate of Rs. 2277/- per sq. ft. The sales in February 1994 were transacted at the rate between Rs. 2257/and Rs. 2312/- per sq. ft. The transaction in the present case was effected in December 1984 at the rate of Rs. 2926/- per sq. ft. That rate is 34% more than the transaction of sales effected in January and February 1994. It is not disputed that the 17 sales were sales of comparable flats inasmuch as they were of the flats in the very same building.

5. Learned Counsel for the respondent Nos. 1 to 4, however, submitted that during the relevant period, the prices of the properties were going on exponentially and the prices had gone up by more than 100% in a year. In the present case, the transaction in question was effected at a premium of only 34% of the prevailing price in February 1994. Increase of 34% in 10 months was too less and the Appropriate Authority had rightly come to the conclusion that the increase in the prices was at least 100%, and so the true market value of the said flat would be Rs. 5500/- per sq. ft. To buttress his submission that the rates of the properties had gone up by more than 100%, learned Counsel for the respondents invited our attention to the rate of rise of other properties in other areas. He invited our attention to the sale instances quoted in Annexure B to the

order of the Appropriate Authority. He pointed out that in respect of the property known as "Great Eastern Royale" at Tardeo, the rates of the properties had gone up from Rs. 6877/- per sq. ft. in November 1993 to Rs. 11,372/- per sq. ft. in May 1994. In respect of the property known as "Kalpataru Heights" situated at Bombay Central, the rates of the property had gone up from Rs. 7172/- per sq. ft. in April 1994 to Rs. 12,438/- in December 1994, and this showed the rate at which the prices of properties in Mumbai were appreciating in the years 1993 and 1994. He therefore submitted that the estimation of the market price made by the Appropriate Authority on the basis of these rising rates cannot be said to be unreasonable. We are unable to agree. It is true that when the prices of properties in a city start increasing, they generally rise all over the city. However, large metropolitan and capital cities having a population of several millions are spread over a large area. Some areas of the city are prime areas, some acquire new prime status, some areas are business areas while some are developed as residential areas, some residential areas are populated by people belonging to high income group, some areas are populated by people belong to low income group and some suburbs are populated by people belonging to middle and lower income groups. Some far flung suburbs develop almost as independent townships and some become satellite towns. The rate of rise in the price of immovable properties in different areas of city are not necessarily the same. Prices in some areas rise much faster than the prices in other areas. Therefore, the rate of rise of price in one area of a city may not always be a sufficient guide to predict the rate of rise in other areas of the city. There may be several reasons for this difference in the rate of rise and it is not necessary to enumerate the reasons therefor. Suffice it to say that the rates of rise are not necessarily uniform.

6. The properties mentioned in Annexure B to the order of the 6 Appropriate Authority are situated in different areas. Kalpataru Heights is situated in Central Bombay and Great Eastern Royale is situated at Tardeo, which also from the island city of Bombay. The flat in question is situated at Mahim, which is a suburb of Bombay. No evidence was placed before the Appropriate Authority to show what was the rate of rise of properties in Mahim. In our view, the Appropriate Authority erred in arriving at a conclusion that the rate of rise of prices of flats in Mahim was or must be similar to rate of rise of prices of flats situate at Tardeo or Central Bombay.

7. There was no other material before the Appropriate Authority to come to the conclusion that the market rate of the said flat was Rs. 5500/- per sq. ft. as on the date of agreement for sale. The Appropriate Authority further did not take into consideration the fact that the said flat was not ready but was under construction. Under the agreement, the purchaser had paid 65% of the consideration on the date of the agreement and was to pay the balance consideration immediately after receipt of no objection certificate from the Appropriate Authority, but the possession was to be deferred for 2 years. This certainly is a factor which would dampen the price of the said flat and that too in

a case where the respondent No. 5 was an unknown builder and it was its first venture. Secondly, the flats in the very building were sold at the rates between Rs. 2263/- and Rs. 2230/- per sq. ft. in the same calendar year, i.e. in February 1994. Discounted price of the said flat is computed by the Appropriate Authority at the rate of Rs. 2926/- per sq. ft. In 10 months till December 1994, the price rise was 34%. As observed earlier, there is no material on record that the price rise was more than 34% during this period of 10 months. The finding recorded by the Appropriate Authority that the price rise was about 100% during the period of 10 months and therefore the price of the said flat would be Rs. 5500/- per sq. ft. is not supported by any material on record and, in our opinion, is perverse.

8. For these reasons, the impugned order needs to be set aside and is hereby set aside. Rule is made absolute in terms of prayer Clauses (a), (b) and (c). There shall be no order as to costs.

9. We are informed at the Bar that the consideration which was paid by the Appropriate Authority has been returned to it and the learned Counsel for respondent Nos. 1 to 3 confirms the same. In view of this, no order regarding refund of the consideration is required to be passed.