

(1994) 05 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application No. 3644 of 1994

Om Shri Jigar Association

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-05-1994

Acts Referred:

Income Tax Act, 1961 — Section 269UD, 269UD(1), 269UD(1A), 269UL, 36

Citation : (1995) 123 CTR 105 : (1994) 209 ITR 608 : (1995) 80 TAXMAN 514

Hon'ble Judges : M.R. Calla, J;M.B. Shah, J

Bench : Division Bench

Advocate : S.N. Soparkar, for the Appellant; B.J. Shelat, for the Respondent

Judgement

M.B. Shah, J.—It is the contention of the petitioner that it is a registered non-trading corporation and that its President, Shri Mahesh Kalubhai Bhatt, entered into an agreement on June 10, 1992, to purchase land bearing Final Plot No. 287 admeasuring 1,230 sq. mtr. (1,028.40 sq. mtr.) owned by the third respondent (Badhabhai Trust) for a sum of Rs. 20 lakhs. The third respondent is a public charitable trust registered under the Bombay Public Trusts Act, 1950 ("the Act", for short). The trust filed an application on February 25, 1993, before the Charity Commissioner for seeking permission to sell the said land. Pursuant to the said application a public advertisement was given in the newspaper on June 4, 1993, inviting objections, if any, to the said sale and inviting offers from the public at large for purchase of the said land. It is also contended that on June 30, 1993, the Charity Commissioner opened the tenders. Two offers were received. The Charity Commissioner found that the offer of one person to buy the said land for Rs. 22 lakhs was a conditional one and hence was not acceptable and, thereafter the petitioner offered to buy the said land for a consideration of Rs. 22 lakhs to the Charity Commissioner. The petitioner's offer was accepted and, therefore, an agreement to sell was executed between the petitioner and the said trust on October 19, 1993. The said agreement to sell was executed subject to certain conditions, inter alia, that the sale would be subject to sanction by the Charity

Commissioner u/s 36 of the Act as well as by the appropriate authority under the Income Tax Act. Thereafter, Form No. 37-I was submitted in the office of the appropriate authority on November 3, 1993. On January 13, 1994, the Charity Commissioner approved the said agreement to sell. It is the contention of the petitioner that, in spite of the aforesaid facts, without giving an opportunity of hearing to the petitioner the appropriate authority has passed an order on February 23, 1994, holding that the said land is fit for pre-emptive purchase u/s 269UD(1) of the Income Tax Act, because the apparent consideration has been understated by more than 15 per cent. and, in exercise of the powers vested u/s 269UD(1) of the Income Tax Act, ordered to purchase the said land. It is submitted that the petitioner has purchased the said land in the public auction held by the Charity Commissioner. The Charity Commissioner has found that the bid of the petitioner was the highest and, therefore, accorded sanction u/s 36 of the Act. Therefore, in the present case, there is no question of undervaluing the land for its purchase. It is further contended by the petitioner that the notice given by the Department is absolutely vague and illegal and it does not disclose any reason or ground as to why the property was sought to be compulsorily purchased.

2. Mr. Shelat, learned advocate appearing on behalf of the respondents submitted that it cannot be held that merely because the land was sold in a public auction, there cannot be any undervaluation. He further submitted that the notice was sent to the petitioner at the address mentioned in Form No. 37-I but it was returned "unserved" by the postal authorities with a remark "not known". As the correct address was not known to the Department, the officer of the second respondent contacted the president of the association on the phone and asked him to collect the show-cause notice on February 1, 1994, but nobody has turned up to collect the show-cause notice on behalf of the petitioner.

3. In our view, the contentions raised by the petitioner are required to be accepted. It is apparent that the petitioner has agreed to purchase the land as per banakhat dated June 10, 1992 (annexure "B" to the petition). Subsequently, an application was submitted by the trust before the Charity Commissioner to grant sanction for sale of the said land. Thereafter the Charity Commissioner issued a public notice and invited offers for purchase of the said land. Two offers were received by the Charity Commissioner, one of them for Rs. 22 lakhs was not acceptable because it was conditional. The petitioner thereafter offered Rs. 22 lakhs and its offer was accepted by the Charity Commissioner. Thereafter, an agreement to sell was executed between the trust and the petitioner and it was subject to sanction by the Charity Commissioner u/s 36 of the Act as well as by the appropriate authority under the Income Tax Act. So, it is apparent that the petitioner entered into an agreement to purchase the property on the basis of advertisement issued by the Charity Commissioner for the sale of the said land. Offers were invited from the public at large. Except where it is alleged that there was fraud or for such other reasons, in normal circumstances, the amount offered by the petitioner is required to be considered as the market value of the

land, that is to say, the highest price realised at the time of auction is required to be accepted as the market value of the land.

4. Further, in the present case, the land is owned by a public trust and the public trust is required to obtain the sanction of the Charity Commissioner u/s 36(1) of the Act. The decision of the Charity Commissioner u/s (1) of section 36 is required to be published in a local newspaper having circulation in the area where the property concerned is situated, as per rule 24(4) of the Bombay Public Trusts (Gujarat) Rules, 1961. Rule 24(4) further provides that the decision of the Charity Commissioner is required to be published in a manner sufficient to give information about the material particulars regarding the number of the application for sanction, the name of the public trust, the description of the property for the alienation of which sanction is accorded and the price at which it is proposed to be sold or mortgaged or the rent at which and the period for which it is proposed to be leased and the substance of such decision. After the said decision is published, if any person is aggrieved by such decision, he is entitled to file an appeal to the Gujarat State Revenue Tribunal within 30 days from the date of its publication.

5. Admittedly, it is the say of the petitioner that at present none has filed any appeal against the decision of the Charity Commissioner.

6. In the light of the aforesaid facts, it is apparent that there was no reason for the appropriate authority to resort to the provisions of Chapter XX-C of the Income Tax Act. It would be difficult to arrive at a conclusion that there is significant undervaluation of property to the extent of 15 per cent, or more in the agreement of sale as evidenced by the apparent consideration being lower than the fair market value by 15 per cent or more. Further, the property was sold after inviting offers from the public at large by giving advertisement in the newspaper and that too after property verification by the statutory authority under the Bombay Public Trusts Act. Even after executing the agreement to sell, objections are invited as provided under rule 24. Hence, in such types of cases, even if some lower amount is received, it would not mean that power to purchase the said property u/s 269UD of the Income Tax can be exercised by the authorities under Chapter XX-C as it would be difficult to draw a presumption that there was an attempt to evade tax. This is made abundantly clear by the Supreme Court in the case of C.B. Gautam Vs. Union of India and Others, . The relevant observations of the Supreme Court are as under (at page 553) :

"As we have already pointed out, the provisions of Chapter XX-C can be resorted to only where there is a significant undervaluation of property to the extent of 15 per cent. or more in the agreement of sale, as evidenced by the apparent consideration being lower than the fair market value by 15 per cent. or more. We have further pointed out that, although a presumption of an attempt to evade tax may be raised by the appropriate authority concerned in case of the aforesaid circumstances being established, such a presumption is rebuttable and this would necessarily imply that the concerned parties must have an opportunity to

show cause as to why such a presumption should not be drawn., Moreover, in a given transaction of an agreement to sell, there might be several bona fide considerations which might induce a seller to sell his immovable property at less than what might be considered to be the fair market value. For example, he might be in immediate need of money and unable to wait till a buyer is found who is willing to pay the fair market value for the property. There might be some dispute as to the title to the immovable property as a result of which it might have to be sold at a price lower than the fair market value or a subsisting lease in favour of the intending purchaser. There might similarly be other genuine reasons which might have led the seller to agree to sell the property to a particular purchaser at less than the market value even in cases where the purchaser might not be his relative."

7. Applying the aforesaid ratio in the present case, it cannot be said that there was an attempt to evade tax. The appropriate authority has not come to the conclusion that there was a fraud at the time of public auction or that the amount offered by the petitioners was not genuine for some reasons. Apparently, it was a bona fide sale of the property after inviting offers from the public at large by giving an advertisement in the newspaper. The public trust is not required to wait till it finds a buyer who is willing to pay the price of the property which the appropriate authority thinks to be the market value. Hence, on this ground, the impugned order passed by the appropriate authority requires to be quashed and set aside.

8. Mr. Soparkar, the learned advocate appearing on behalf of the petitioner, vehemently submitted that the show-cause notice issued by the appropriate authority is absolutely vague and it has not mentioned the grounds or the sale instances on which it seeks to place reliance for exercising the power of pre-emptive purchase. He further submitted that, except the appropriate authority in the State in Gujarat, the appropriate authorities in other States are issuing exhaustive show-cause notices so that the affected persons can represent their cases properly.

9. In our view, considering the findings given above, it is not necessary to deal with the aforesaid contention exhaustively. However, it should be noted that issuance of a show-cause notice is not an empty formality. Its purpose is to give a reasonable opportunity to the affected persons to contend that the apparent consideration as per the agreement to sell is the market price or that there is no undervaluation because of peculiar facts. Therefore, before taking any action u/s 269UD(1) of the Income Tax Act, the appropriate authority should give to the person likely to be affected by the order proposed to be made a notice of the action intended to be taken, inform him about the material on the basis of which the appropriate authority proposes to take action for pre-emptive purchase and give a fair and reasonable opportunity to such person to represent his case and to correct or controvert the material sought to be relied upon against him. Hence, in the show-cause notice u/s 269UD of the Income Tax Act, provisional

conclusions are required to be briefly specified. If a vague show-cause notice is given without specifying anything or the grounds for holding that the property is required to be purchased u/s 269UD of the Income Tax Act, then it can be held that reasonable opportunity of showing cause against an order for pre-emptive purchase being made by the appropriate authority was not given, because the transferor and the transferee would be totally unaware of the grounds which had prompted the appropriate authority to arrive at prime facie conclusion that the power u/s 269UD(1) of the Income Tax Act was required to be exercised and the property should be compulsorily purchased. Issuance of a show-cause notice is the preliminary step which is required to be undertaken before giving opportunity of hearing u/s 269UD(1A) of the Income Tax Act.

10. While considering the contents of show-cause notice in a matter arising in connection with a disciplinary proceeding under the Punjab Civil Services (Punishment and Appeal) Rules, 1952, the Supreme Court has in the case of B.D. Gupta Vs. State of Haryana, observed as under (at page 2474) :

"There is nothing, however, in the "show-cause notice" of October 26, 1966, to indicate clearly that the dissatisfaction of Government with the appellant's reply of December 18, 1956, had nothing to do with charge 1(a). The "show-cause notice" merely states in vague general terms that the appellant's reply to the charges and allegations was unsatisfactory. Even if we were to assume, though there is no reasonable ground for this assumption, that Government did not have in mind the contents of charge 1(a) while serving this "show-cause notice", there is nothing in the "show-cause notice" to give any indication that the particular allegations regarding which the appellant had failed to furnish a satisfactory explanation were referable only to charge 1(b). The notice is vague on other grounds as well. As one reads the first paragraph of the notice, the questions that at once assail one's mind are many : In what way was the explanation of the appellant unsatisfactory ? Which part of the appellant's explanation was so unsatisfactory ? On what materials did the Government think that the appellant's explanation was unsatisfactory ? It is to our mind essential for a "show-cause notice" to indicate the precise scope of the notice and also to indicate the points on which the officer concerned is expected to give a reply."

11. The same would be the position here. It would be difficult for the transferor and the transferee to show cause as to why the property should not be compulsorily purchased or to point out that there is no undervaluation of the property or even if there is undervaluation, it is because of the peculiar facts regarding the property.

12. In the result, the petition is allowed. The impugned order dated February 23, 1993 (annexure "A"), passed by the appropriate authority is quashed and set aside. The appropriate authority is directed to issue "no objection" certificate under sub-section (1) of section 269UL of the Income Tax Act to the petitioner. Rule made absolute to the aforesaid extent with no order as to costs.

13. At the request of the learned advocate for the respondents, operations of this order is stayed up to August 1, 1994.