

(1994) 05 KL CK 0007

In the High Court Of Kerala

Case No : Original Petition No. 15568 of 1993-C

P.K. Yusuf and Another

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 24-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 269UA, 269UC(1), 269UC(2)
Income Tax Rules, 1962 — Rule 48K

Citation : (1995) 123 CTR 614 : (1994) 210 ITR 731

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : P.G.K. Wariyar, for the Appellant; P.K.R. Menon, Senior Advocate and N.R.K. Nair, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—The two petitioners, father and son, are the owners of two continuous plots of land in Survey No. 985/8 of Thoppumpady village, with extents of 7.5 and 8 cents, respectively. The petitioners have jointly constructed a three-storeyed building on the property, after taking a loan of Rs. 5 lakhs from the bank. The petitioners state that they have subsequently explained to the Income Tax authorities their source of funds for the acquisition of the property and the construction of the building thereon.

2. The petitioners entered into an agreement, exhibit P-3, dated October 8, 1991, with one A. A. Joseph to sell the 15.5 cents of land and the building thereon for a consideration of Rs. 12.75 lakhs. On getting information about this agreement, the first respondent-income tax Officer queried by his communication exhibit P-4, whether the proposal to transfer the property had been communicated to the appropriate authority u/s 269UC of the Income Tax Act, 1961 ("the Act"). The petitioners replied by their letter exhibit P-5 that the agreement to sell related to their separate rights in the properties, the consideration for which was less than Rs. 10 lakhs and, therefore, the provisions of Chapter XX-C of the Act were not applicable. The petitioners thereafter

approached the Deputy Commissioner of Income Tax, the second respondent, with a request to issue appropriate directions to the first respondent to enable him to obtain the necessary clearance certificate u/s 230A of the Act. Pursuant thereto, the petitioners were informed by the first respondent by his letter exhibit P-8 that they had to approach the appropriate authority under Chapter XX-C of the Act. The writ petition was then filed challenging this view taken by the respondents.

3. Sub-section (1) of Section 269UC in Chapter XX-C of the Act, read with Rule 48K of the Income Tax Rules, 1962, mandates that notwithstanding anything contained in the Transfer of Property Act, 1882, or in any other law for the time being in force, no transfer of any immovable property of value exceeding Rs. 10 lakhs shall be effected except after an agreement for transfer is entered into between the transferor and the proposed transferee in accordance with the provisions of Sub-section (2) at least three months before the intended date of the transfer. Sub-sections (2) and (3) require the agreement to be in the form of a statement as specified therein, and the statement has to be furnished to the appropriate authority by the parties to the transaction in the manner and within the time prescribed. Sub-section (1) read with rule 48K speaks of the transfer of immovable property of value exceeding Rs. 10 lakhs. Immovable property is defined for the purposes of this Chapter in Section 269UA(d) read with the Explanation as meaning, inter alia, any land, or any building or part of a building including any rights therein. The petitioners are separate owners of parcels of the land, and co-owners of the building with an equal share therein (vide exhibit P-6). There is no controversy of these facts. What they are seeking to convey is their separate right in the land and the building, which constitutes immovable property u/s 269UA(d). The consideration for the sale of the right of each one of them does not exceed Rs. 10 lakhs. The immovable property dealt with by each of the petitioners belongs to him and he has got the right to transfer it separately and without reference to the other co-owner. Its value is less than the prescribed limit. Section 269UC has therefore no application to the sale though the total consideration for the transfer along with the other co-owner exceeds Rs. 10 lakhs. The fact that a consolidated sale deed of the rights of both the co-owners is proposed to be executed is irrelevant in this context, so long as the separate, though undivided, share of each of the co-owners is of value less than Rs. 10 lakhs. The contention of standing counsel for the Revenue that the co-owners constitute an assessable entity as an association of persons appears feeble and does not appeal to me as each of the petitioners has got a separate defined right, and in any case, the status of association of persons appears irrelevant so far as a building is concerned by virtue of Section 26 of the Act.

4. The view that I have taken is fortified by two decisions of the Madras High Court : K.V. Kishore and another Vs. Appropriate Authority and others OVERRULED, and N.C. Rangesh and others Vs. Inspector General of Registration and others, . In K.V. Kishore and another Vs. Appropriate Authority and others OVERRULED, , the heirs of one S, to whom an immovable property belonged,

sold it under a single instrument executed by all of them, for a consideration of Rs. 20 lakhs ; but the share of each of the vendors was less than Rs. 10 lakhs. Ramalingam J., held that the share allocable to each of the co-heirs came within the definition of "immovable property", he was entitled to transfer his share to third persons and, therefore, Chapter XX-C was inapplicable, though the plurality of co-owners joined together to execute a single document for the purpose of convenience.

5. This decision was followed by Bakthavatsalam J., in N.C. Rangesh and others Vs. Inspector General of Registration and others, with the ratio that the sale of an undivided interest in land for a value of less than Rs. 10 lakhs was not hit by Chapter XX-C.

6. The direction contained in exhibit P-8 that the petitioners should approach the appropriate authority under Chapter XX-C of the Act is not, therefore, valid in law. The original petition is allowed and exhibit P-8 is quashed. Any application for a clearance certificate u/s 230A will be dealt with in the light of the observations contained in this judgment. There will be no order as to costs.