
(1994) 12 MAD CK 0082

In the Madras High Court

Case No : Writ petition No. 5304 of 1994

P.L. Finance and Investments Ltd. and another

APPELLANT

Vs

Appropriate Authority and others

RESPONDENT

Date of Decision : 01-12-1994

Acts Referred:

Income Tax Act, 1961 — Section 132, 269(UC), 269(UD), 269(UH), 269(UL(1))

Citation : (1995) 215 ITR 677

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : R. Krishnamurthy, for M/s A. Asokan and Murugesan, for the Appellant; S.V. Subramanian and P. Kothandaraman, for the Respondent

Judgement

Raju, J.—The above writ petition has been filed for the following relief :

"To issue a writ of certiorarified mandamus or any other appropriate writ, order or direction in the nature of writ, call for the records relating to the order of the first respondent dated November 30, 1993, bearing Reference No. A. 4/MDS/11/93-94 and quash the same and direct the first respondent to issue a certificate of no objection as per section 269UL(1) of the Income Tax Act, 1961, and pass such further or other orders as this court may deem fit."

2. The petitioners, in the affidavit filed in support of the writ petition, state that they have entered into an agreement on February 11, 1993, with respondents Nos. 2 to 4 to purchase from them their undivided two-thirds share in the properties bearing Door Nos. 63 and 64, Luz Church Road, Mylapore, Madras-600 004, and property in the village of Pudur in Naidupet Mandal, Nellore District, Andhra Pradesh. The sale consideration for the conveyance of the two-thirds undivided share in the properties mentioned was said to be Rs. 2,00,00,000 of which it is stated, as could be seen from Form No. 37-I filed under rule 48L, that the value of the total apparent consideration for the transfer of the two-thirds share in the property located at Door Nos. 62 and 63, Luz church Road, Madras-600 004 is Rs. 1,99,00,000. Even the agreement of sale entered into

between the parties appears to disclose the pendency of the suit in C.S. No. 953 of 1989 on the original side of the High Court filed for partition and separate possession by metes and bounds. As obligatory on the part of the parties, the vendors have filed the required application in the prescribed form to the Appropriate Authority u/s 269UC. u/s 269UD, the Appropriate Authority is entitled to make an order for the purchase by the Central Government of the property at an amount equal to the apparent consideration, but no such order shall be made in respect of any immovable property after the expiry of a period of two months (as it stood at the relevant point of time) 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. The Appropriate Authority, in the case on hand, with reference to the application made and statement filed by the vendors, respondents Nos. 2 to 4 herein, passed the following order :

"Please refer to the statement of transfer of immovable property in Form No. 37-I filed on August 30, 1993, for transfer of two-thirds share in the Hindu undivided family immovable property located at 62 and 63, Luz Church Road, Mylapore, Madras-600 004. In view of the pendency of the partition suit in C.S. No. 953 of 1989 between Shri Alladi Kuppuswamy and Shri Alladi Prabhakar on the one side as plaintiffs and Shri Alladi Ramakrishnan, Shri Alladi Krishnaswami and Shri Alladi Sitaram as the defendants on the other side, the members of the Appropriate Authority are of the opinion that the agreement for sale of two-thirds undivided share in the joint family immovable property referred to above is premature. It has, therefore, been decided to lodge the statement."

3. Aggrieved, the above writ petition has been filed by the petitioners, who are the purchasers under the agreement of sale, dated February 11, 1993, entered into with respondents Nos. 2 to 4.

4. Relying upon some of the earlier decisions on the subject including that of the Supreme Court, and this court, it has been contended that the Appropriate Authority has no right to examine the title of the parties to the transaction or go into the purchase of the sale and that the choice of with them is to either order the purchase of the property by the Central Government or to issue the certificate of no objection and the order of the nature passed in the present case cannot be said to be within the competency or the authority of the appropriate authority. It is also contended that after the expiry of the period mentioned in section 269UD(1), proviso, the Appropriate Authority cannot be given a fresh opportunity to reconsider its decision when it already failed to exercise its jurisdiction within the prescribed time and that, therefore, the Appropriate Authority is under a mandatory obligation to issue a no objection certificate to enable the parties to pursue and proceed with the finalisation of the transaction.

5. The first respondent has filed a counter-affidavit stating that one of the coparceners of the Hindu undivided family, who is not a party to the sale agreement and the proceedings, and who has a right in the undivided share in the property proposed to be sold, objected even to the first respondent's officers

inspecting the property in question, and when after the filing of the revised statement on August 30, 1993, the inspection was made and a thorough verification of the document was done, it was found that there was a civil suit filed by the transferors in C.S. No. 953 of 1989 on the file of this court, for partition and division of the properties, between the transferor and another coparcener of the Hindu undivided family, and in view of the pendency of the partition suit, the argument for sale of the two-thirds undivided share in the joint family property was premature. It is also stated that as the partition is not effected the coparcener cannot ask for declaration of a specific share in the coparcener's property and a decree in the pending suit from the court is necessary to work out the allotment of define shares. The further contention is as long as the family is not divided, transfer of any Hindu undivided family property should be by all coparceners, and even though the transfer under the agreement of sale was in respect of an undivided two-thirds share of the property, all the coparceners should have signed the Form No. 37-I statement and, therefore, the application was rightly lodged. The stand that it is premature for the Appropriate Authority to act on the statement filed for the transfer of two-thirds Hindu undivided family property during the pendency of a civil suit for partition on the file of this court is reiterated. It is also stated that the agreement consideration for the transfer of properties is contingent upon the passing of a decree in the civil suit. In other respects, the various averments made in the affidavit filed in support of the writ petition have been traversed, by contending also, that the decisions relied on in the affidavit filed in support of the petitions would not come to their rescue. It is also stated that it is open to all the coparceners to enter into an agreement for transfer of two-thirds undivided share, as long as the family is joint, and if such an agreement is entered into, the Appropriate Authority will certainly decided the issue.

6. A reply affidavit has also been filed, but I consider it unnecessary to advert to it in detail for the purpose of adjudicating the issue before me.

7. Respondents Nos. 2 to 4, the vendors have filed an affidavit supporting the claim of the writ petitioners and stating, that a no objection certificate has to be issued to the petitioners as prayed for in the writ petition.

8. Before adverting to the consideration of the claim, it is necessary to refer to some of the provisions of the Act as also the relevant among the several decisions referred to for my consideration.

9. Section 269UD of the Income Tax Act, 1961, reads as follows :

"269UD. Order by appropriate authority for purchase by Central Government of immovable property. - (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."

10. Section 269UC of the Income Tax Act, 1961, reads as follows :

"269UC. Restrictions on registration, etc., of documents in respect of transfer of immovable property. - (1) Notwithstanding anything contained in any other law for the time being in force, no registering officer appointed under the Registration Act, 1908 (16 of 1908), shall register any document which purports to transfer immovable property exceeding the value prescribed u/s 269UC unless a certificate from the appropriate authority that it has no objection to the transfer of such property for an amount equal to the apparent consideration therefore as stated in the agreement for transfer of the immovable property in respect of which it has received a statement under sub-section (3) of section 269UC, is furnished, along with such document.

(2) Notwithstanding anything contained in any other law for the time being in force, no person shall do anything or omit to do anything which will have the effect of transfer of any immovable property unless the appropriate authority certifies that it has no objection to the transfer of such property for an amounts equal to the apparent consideration therefore as stated in the agreement for transfer of the immovable property in respect of which it has received a statement under sub-section (3) of section 269UC.

(3) In a case where the appropriate authority does not make an order under sub-section (1) of section 269UD for the purchase by the Central Government of an immovable property, or where the order made under sub-section (1) of section 269UD stands abrogated under sub-section (1) of section 269UH, the appropriate authority shall issue a certificate of no objection referred to in sub-section (1) or, as the case may be, sub-section (2) and deliver copies thereof to the transferor and the transferee."

11. The scope, nature and extent of the power, as also the manner of the exercise of such powers conferred on the appropriate authority u/s 269UD has come up for consideration in cases almost similar to the one before me, in the decisions reported of which a reference to some can be usefully made.

12. In Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, , the concerned appropriate authority ordered with reference to the statement filed in the prescribed form therein, that there was no proper agreement and consequently, there was no valid statement for the purpose of Chapter XX-C and, therefore, the applicant was directed to file a statement again. In substance no certificate as claimed was issued in view of the said order.

When the aggrieved applicant approached the Delhi High Court, the Division Bench of the Delhi High Court held that the authority constituted under the Act can exercise only those powers which are, expressly or by necessary implication, conferred on it and that the only power which is conferred on the appropriate authority u/s 269UD is the power to decide whether to purchase the property or not and though in the exercise of such power, the authority will have other implied powers which will make such a power effective - such as the power to see the material documents in order to satisfy by itself whether the apparent consideration is proper or not, in order to come to the conclusion whether to purchase the property or not but the investigation so permissible will have to be undertaken by the appropriate authority only with a view to determine, whether the right of pre-emptive purchase should be exercised or not. It was also held therein that if the appropriate authority has reservations or doubts with regard to the legality of the proposed sale, it is open to authority not to exercise its right to purchase and section 269UD, however, does not contemplate the rejection of any statement by the appropriate authority.

13. While considering the effect of the proviso of sub-section (1) of section 269UD and sub-section (3) of section 269UL, it was held that if the appropriate authority passes no order for purchase before the expiration of the time stipulated, then no order for purchase can at all be passed, and as a consequence, by the operation of sub-section (3) of section 269UL, the certificate of no objection alone could be issued and no other order could be passed. In cases where an order for purchase is not passed within the stipulated period of time it was emphasised by the Division Bench of the Delhi High Court, that it becomes imperative and obligatory on the appropriate authority to issue a certificate u/s 269UL(3). An appeal filed against the said judgment before the apex court also came to be rejected as could be seen from the decision in *Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others*, . Though, during the pendency of the appeal, it appears that the certificate in that case was issued, their Lordships of the Supreme Court have agreed with and approved the decision of the Division Bench of the Delhi High Court, laying down the principle that two alternatives are alone open to the appropriate authority under the scheme of the legislation, viz. :

(1) the Union of India through the appropriate authority could buy the property, or

(2) in the event of its decision not to buy, it has to issue a no objection certificate leaving it open to the parties to deal with the property.

14. Reliance has also been on the decision of a Division Bench of this court in *Appropriate Authority, Government of India Vs. Naresh M. Mehta*, . That was a case wherein an appeal before the Division Bench was filed by the appropriate authority challenging the order of the learned single judge, quashing the order of the appropriate authority and directing the issue of no objection certificate. The appropriate authority therein appears to have passed an order stating that in

view of defects in the property proposed to be conveyed, the appropriate authority was unable to purchase the property u/s 269UD(1), or issue a no objection certificate u/s 269UL. The Division Bench exhaustively considered the earlier decisions on the subject, including the decision referred to supra, and held that the appropriate authority had no power to pass an order of the nature passed therein, while declaring that the jurisdiction of the said authority u/s 269UD of the Income Tax Act is limited either to pass an order within the specified time for purchase of the property by the Central Government for the consideration recorded under the agreement or to issue a no objection certificate for transfer at that consideration. It was held that while considering the statement filed in the prescribed form, the appropriate authority has only to examine the adequacy of the consideration and decide whether to order the purchase of the property by the Central Government or grant a no objection certificate and it has no jurisdiction to go into the object or purpose of the transaction or its legality and validity.

15. The further issue raised before the learned judges of the Division Bench was as to whether, the appropriate authority had to be given a further opportunity to consider the matter once again, if the order already passed in quashed. Adverting to the phraseology and the type of the order passed therein, the Division Bench held that when the appellant before the court has already concluded that it is unable to make the purchase, it cannot be given a fresh opportunity to consider and pass a fresh order regarding the purchase. Their Lordships of the Division Bench laid stress on the prohibitive language employed in the proviso to section 269UD(1) that no order for purchase by the Central Government shall be made after the expiration of the period of two months from the end of the month in which the above said statement was received by the appropriate authority. It may be noticed, at the expense of repetition, that the order passed in the said case was that the appropriate authority was unable to either make an order for purchase u/s 269UD(1) or issue a no objection certificate as contemplated u/s 269UL.

16. In the decisions of K.V. Kishore and another Vs. Appropriate Authority and others OVERRULED, and R. Lokeswari and others Vs. State of Tamil Nadu and another, , S. Ramalingam J., expressed the view, that even an undivided coparcener or owner of a property is entitled to sell separately his share, and there can be no objection for the same in law. Even that apart, though no one coparcener, as long as the property remains joint and undivided, can claim any exclusive right in a particular piece or portion of a property, there is no impediment in law, governing the rights of the parties to even individually convey their undivided common share to any one of their choice and there is no obligation cast on any such co-owner or coparcener to get the consent of the non-alienating co-owner or make him join with the alienating coparcener as a party to the transaction or document in conveying his individual and separate share, though joint and undivided. The assumptions made of the governing legal principles both in the order and in the counter-affidavit filed have no basis

whatsoever and the stand of the Department does not merit acceptance.

17. In the light of the above principles, it becomes necessary for this court to consider the legality and propriety of the order under challenge and the respective rights of the parties. Though Mr. S. V. Subramaniam, learned senior counsel for the first respondent, endeavoured to justify the action of the first respondent, in the light of some of the factual claims made in the counter-affidavit, in view of the overwhelming weight of authorities against him, as referred to supra, learned senior counsel could not successfully get over the hurdles placed against such claims on behalf of the Department. In the light of the categorical pronouncements and declaration of law in such unmistakable terms, both by the Supreme Court as well as by the Division Bench of this court, the only alternative or choice left with the appropriate authority under the scheme of the provisions in Chapter XX-C of the Act is to pass orders either for the purchase by the Central Government of the property for the consideration recorded in the agreement or to issue a no objection certificate for the transfer at that consideration and the order passed in the present case cannot be sustained at all. The view expressed in the impugned order that the agreement for sale of two-thirds undivided share in the joint family immovable property is premature, has no basis in law and cannot have the approval of this court. Having regard to the well-settled principles, in this regard to which a reference has already been made supra, it has to be held that the first respondent in the present case has miserably failed to exercise its powers in the manner known to, and in accordance with, law within the time stipulated therefor. There is no power in the first respondent to pass such an order and the order purported to have been passed on November 30, 1993, which is the subject-matter of challenge in this writ petition, cannot be considered to be an order at all within the meaning and contemplation of section 269UD(1) of the Income Tax Act, 1961, and if at all the first respondent, in my view, has made a perfunctory exercise of power by passing an inchoate order of no significance or effect, which could not by any means be claimed to be an order at all within the meaning as also within the contemplation of section 269UD(1) of the Act. Consequently, the impugned order is liable to be and is hereby quashed, as one not constituting a valid, proper or an effective exercise of power or disposal of the statement filed as contemplated u/s 269UD(1) of the Act and, therefore, is totally without jurisdiction.

18. Learned senior counsel for the first respondent strenuously pleaded, as in the earlier case before the Division Bench, that the appropriate authority must be given an opportunity to consider the matter once again, with quashing of the order dated November 30, 1993, by this court, so as to enable them to pass a fresh order in the exercise of the powers under Chapter XX-C of the Act. Learned senior counsel took pains to distinguish the decision of the earlier Division Bench, by adverting to the nature of the order passed by the appropriate authority that was under challenge therein and consideration before the Division Bench, and the type of the order that has been passed in the present case challenged before me. It was contended that the appropriate authority, in the earlier case, has not

only stated that the certificate of no objection cannot be issued but also recorded a finding that the authorities were unable to make an order of purchase also. While emphasising the above difference, in the nature and content of the order, it is contended for the first respondent that the appropriate authority in this case should be given an opportunity to consider the matter afresh. In this regard, learned senior counsel placed reliance upon two decisions - one by the Supreme Court and another by a Full Bench of this court - to support his claim.

19. In the decision of *The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another*, , the Supreme Court was considering the right of the concerned officer of the Department to pass an order beyond the period stipulated u/s 132, the passing of which was necessitated on account of the decision of a competent court, setting aside the earlier order passed no doubt within the time limit. While dealing with such a situation, it has been observed as hereunder :

"It is obvious that the delay in the issue of a notification, in holding an enquiry u/s 5A and issuing a declaration u/s 6 has been caused only as a result of the order of stay issued by this court ... It is a well-established proposition of jurisprudence that no order passed by a court can be allowed to injure a litigant's interests. The petitioners having obtained an order to stay, cannot now be allowed to take advantage of that stay order to urge that notwithstanding the order of stay, the Government should either have issued a fresh notification u/s 4(1) or that they would be debarred from issuing a declaration u/s 6 if they did not do so within two years of the promulgation of the Ordinance."

20. In *K. Chinnathambi Gounder v. Government of Tamil Nadu* AIR 1980 Mad 251, a Full Bench of this court had an occasion to consider the issue pertaining to the exercise of the power by the designated authority beyond the stipulated period, in the given circumstances when it had become necessary for being exercised for the second successive time. The Full Bench decision arose under the first proviso to section 6(1) of the Land Acquisition Act, 1984. The proviso obliged the Government to issue a declaration u/s 6 of the Act within three years from the date of notification u/s 4 of the Act. In that case, a declaration under the Act was made within a period of three years, as stipulated in the proviso. But the acquisition proceedings were challenged by means of a writ petition and ultimately the court quashed the declaration u/s 6 of the Act alone on the ground of violation of the principles of natural justice and denial of an opportunity to the person interested in the property before issuing the declaration u/s 6 of the Act. When the defect noticed was rectified by giving an opportunity, a fresh notification came to be issued and the same was challenged as being made beyond the period of three years stipulated under the proviso to section 6(1) of the Act. The learned judges of the Full Bench of this court, while applying the ratio of the decision of the Supreme Court in the Income Tax case, referred to supra, have held that for passing orders by complying with the stipulation of time envisaged under the proviso to section 6(1) of the Land Acquisition Act, it cannot

be said that the Government did not pass any declaration within the period of three years since the first declaration u/s 6(1) was well within three years. It was further observed that though the first declaration was quashed, the fact of declaration could not be disputed or effaced, since the first proviso to section 6(1) refers only to a declaration u/s 6 and not an effective declaration within the period of three years; nor does it say that in the event of the declaration being quashed by the court, subsequent declaration too should be made within three years.

21. The principle laid down, *supra*, if it is merely a matter of declaration of the position of law, cannot be seriously disputed nor is it permissible for me setting singly to take a contra view. Even applying the ratio of the two decisions relied on by learned senior counsel for the first respondent, I am of the view that the first respondent cannot in this case claim to have the right or liberty to consider the matter afresh once over again. As noticed earlier, the first respondent only had two choices or alternatives before it and if it had failed to exercise its powers within the contemplation of law, and pass an order either to purchase the property for the Central Government or by issuing a no-objection certificate, it is as good as the first respondent having not exercised its power at all within the stipulated time. The order passed in the present case, as held earlier by me, cannot be considered to be an order at all within the contemplation of law, unlike in the case relied on for the first respondent. In both the Income Tax case as well as the case which fell for consideration before the Full Bench, it can be seen that effective orders, as envisaged, were initially passed, but it had so happened in those cases that the competent forum or court had set aside such orders for some irregularity or infirmity, and, therefore, the court, considering the fact situation, held that the bar of limitation prescribed therein could not stand in the way of the second and subsequent exercise of the power. In the case on hand, in view of my finding that there has been no exercise of power within the meaning and contemplation of law within the stipulated time and inasmuch as there was no effective order passed by the availing of either of the alternatives which alone was available and permissible for the first respondent under the Act, it should be held that the first respondent has missed its right to exercise once and for all its option and virtually abandoned its right pass an effective order within the meaning or contemplation of law, within the stipulated time. By doing so the first respondent has forfeited its right to pass any further order of its choice. In such circumstances, there is no other alternative left with the first respondent, having regard to the mandate contained in sub-section (3) of section 269UD, but to issue the no objection certification. Hence, the request made on behalf of the first respondent for liberty to make a fresh consideration, cannot be countenanced in law, and consequently there shall be a direction to the first respondent to issue a non-objection certificate in favour of the petitioners pertaining to the transaction in question, within four weeks from the date receipt of a copy of this order either through court or on production by counsel for the petitioner. The writ petition is allowed and ordered accordingly. No costs.