

(1981) 05 CAL CK 0011
In the Calcutta High Court
Case No : IT Appeal No. 1 of 1976

Prodyut Kumar Dutta

APPELLANT

Vs

Competent Authority

RESPONDENT

Date of Decision : 05-05-1981

Acts Referred:

Income Tax Act, 1961 — Section 269, 269B, 269C, 269C(1), 269C(2)

Citation : (1981) 7 TAXMAN 412

Hon'ble Judges : Sudhindra Mohan Guha, J; Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : R.C. Deb and Dr. Tapas Banerjee, for the Appellant; D.K. Sen and Sunil Mukherji, for the Respondent

Judgement

Sabyasachi Mukharji, J.—This is an appeal u/s 269J of the income tax Act, 1961, against the order of the income tax Appellate Tribunal, "B" Bench, in respect of an acquisition order u/s 269F(6) of the income tax Act, 1961, by the Competent Authority, namely, the IAC, Acquisition, Range-I, regarding premises No. 105/7B, Surendra Nath Banerjee Road, Calcutta. There is a house property at No. 105/7B, Surendra Nath Banerjee Road, Calcutta, consisting of one-storeyed brick-building housing a few shops mainly with land on part where of the same is built covering an area of 4-7 kottahs, belonging to one Sri Amar Nath Seal of 308, Chittaranjan Avenue, which was sold to three different persons under three different conveyances registered with the Registrar of Assurances, Calcutta. The names of the purchasers are (1) Sri Provat Kumar Dutta, (2) Sri Pra-santa Kumar Dutta, and (3) Sri Prodyut Kumar Dutta. Each of them was the purchaser of an 1/3rd undivided share for a consideration of Rs. 34,000. The transaction under consideration, according to the revenue in the present case, is of the 1/3rd share in the said property purchased by each of the three persons. On receipt of information from the Registrar of Assurances, Calcutta, the above transaction, according to the revenue, was sent up for valuation to the Valuation Officer, Unit-II. The Valuation Officer valued the entire property at Rs. 1,29,501 and the individual 1/3rd share in the present transaction at Rs. 43,167 against the

admitted consideration of Rs. 34,000. It would be relevant at this stage to refer to the valuation made by the Valuation Officer. The Valuation Officer of the department has stated that the property was inspected by him on November 13, 1973, and the property comprised of a single storeyed shop housed in a very old structure previously used as stables. The building is nearly 100 years old. Shopkeepers have maintained and renovated the building from time to time. The building has no electrical and sanitary arrangements, except one common latrine at the back. The Valuation Officer goes on to say that the total area of the plot as per Corporation plan is 417 kottahs. The Valuation Officer further notes that the sellers initiated a case in the High Court for the eviction of the tenants. The High Court's decision was that the eviction was not possible, but while building a new structure by dismantling the old one, the same shopkeepers have to be given their corresponding accommodation at a slightly higher rate of rent and no other compensation for the period of construction during which the shopkeepers would have to suspend their business, which was estimated to be only 9 months. The present owners produced a sanctioned plan for the development of the area before the Valuation Officer. The plan contemplated a four-storeyed construction on a slightly larger plinth area by increasing the width of the building from 15'-9" to 21'-3" by excluding cantilever verandahs. As recent land price in the area, the Valuation Officer went on to observe, could not be ascertained for want of sale instances, the land price had been computed on the basis of development method, according to him, based on the sanctioned plan and the market rental except for the ground floor where the rental increase would be only Rs. 10 per shop from Rs. 40 to Rs. 50 per month. According to the Valuation Officer of the department there are only 7 shops and in the new construction there will also be seven shops. None of the tenants pay any taxes. The sale price of the land was thus worked out by him at Rs. 27,000 per kottah which was considered by him to be fair and reasonable for this area. As the building was more than 100 years old, while calculating the valuation by land and building method, only the salvage value had been considered, that is to say, salvage value plus price of the land, had been considered by him. The Valuation Officer went on to observe that the land was in a developed area and was revenue free land. The locality was very close to Rafi Kidwai Road on S. N. Banerjee Road, close to Lotus Cinema in Calcutta. According to the Valuation Officer, commercially the area was not as important as Dharamtalla Street. The plot was having a road frontage facing south of nearly 94 ft. The depth of the plot was only 34 ft. as per measurement but it was shown as 36 ft. in the Corporation plan. There was a compound wall at the back. The existing building had a very low plinth height and only about 8 ft. storey height, single storeyed. There was no stair to the roof. The walls were 18" thick in line, soorki and mortar lime plastered. The roof was laid on old rails as beams, burnt earthen tiles and terraced over. The flooring was lime concrete with cement plaster. There was no window. The front opening was initially provided with M. S. rods as gratings which were placed in many of the shops by collapsible gates. By the land and building method the valuation of the property, according to the departmental valuer, came to Rs. 1,29,500. He enclosed a calculation

sheet which is as follows:

"Enclo : Calculation sheets.

By land & building method

Rs.

S. H.?Reproduction cost.

Plinth area?1558 sft. @ Rs. 16 per sft.

24,928

M. S. bars in door?7 Nos. @ 70 sft. each = 490 sft. @ Rs. 3 per sft.

1,470

26,398

Salvage value?10% of R-s. 26,398?Rs. 2,600 (say)

Land

Area of land?4.7 kottah @ Rs. 27,000-P.K

1,26,900

Therefore, value of the property comes to Rs. 1,26,900 plus 2,600 = Rs. 1,29,500

2. Acting on this valuation report, notice was given by the IAC, which was as follows:

Whereas, I, S. K. Chakravariy, being the competent authority u/s 269B of the income tax Act, 1961 (43 of 1961), have reason to believe that the immovable property, having a fair market value exceeding Rs. 25,000 and bearing No. 105/7B situated at Surendra Nath Banerjee Road, Calcutta (and more fully described in the Schedule annexed hereto), has been transferred as per deed registering officer, the Registrar of Assurances, No. 5, Govt. Place North, Calcutta, on 18-5-73 for an apparent consideration which is less than the fair market value of the aforesaid property and I have reason to believe that the fair market value of the property as aforesaid exceeds the apparent consideration therefore by more than fifteen per cent, of such apparent consideration and that the consideration for such transfer as agreed to between the transferor(s) and the transferee(s) has not been truly stated in the said instrument of transfer with the object of--

(a) facilitating the reduction or evasion of the liability of the transferor to pay tax under the income tax Act, 1961 (43 of 1961), in respect of any income arising from the transfer; and/or

(b) facilitating the concealment of any income or any moneys or other assets which have not been or which ought to be disclosed by the transferee for the

purposes of the Indian income tax Act, 1922 (11 of 1922), or the income tax Act, 1961 (43 of 1961), or the Wealth-tax Act, 1957 (27 of 1957);

And whereas the reasons for initiating proceedings for the acquisition of the aforesaid property in terms of Chapter XX-A of the income tax Act, 1961 (43 of 1961), have been recorded by me.

Now, therefore, in pursuance of section 269C, I hereby initiate proceedings for the acquisition of the aforesaid property by the issue of this notice under sub-section (1) of section 269D of the income tax Act, 1961 (43 of 1961), to the following persons, namely:-

Transferor

Sri Amar Nath Seal

Transfer ee

Sri Provat Kumar Dutta

3. Apart from the said notice, no other materials were produced or indicated for the initiation of the proceedings u/s 269C of the income tax Act, 1961. Learned advocate for the appellant contended that there were no materials for the initiation and as such the initiation was bad. On the other hand, on behalf of the revenue/respondent it was urged that before the initiation there was the report of the Valuation Officer, which we have set out hereinbefore and that, according to the revenue, was sufficient material for an initiation of the proceedings which fulfilled the requirements of the section. We shall advert to this aspect later.

4. The appellant showed cause and there were various grounds indicated and reliance was placed also on a valuation report by the parties. Now, the said valuation report also gives the particulars of the plot, except that the area of the property which the valuer stated, was ascertained by him to be 4 kottahs 12 ch. 12 sft. The valuer in his report stated as follows:

4. The property has been let out to a number of tenants, each occupying one shop room at a total gross rent of Rs. 233.50 per month. This total rent is of long standing and cannot be a guide for determining the market value. I have come to learn that the land lord has agreed according to the terms of compromise to enhance the rent to Rs. 50 gross per month for each shop in case the landlord rebuilds the structures, there being proposal for seven such shop rooms. So, total expected rents for the shops will be Rs. 350 gross for month. So, I have considered rent of Rs. 350 per month in arriving at the rental value of the property.

5. Value of the property on land and building in the present market considering full value of land should be Rs. 1,52,447 only as part following details:.

Land :-4k-12 ch.-12 sft. @ Rs. 30,000 P.K. = Rs. 14,000 Structure:-

Rs.

1 storeyed building?1,531 sft. @ 25 sft.

33,775

Drainage, water supply, sanitary fittings, etc., & electricity

4,000

Total prime cost

37,775

Less depreciation at 75%

28,332

9,443

Value in present market on land & building

1,52,487

6. Value of the property on the basis of rent of Rs. 350 gross per month as discussed above should be in the present market even at 6% return, which is far below the usual return now a days, Rs. 44,500 only as per following details:

Rs.

Gross, annual rent: 350 X 12, i.e.

4,200

Less yearly Corporation taxes @ 22.5% less 11.25% less 10% as existing taxes of Rs. 541.28 is low and disproportionate to annual rent of Rs. 4,200

756

3,444

Less for repairs

574

Collection

206

708

Rs. 44,400 will produce a net annual yield of Rs. 2,664 at 6% return or 1,666 years" purchase.

7. The property is a tenanted one and as such is subject to the Rent Act and cannot escape from the provisions of the said Act. So the rental value cannot be ignored. Considering all pros and cons, in my opinion, value of the property should be the mean of the above two values (Rs. 1,52,488 +

Rs. 44,400) i.e.,

Rs. 1,96,888.

= Rs. 98,444

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8. So I certify that value of each equal undivided 1/3rd share in the property in the present market should be, deducting 10% from Rs. 9,84,440, the present value of the property as arrived at para. 7, Rs. 29,533 or say Rs. 30,000 only.

5. He has, therefore, valued the undivided 1/3rd share at about Rs. 30,000 each. The IAC after considering the rival contentions was satisfied that the conditions for the acquisition were fulfilled and, therefore, made an order that the property be acquired under Chap. XX-A of the income tax Act, 1961.

6. There was an appeal from the said order of the IAC. Though the Tribunal was unable to accept that the development method as indicated by the department valuer could not be accepted, according to the Tribunal, inasmuch as the entirety of the property was not fully developed or let out, the principles enunciated by the Supreme Court in the case of R. C. Cooper v. Union of India [1970] 40 Comp Cas 325, would be applicable and the ratio of the decision of this court in the case of CONTROLLER OF ESTATE DUTY, WEST BENGAL Vs. RADHA DEVI JALAN., , would not apply in full force and, therefore, the order of the IAC making the acquisition was upheld by the Tribunal. The property of the said order is under challenge in this appeal before us.

7. On behalf of the appellant it was contended that there were no materials for the initiation of the proceedings. It was secondly urged that, in any event, on the materials as produced before the Tribunal and as apparent from the records it was evident that the order of acquisition could not be legally made or sustainable. Before we consider the rival contentions, it would be material to bear in mind certain undisputed facts.

8. The transactions in question took place some time in the year 1973. Now, though there is some discrepancy in the report of the valuer about the area being 4.12 kottahs it appears that the order of acquisition proceeded on the basis that the premises in question comprised of 4.7 kottahs, and the department valuer has also valued the premises in question on that basis. We will, therefore, have to proceed (on the basis) that the land involved in this case was 4.7 kottahs. It is also undisputed that each seller involved had a 1/3rd share in the premises in question. On this aspect it is also important to bear in mind that the property was conveyed not by one conveyance executed by the three executants of the respective shares but by three different conveyances conveying their undivided shares to the vendor. Thirdly, it is indisputable that 50% of the premises in question was at least tenanted. It is also true that there was a litigation in the High Court about the eviction of the tenants and there is a decree of the High Court which postulated that the eviction was not possible, but for the

purpose of construction of the building, a plan for which had been sanctioned, was produced before the departmental valuer and was also taken into consideration by the IAC in his order, postulates that if and when a new building is constructed the existing tenants would have been given the same accommodation as they were enjoying with only Rs. 50 increase in their rent and they would be out of possession for only nine months. Learned advocate for the revenue stressed this point to indicate that the rental method in this case would not be a safe guide, because the property was under the development scheme in the sense that there was a plan already sanctioned for the total area. That is true, but if that factor has to be taken into consideration, then that factor will have to be taken into consideration along with the fact that there was an obligation imposed by the decree to construct a building and to let the same out to the tenants and the property was sold subject to this agreement with the tenants. According to the Departmental Valuation Officer, he has valued the land at Rs. 27,000 per cottah. Now, 4.7 kottahs at the rate of Rs. 27,000 per kottah does not come to Rs. 1,26,900, but works out to be Rs. 1,19,812.50. It appears that before the IAC it was pointed out that there was a mistake, but the mistake pointed out was slightly different. It was urged that the figure should be Rs. 1,19,812.50 instead of Rs. 1,26,900. But strangely enough the IAC observed that he saw no arithmetical inaccuracy in the calculation. Such arithmetical inaccuracy is self-evident and it is strange that the IAC could not see it. Learned advocate for the revenue urged before us that this was a question of fact urged before the IAC and he has held against him and, therefore, we should not go behind this finding. It was, further, urged that this question did not seem to have been urged before the Tribunal. We are, however, unable to accept this contention. If an apparent arithmetical mistake is self-evident, then in our opinion, in exercise of our appellate jurisdiction in disposing of the appeal, we can certainly take cognizance of these facts, which are apparent from the records, as these are. If we proceed on the basis that Rs. 1,19,812.50 should be the figure as value of the land as per calculation of the Departmental Valuation Officer of 4.7 kottahs of land and add Rs. 2,600 as the salvage value which he has added, then the total figure comes to Rs. 1,22,412.50.

9. The next question, however, appears to be whether any deduction on account of the undivided one-third share had to be calculated. Now, that this was not the property of one individual and there were three separate properties involved is evident from the fact that there were three separate conveyances executed and each of the vendees had an undivided one-third share in the premises in question. Learned advocate for the revenue, however, drew our attention to the fact that the background of this case, as indicated in the order of the IAC, showed that the father of the vendees was a tenant of the premises in question and there was a decree of the High Court for his eviction. To protect him from eviction the three vendees purchased the property one-third each with an idea of reselling. Therefore, it was urged that the parties in question had an undivided one-third share each, which is a factor which should not be taken into

consideration, in view of the peculiar facts and circumstances of the case. It is true in this case that the parties joined in consolidated action both in respect of the vendees purchasing the property and later reselling the same to the vendor. But section 269C, as attracted and applied, speaks of the excess of the actual consideration with (respect to) the fair market value of the property. Therefore, the court or an authority is concerned with the fair market value of the property in question, not what a particular property (in relation) to a particular seller or a particular buyer would fetch because of fortuitous combination of circumstances. This is a well-known principle well accepted in judging questions of valuation. A combination of certain fortuitous circumstances making the property to bring a higher price or bringing down the property to a low price would not affect the principles for a determination of fair market value, upon which the applicability of section 269C of the Act depends.

10. The ground, if a property is joint and parties have undivided share, the valuation of that property has to be different from the property which is owned by a sole owner was recognised by this court in a decision in the case of J.N. Bose Vs. Commissioner of Wealth Tax, , in an unreported decision of the Division Bench of this court in the case of Commissioner of Income Tax Vs. Madho Properties Ltd.,). Therefore, if one takes into consideration that the vendees have a one-third share each, then ten per cent, deduction, as was given by the parties on the valuation, would not be unreasonable and if ten per cent, deduction from the total value as computed by the departmental valuer with arithmetical inaccuracy ultimately comes to Rs. 1,10,171-50, i.e., Rs. 1,19,812-50 plus Rs. 2,600, making a total figure of Rs. 1,22,412.50 and deducting therefrom for an undivided share at 10%, i.e., Rs. 12,241, we arrive at the figure of Rs. 1,10,171.50 and one-third of the same would work out to Rs. 36,723-83, the premises in question having been sold by each of the three vendees at Rs. 34,000. On these figures, ex facie it shows that the premises had not been sold at a price 15% lower than the market price as was estimated properly by the departmental valuer. If this is the position, then the order cannot be sustained and the acquisition could not be upheld. And, if this was the only material available before the initiating authority, then the initiation was also improper.

11. Learned advocate for the revenue stressed, relying on certain observations made in this case J.N. Bose Vs. Commissioner of Wealth Tax, , that only one method should be followed. In our opinion, reading the judgment in that way would be only misreading the observations. What was said was that there are methods of valuation and whether in a particular situation a particular method of valuation should be followed or not, viz., land and building method, or rental method or other methods, whether in a particular situation one method should be followed in preference to the other would depend on the peculiar facts and circumstances of a particular case. If in a particular case the property is not fully developed, then a combination of both land and building method as well as the rental method may in an appropriate case be resorted to, as has been supposed

to be done by the valuer of the parties in the instant case.

12. As a matter of fact, we had explained these methods in a little more detail in the case of *Debi Prosad Poddar Vs. Commissioner of Wealth Tax*, . This is also the view of the Division Bench of this court in the case of *Commissioner of Income Tax Vs. Madho Properties Ltd.*, .

13. Learned advocate for the revenue drew our attention to the decision of the Supreme Court in the case of *R. C. Cooper v. Union of India* [1970] 40 Comp Cas 325, and he relied on the observation of Shah J. at page 383 to the following effect:

These are, however, not the only methods. The method of determining the value of property by the application of an appropriate multiplier to the net annual income or profit is a satisfactory method of valuation of lands with buildings, only if the land is fully developed, i.e., it has been put to full use legally permissible and economically justifiable, and the income out of the property is the normal commercial and not a controlled return or a return depreciated on account of special circumstances. If the property is not fully developed, or the return is not commercial the method may yield a misleading result.

14. But the Supreme Court later on in the case of *Smt. Tribeni Devi and Others Vs. Collector of Ranchi*, at 1420, dealing with compensation under the Land Acquisition Act had observed as follows:

The land acquired has, therefore, to be valued not only with reference to its condition at the time of the declaration u/s 4 of the Act, but its potential value also must be taken into account. The sale deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market value. This, however, is not the only method. The rent which an owner was actually receiving at the relevant point of time or the rent which the neighbouring lands of similar nature are fetching can be taken into account by capitalising the rent which, according to the present prevailing rate of interest is 20 times the annual rent. But this also is not a conclusive method. This court had in *The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty*, , indicated at page 412, the methods of valuation to be adopted in ascertaining the market value of the land on the date of the notification u/s 4(1) which are : (i) opinion of experts, (ii) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (iii) a number of years purchase of the actual or immediately prospective profits of the lands acquired. These methods, however, do not preclude the court from taking any other special circumstances into consideration, the requirement being always to arrive as near as possible at an estimate of the market value. In arriving at a reasonable correct market value, it may be necessary to take even two or all of those methods into account inasmuch as the exact valuation is not always possible as no two lands may be

the same either in respect of the situation or the extent or the potentiality nor is it possible in all cases to have reliable material from which that valuation can be accurately determined.

15. Therefore, the Supreme Court recognised that in an appropriate case a mixture of methods is permissible if warranted by the particular facts and circumstances of that case. Our attention was also drawn to the observations in Principles & Practice of Valuations (Land & Houses) by J. A. Parks, 1977 Edn., p. 53, where it was observed as follows:

In making many valuations it is customary to check one method by another method. The Rental Method of valuation should be checked by the Land and Building Method of Valuation whenever possible. If you try to analyse a sale of land and buildings, it is rare for the valuer to obtain figures of rent but he can measure and value the building and can check the sale price by the Land and Building Method.

16. On the other hand, learned advocate for the revenue tried to stress that in this case, as the sanctioned plan was given, the front of the road was very large enough, and there are factors which should be taken into consideration. Our attention was again drawn to the same passage where at p. 62, it was stressed that the frontage of a plot of land and the building was an important factor which should be taken into consideration when making a valuation of land. In shopping areas, it was stated that a land nearest to the road side has the upper value because the land could be used for shopping space. Usually, the shopping space would command a highest rate in building. These observations must, however, be borne in mind in the context of the particular facts, which we have mentioned hereinbefore, that is to say, there were three different vendees, though by combination and subsequent action they have combined in one action, one although the property originally belonged to the father in selling the property to a particular vendor. Therefore, on the materials available on record we are clearly of the opinion that the combination of the rental and land and building method would be suitable in this case and having regard to the figures that we have set out hereinbefore, Chap. XX-A of the income tax Act, 1961, was not attracted to the transaction in question.

17. Before we conclude, we must, however observe about two aspects of the matter. Before us, it was stressed that the initiation of the proceedings was bad. In this connection, reliance was placed on certain observations of mine, made sitting singly, in the case of SUBHKARAN CHOWDHURY AND OTHERS Vs. INSPECTING ASSISTANT COMMISSIONER OF Income Tax, ACQUISITION RANGE I, AND OTHERS., , where at p. 784 of the report, it was observed by me that the evidentiary value of the presumption under sub-section (2) of section 269 were not attracted at the time of initiation because, according to me, if that were so, there was no question of rebutting the presumption. On this aspect, we had accepted the view of the learned single judge of this court in the case of Smt. Bani Roy Chowdhury v. Competent Authority [1978] 112 ITR HI, where at p. 120

of the report Mr. Justice R. M. Dutta had observed also to that effect. These two decisions were referred to in the judgment in the case of CIT v. Madho Properties Ltd. (income tax Appeals Nos. 9 & 10 of 1976 delivered on 12th December, 1980, unreported--since reported in Commissioner of Income Tax Vs. Madho Properties Ltd., , where analysing the sections and after referring to the decision and judgment in the case of Smt. Bani Roy Chowdhury Vs. Competent Authority, Inspecting Assistant Commissioner of Income Tax, Acquisition Range II and Others, , referred to hereinbefore, and also the decision in the case SUBHKARAN CHOWDHURY AND OTHERS Vs. INSPECTING ASSISTANT COMMISSIONER OF Income Tax, ACQUISITION RANGE I, AND OTHERS., , which we have mentioned hereinbefore, Mr. Justice Dipak Kumar Sen, speaking for the Division Bench, after referring to the relevant provision, observed as follows (pp. 407, 408):

From the aforesaid sections it appears that acquisition proceedings can be validly initiated only when the conditions prescribed in sections 269C and 269D are satisfied. Such conditions are that the Competent Authority must have reason to believe that:

(a) The transfer involves immovable property of a fair market value exceeding Rs. 25,000.

(b) Such property has been transferred for an apparent consideration which is less than the fair market value by at least 15%.

(c) The consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object of facilitating the reduction or evasion of the tax liability of the transferor or the concealment of any income, money or assets by the transferee.

When the said conditions exist the Competent Authority is required to take further ministerial steps for initiating the proceedings as follows:

(a) he has to record his reasons for initiating the proceedings;

(b) he has to issue a notice u/s 269D to be published in the official Gazette.

In our view, the conditions prescribed in section 269C are not disjunctive and each of them must exist before a proceeding can be validly initiated.

In the instant case, admittedly, the fair market value of the property exceeds Rs. 25,000. The Valuation Officer has estimated the fair market value of the property at a figure and his figure exceeds the consideration stated in the conveyance by more than 15% (of the consideration). The report of the Valuation Officer contains sufficient material for the Competent Authority to have reason to believe that the property was transferred at an apparent consideration less than its fair market value and that the fair market value of the property exceeds the apparent consideration by more than 15% (of the apparent consideration).

Solely on the basis of the aforesaid, the Competent Authority has drawn a presumption u/s 269C(2) and has recorded that he had reasons to believe that

the agreed consideration had not been truly stated in the conveyance with the object of evasion, reduction and/or concealment within the meaning of section 269C(1). It is to be determined whether the Competent Authority was entitled to initiate proceedings in the instant case on the basis of such presumptions in the absence of any further material. In our view it was not open to the Competent Authority to draw any presumption u/s 269C(1) prior to the initiation of the acquisition proceedings. Section 269C lays down that such presumption can be drawn in any proceeding under that chapter. Section 269D similarly lays down equally clearly that proceedings for acquisition under that chapter can be initiated only by a notice to be issued under that section. We are unable to accept the contention of the revenue that the word "proceeding" in section 269C includes all initial steps to be taken by the Competent Authority prior to the issue of a notice u/s 269D. This contention appears to be untenable in the face of the clear language of section 269D. It was also not open to the Competent Authority to draw any presumption u/s 269C at that stage for other reasons. The presumption u/s 269C(2) can be drawn only where the fair market value of the property exceeds the apparent consideration by a certain percentage (of the apparent consideration). In our view, such a presumption can be drawn only when the value of the property has been finally determined and not before. At the time of initiation of the proceeding the Competent Authority is required only to record his reasons for his belief that the fair market value of the property exceeds the apparent consideration by the prescribed percentage. He is neither called upon nor empowered to come to any final conclusion regarding the value of the property and as such the question of drawing the presumption under sub-section (2) of section 269C can never arise at that stage.

18. This view is further corroborated by the observations of the Division Bench of this court in the case of Competent Authority, Inspecting Assistant Commissioner of Income Tax and Others Vs. Smt. Bani Roy Chowdhury and Others, , which went up in appeal from the judgment of the learned single judge, which I have referred to hereinbefore, where, after referring to the several decisions, which we have mentioned before, the Division Bench observed (p. 587):

Thus, it appears that this court has persistently taken the view that the presumption under clause (b) of section 269C(2) of the Act is not applicable to the stage when the Competent Authority forms the belief under sub-section (1) of section 269C, for, there is no proceeding at that stage.

19. Learned advocate for the revenue, however, observed that in view of section 269L, this valuation report was sufficient material for the initiation of any proceedings. From the notice of the initiation of proceedings it is not evident that the valuation report was the basis for the initiation of proceedings, but, apart from that it does not appear, in view of the opinion expressed by the Division Bench, that that was a correct position. But, we need not for this purpose rest our decision on this because, even assuming that the valuation report was there and even assuming that the figure of Rs. 27,000 per kottah was taken then it

must be admitted that for the undivided one-third share even on this difference of figure between the actual consideration money on the deed and the estimated market value would be less than 15 per cent, which could attract the provision of this section. In the premises, we are of the opinion that in this case the initiation of the proceedings u/s 269D(1) was bad and the order passed u/s 269F(6) by the Tribunal is bad and is not legally tenable and, therefore, they are quashed and set aside.

20. Interim order of injunction of stay passed by this court is vacated. In the facts and circumstances of this case, the parties will pay and bear their own costs.

Sudhindra Mohan Guha, J.

I agree.