(1987) 09 DEL CK 0030

In the Delhi High Court

Case No : Civil Writ No. 1834 of 1987 in Civil Miscellaneous No. 2944 of 1987

Poonam Jain APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 15-09-1987

Acts Referred:

Citation : (1988) 73 CTR 77 : (1988) 172 ITR 659

Hon'ble Judges : Y.K. Sabharwal, J;S.S. Chadha, J

Bench : Division Bench

Judgement

1. There was an agreement to sell House No. B-1/14, Hauz Khas Enclave, New Delhi, between the petitioner and respondent No. 3 for a consideration of Rs. 20 Lakhs. The petitioner paid Rs. 2 Lakhs by way of earnest money and balance of of Rs. 18 Lakhs was payable at the time of registration of the sale deed. The statement of transfer was furnished by the petitioner as required u/s 269UC of the Income Tax Act. The Central Government, by the impugned order dated May 18, 1987, decided to purchase this property at an amount equal to the apparent consideration .The provisions of section 269UC were challenged as ultra virus the Constitution. The writ petition has been admitted. An ex parte stay of the operation of the impugned order was granted on June 10, 1987. An application for modification of the order was moved by Income Tax department and that came up for hearing on June 26, 1987. An order was passed affecting the rights of respondent No. 3 without notice to him. That order has been recalled. All these applications are for disposal after notice.

2. Respondent No. 3 was asked by order dated June 2, 1987, to surrender or deliver possession of the property to the Central Government u/s 269UC of the said Act. 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 269UC has been made has to surrender or deliver possession thereof to the appropriate authority within 15 days of the service of the order on him. Respondent No. 3 offered to give possession and the Income Tax Department

actually took possession of the property on June 10, 1987. The stay order made by this court on the writ petition staying the operation of the impugned order dated May 18, 1987, was also granted on June 10, 1987. By the modification of the order dated June 26, 1987, it has been ordered that the Income Tax authorities need not pay either the seller or the purchaser the amount of the purchase price of the property as appearing from the documents of sale and as required by the State. Respondent No. 3 has, Therefore, not been paid the apparent consideration.

3. In other cases, this court has taken the view that the rights of the writ petitioner as well as the Government would be prejudiced by directing the Government to pay over to the seller the amount of consideration in respect of the purchase of the property and the status quo has been maintained in those cases. In this case the Government has slightly changed the position by taking over possession of the property on June 10, 1987.

4. It would be wholly inequitable to deprive respondent No. 3 of the purchase price as well as the possession of the property. We, Therefore, direct the Government to deliver back the possession of the property to respondent No. 3 immediately. Counsel for respondent No. 3 says that the consideration was urgently required to meet other demands of respondent No. 3. We, Therefore, permit respondent No. 3 to raise money by mortgaging the property without possession but to the extent of 50% of the total sale consideration.

5. We, Therefore, direct that the impugned order dated May 18, 1987, shall remain stayed subject to the following conditions :

1. The Income Tax authorities shall immediately, latest within one week, hand over possession of the property to respondent No. 3.

2. The Income Tax authorities need not pay either the seller or the purchaser the amount of the purchase price of the property.

3. The provisions regarding limitation under sections 269UG and 269UH will not operate against the Income Tax authorities till further orders.

4. Respondent No. 3 shall not part with possession of the property but is permitted to mortgage the property without possession to the extent of 50% of the sale consideration.

5. In the event of the writ petition being dismissed, respondent No. 3 shall hand over possession to the Income Tax Department within one month.

6. The question of payment of interest will be determined at the time of disposal of the writ petition.

6. C.Ms. are disposed of in the above terms.

