(2003) 10 DEL CK 0035

In the Delhi High Court

Case No : C.M. No. 6863 of 2002 and C.W. No. 395 of 1994

Raj Kumar Bhargava APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 30-10-2003

Acts Referred:

Income Tax Act, 1961 — Section 269UD, 269UD(1), 269UE(1), 269UE(6), 269UF(1)
Income Tax Rules, 1962 — Rule 48L
Transfer of Property Act, 1882 — Section 55(6)

Citation : (2004) 186 CTR 378 : (2004) 265 ITR 46 : (2004) 135 TAXMAN 6

Hon'ble Judges : Madan B. Lokur, J;D.K. Jain, J

Bench : Division Bench

Advocate : Arjun Bhandari, for the Appellant; R.D. Jolly, for the Respondent

Judgement

D.K. Jain, J.—Challenge in this writ petition is to the legality of the order dated March 30, 1993, passed by the appropriate authority u/s 269UD(1) of the Income Tax Act, 1961 (for short "the Act"), directing preemptive purchase of the ground floor of the house bearing No. D-203, defense Colony, New Delhi.

2. The background facts, relevant for the purpose of dealing with the present petition, are as follows :

On December 22, 1992, the petitioner entered into an agreement to purchase the aforenoted property for a total consideration of Rs. 20 lakhs with respondent No. 2 (hereinafter referred to as "the vendor"). As per the agreement, the vendor was paid a sum of Rs. 1,50,000 by way of earnest money and the balance amount of Rs. 18,50,000 was to be paid at the time of registration of the conveyance deed with the Registrar of Assurances, New Delhi. A statement in Form No. 37-1 under rule 48L of the Income Tax Rules, 1962, along with an agreement to sell was filed with the appropriate authority on January 4, 1993, seeking "no objection certificate" from the said authority. Upon consideration of the objections filed on behalf of the petitioner, the appropriate authority came to the conclusion that the apparent consideration is very low as compared to the market value of the subject property and thus, exercising power vested in it u/s 269UD(1) of the Act, vide impugned order, ordered the purchase of the subject property by the Central Government. The said order has been challenged in the writ petition. Besides the vendor, the Union of India and the appropriate authority, have been arrayed as respondents Nos. 2 and 3, respectively.

3. During the pendency of the writ petition, the petitioner filed this application seeking a direction to the respondents to pay to him a sum of Rs. 1,50,000 paid as earnest money to the vendor in terms of the agreement to sell along with interest at the rate of 21 per cent, per annum, as the said amount had not been tendered to him by the Central Government before April 30, 1993, in terms of the impugned order.

4. The application is resisted by the appropriate authority. The vendor has chosen to keep quiet. While opposing the application as not maintainable it is stated in the reply affidavit that since the vendor did not consent to receive the apparent consideration, the same was deposited by the Chief Commissioner with the appropriate authority on April 30, 1993, in accordance with the provisions of Section 269UG(3) of the Act. It is emphasised that though the transferee, being the intending purchaser, may be entitled, by way of restitution or compensation, to claim the refund of the earnest money and advance paid by him to the transferor but he is not entitled to claim refund by way of tender of such amount by the Central Government u/s 269UG(1) of the Act. It is thus pleaded that there was no question of tendering any amount to the petitioner as claimed by him.

5. In the affidavit filed by way of rejoinder to the reply affidavit, the petitioner has taken a new plea, namely, that the appropriate authority having failed to tender the amount of Rs. 1,50,000 paid by the petitioner to the vendor, within the time stipulated in Section 269UG(1) of the Act, the purchase order stands abrogated under Sub-section (1) of Section 269UH of the Act. The stand of the petitioner is that as per Section 269UG(1), he is also a person entitled to receive a part of the amount of apparent consideration and, Therefore, the respondents having admittedly failed to tender the aforenoted amount, the provisions of Section 269UH(1) are attracted and the property stands revested in the vendor.

6. Though in the normal course we would have not permitted the petitioner to raise a point which had not been raised in the main petition, as the relief in the miscellaneous application cannot be greater in scope than the main writ petition, and could have directed him to either amend the writ petition or take recourse to any other appropriate proceeding, in order to cut short the life of the litigation and keeping in view the fact that no sur-rejoinder has been filed on behalf of the appropriate authority, rebutting what is stated in the rejoinder affidavit, we have permitted the petitioner to address us on the said point.

7. We have heard Mr. Arjun Bhandari, learned counsel for the petitioner, and Mr. R. D. Jolly, learned senior standing counsel for the Revenue.

8. Before we deal with the issue raised, we may briefly refer to the relevant

provisions of Chapter XX-C of the Act.

9. On the passing of an order u/s 269UD(1) of the Act for pre-emptive purchase by the Central Government, Section 269UF(1) obligates the Central Government to pay an amount equal to the apparent consideration by way of consideration for such purchase. Section 269UG(1) provides for the person or persons to whom the amount of apparent consideration is to be tendered by the Central Government, within a period of one month from the end of the month in which the property concerned becomes vested in the Central Government under Sub-section (1), or, as the case may be, Sub-section (6) of Section 269UE of the Act. Without categorising the person or persons to whom the amount shall be tendered, the Legislature has employed the expression--"person or persons entitled thereto". The expression is again not defined in the Chapter. In the instant case, the controversy centres around the interpretation of the said expression.

10. In support of the proposition that failure on the part of the Central Government to tender the earnest money paid by the petitioner to the vendor has resulted in the pre-emptive purchase order being abrogated in terms of Sub-section (1) of Section 269UH, strong reliance is placed by learned counsel for the petitioner on the decision of the Supreme Court in Prima Realty Vs. Union of India (UOI) and Others, . It is asserted that in view of the said decision, the issue stands concluded in favor of the petitioner and, Therefore, the purchase order made u/s 269UD(1) of the Act deserves to be quashed.

11. Mr. Jolly, on the other hand, however, maintains that the vendor alone being the person entitled to receive the amount of apparent consideration payable u/s 269UG(1) of the Act, no amount of apparent consideration was required to be tendered to the petitioner. According to learned counsel, in so far as this court is concerned, the issue stands concluded by a majority view in Durga Dass Uppal v. Union of India.

12. Thus, the short question arising for our consideration is whether a vendee, who has paid some amount as earnest money to the vendor in terms of the agreement to sell can be said to be also a "person entitled to" receive the amount of apparent consideration, payable by the Central Government in terms of Sub-section (1) of Section 269UG of the Act.

13. In our opinion, in the light of the decision of the apex court in Asgar S. Patel and Others Vs. U.O.I. and Others, , the issue is no more rest Integra.

14. In the said decision, their Lordships, while analysing the meaning of the expression "the person or persons entitled thereto" as appearing in Section 269UG, observed that (page 721): "We have to go by the ordinary meaning of the expression and the context in which it has been used. The word ''entitle'' means ''to give a claim, right or title to : to give a right to demand or receive, to furnish with grounds for claiming'' (Law Lexicon, P. Ramanatha Aiyar, second edition). Examining the provisions of Section 269UG in the light of Section 55(6)

of the Transfer of Property Act, it has been observed that unless during the course of proceedings under Chapter XX-C of the Act, the appropriate authority records a finding that the purchase money, which purports to have been paid by the transferee to the transferor is being claimed to have been paid only with a view to defeat the provisions of this Chapter and makes a declaration to that effect, the charge/lien of the transferee u/s 55(6)(b) of the said Act shall continue to exist and follow the property in the hands of the Central Government. Their Lordships, while disagreeing with the plea raised on behalf of the appropriate authority that it is always the vendor alone, who is entitled to receive the consideration payable under an order of compulsory purchase, observed thus (page 723) :

"According to the appropriate authority it is always the transferor/ vendor alone who is entitled to receive the consideration payable under an order of compulsory purchase unless otherwise agreed mutually and expressly between the parties and consent terms filed with the appropriate authority. It is difficult to agree with the above said plea raised on behalf of the appropriate authority. If there be no dispute between the buyer and the seller or a third person as to the amount of purchase money having been paid or as to the apportionment of the amount forming part of the purchase money then the amount must be tendered by the Central Government to the person or persons entitled thereto. If there be any dispute raised as to the apportionment of the amount by more than one person staking claims seeking payment of the amount resulting into a dispute as to the apportionment of the amount of consideration, in that case the Central Government shall deposit so much part of the apparent consideration as is the subject-matter of dispute with the appropriate authority as provided by Sub-section (2) of Section 269UG. In either case the compliance must be made within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government. Failure to make such tender shall result in the pre-emptory purchase being abrogated and the ''immovable property shall stand revested in the transferor as provided by Sub-section (1) of Section 269UH."

15. However, having expressed the above view, their Lordships did not go into the question, whether on account of non-tendering the amount to the vendees, the subject property stood revested in the vendor because a statement was made on behalf of the vendees before the Supreme Court that they were not seeking revesting of the property and they were only seeking enforcement of the statutory charge in their favor for the amount of purchase money paid by them. None the less, the afore-extracted para does clarify that in the absence of any dispute between the vendor, vendee or any third party with regard to the purchase money paid or as to the apportionment of amount forming part of the purchase money the Central Government must tender the amount to the person or persons entitled thereto, which includes a transferee/vendee who has paid some amount to the vendor under the agreement to sell. The apex court has, in no uncertain terms rejected the stand of the appropriate authority that it is

always the transferor/vendor alone who is entitled to receive the consideration payable under an order of compulsory purchase.

16. In Prima Realty Vs. Union of India (UOI) and Others, , heavily relied upon by learned counsel for the petitioner, out of the total amount of apparent consideration of Rs. 3,58,84,384 determined by the appropriate authority to be payable by the Central Government, an amount of Rs. 60 lakhs out of the amount of Rs. 66 lakhs paid by the transferee as earnest money to the transferor was tendered by the Central Government within the stipulated time by sending a cheque drawn in favor of "Prima Realty Ltd." instead of "Prima Realty", a partnership firm. On the transferee''s filing a writ petition, inter alia, contending that the purchase order stood abrogated on account of non-compliance with Section 269UG(1) the Central Government sent a corrected cheque in the name of "Prima Realty". Admittedly, the new cheque was sent after the period prescribed u/s 269UG(1) had expired. On these facts, the court held that the tender of amount of apparent consideration fell short by the amount for which the cheque was made and, Therefore, there was clear non-compliance of the requirement of Section 269UG(1) of the Act. The consequence envisaged by Section 269UG of the Act ensued. From this decision, it is clear that the Supreme Court has been pleased to hold that if any amount is paid by the transferee/ vendee as earnest money, he is also a person entitled to receive a part of the apparent consideration as per the provisions of Section 269UG(1) of the Act.

17. In the light of the aforementioned authoritative pronouncements of the apex court, we have no hesitation in holding that the petitioner is one of the persons entitled to receive a part of the apparent consideration from the Central Government as ordained in Section 269UG(1) of the Act.

18. There is no dispute in regard to the payment of earnest money of Rs. 1,50,000 by the petitioner to the vendor and, Therefore, in the light of the view we have taken above, the said amount had to be tendered to the petitioner as per the provisions of Section 269UG(1) of the Act. Admittedly, the said amount was never tendered to the petitioner. Thus, there is a clear non-compliance with the requirements of Section 269UG(1) of the Act and consequently the provisions of Section 269UH are attracted.

19. In view of the decisions of the apex court in Asgar S. Patel and Others Vs. U.O.I. and Others, and Prima Realty Vs. Union of India (UOI) and Others, , the majority view of this court in Durga Dass Uppal v. Union of India cannot be said to be good law.

20. For the foregoing reasons, we accept the plea of the petitioner taken in his rejoinder-affidavit and hold that the order dated March 30, 1993, made by the appropriate authority u/s 269UD(1) stands abrogated and the subject property would revest in the vendor, in terms of Sub-section (1) of Section 269UH of the Act, with the other consequential results, including those specified in Sub-section (2) of Section 269UH and Sub-section (3) of Section 269UL of the Act.

21. The application as well as the main writ petition stand disposed of in the above terms with no order as to costs.

