
(1994) 04 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3426 of 1991

Rajasthan Patrika Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-04-1994

Acts Referred:

Income Tax Act, 1961 — Section 269UA, 269UB, 269UC, 276AB
Transfer of Property Act, 1882 — Section 53A

Citation : (1995) 121 CTR 255 : (1995) 213 ITR 443

Hon'ble Judges : Y.R. Meena, J;M.R. Calla, J

Bench : Division Bench

Advocate : N.M. Ranka and J.K. Ranka, for the Appellant; G.S. Bafna, for respondent Nos 1 to 3 and J.S. Rastogi, for the Respondent

Judgement

M.R. Calla, J.—The petitioner is a limited company incorporated under the Indian Companies Act, 1956, in the name and style of Rajasthan Patrika Limited, having its registered office at Kesargarh, Jawaharlal Nehru Marg, Jaipur. According to the petitioner, respondent No. 4 (J.K. Rastogi) held property comprising land area of 1,033.33 sq. yards, one building on the ground floor, part building on the first floor including roof and some construction on the second floor situated at 11, Hospital Road, Jaipur, known as Krishna Kunj. Respondent No. 4 being desirous of selling the abovesaid property and the petitioner-company being interested to purchase the same, agreed to purchase it for a sale consideration of value of Rs. 25 lakhs and for that purpose entered into an agreement for sale, which was executed on March 7, 1991, and was got registered with the Sub-Registrar, Jaipur-2, Jaipur, on March 7, 1991. The petitioner-company parted with an amount of Rs. 8 lakhs 50 thousand on March 7, 1991, vide pay order in favour of respondent No. 4 before the Sub-Registrar at the time of the registration of the agreement of sale by way of an advance. It is also the case of the petitioner-company that respondent No. 4, as a security against the payment of Rs. 8.50 lakhs, gave the possession of certain portion of the aforesaid property as detailed in Schedule "A" and the petitioner took possession of the said portion on March

7, 1991, and is in possession of the said portion of the property, about which the sale agreement was entered into and executed. According to the petitioner, the important salient terms of agreement of sale in brief are as under :

(i) That the humble petitioner shall be entitled to use, occupy, hold and enjoy the portion described in Schedule "A", but shall not be entitled to make any new construction in the said portion till registration of sale deed of the property ;

(ii) That respondent No. 4 shall continue to remain in possession of the portion described in Schedule "B" till the registration of sale deed and receipt of balance of Rs. 16.5 lakhs. Respondent No. 4 shall be entitled to use and occupy the said portion but shall not be entitled to sublet, assign or part with possession to any other person ;

(iii) That respondent No. 4 shall take necessary steps, within 15 days from the date of agreement of sale, to make payment of Income Tax, land and building tax, house tax, dues of water works, Rajasthan State Electricity Board, etc., uptill the date of registration of the sale deed and to obtain necessary tax clearance certificate u/s 230A of the Income Tax Act as well as necessary no-objection certificate u/s 269UL (Chapter XX-C of the Income Tax Act, 1961), etc., from the Income Tax Department in accordance with law and at its own cost and expenses ;

(iv) That respondent No. 4 after collecting receipts of payment of taxes, obtaining tax clearance certificate/no-objection certificate/certificate from the Income Tax Department under the Income Tax Act, 1961, for registration of sale deed shall give necessary information in writing to the humble petitioner and thereafter the humble petitioner shall get prepared the sale deed for execution and registration at its own cost and shall pay the balance sale consideration before the Sub-Registrar at the time of registration of the sale deed ;

(v) That if the humble petitioner fails to get executed the sale deed and get it registered after respondent No. 4's obtaining of receipts, tax clearance certificate, no-objection certificate, etc., then respondent No. 4 shall be entitled to deduct a sum of Rs. 2 lakhs by way of compensation and also to get back possession of the portion described in Schedule "A" of the agreement of sale ;

(vi) That if respondent No. 4 fails to pay the dues, produce the receipts, obtain requisite no objection certificate/tax clearance certificate/ certificate under the Income Tax Act or refuses to execute sale deed or get it registered then the humble petitioner shall be entitled to sue for specific performance at the cost of respondent No. 4 and snail also be entitled to claim a compensation of Rs. 2 lakhs ;

(vii) That respondent No. 4 assured that the impugned property is free from all encumbrances, it is not under acquisition and he has valid title to transfer to the humble petitioner ;

(viii) That respondent No. 4 shall hand over the original gift deed dated

November 2, 1957, to the humble petitioner at the time of registration of the sale deed and any claim by any other person shall be non est in law. If on account of defective title the humble petitioner is divested of ownership or possession, then respondent No. 4 shall reimburse with compensation ; and

(ix) That house tax, land and building tax, other taxes, if any, shall be paid by respondent No. 4. Stamp duty, registration fees and other expenses for execution and registration of sale deed shall be at the cost of the humble petitioner.

2. A copy of the agreement dated March 7, 1991, has been annexed with the writ petition as annexure "A".

3. Chapter XX-C entitling purchase by the Central Government of immovable properties in certain cases of transfer was inserted in the Income Tax Act by the Finance Act, 1986, with effect from October 1, 1986, vide Notification No. S. O. 480(E), dated August 7, 1986 (see Commissioner of Income Tax Vs. Amar Transport Services,). The provisions of this Chapter have been made applicable to Delhi, Greater Bombay, Calcutta Metropolitan Area and Madras Metropolitan Planning Area. The provisions of this Chapter XX-C were also made applicable on the property situated at Jaipur on, and from June 1, 1989, vide Notification (see [1989] 177 ITR 238), dated May 8, 1989. Thus the provisions of Chapter XX-C became applicable in respect of the aforesaid property situated at Jaipur, in respect of which the agreement was entered into on March 7, 1991, as aforesaid, that is a date subsequent to June 7, 1989. The provisions of this Chapter XX-C are not applicable in respect of transfer of any immovable property of a value up to Rs. 10 lakhs as prescribed under Rule 48K of the Income Tax Rules, 1962, as inserted by the Income Tax (Seventh Amendment) Rules, 1986. Thereafter, Form No. 37-I (statement of transfer of immovable property to be furnished to the appropriate authority u/s 269UC) was got prepared, the authorised signatory of the petitioner, namely, Laxmi Narain, appended his signatures thereon and the same was handed over to respondent No. 4 for submission to the appropriate authority for obtaining no-objection certificate, so that sale deed may be executed and got registered. Respondent No. 4 submitted the said statement in Form No. 37-I in the office of the Deputy Commissioner of Income Tax Department, Jaipur, along with the agreement of sale on March 22, 1991. The District Valuation Officer (AA) Appropriate Authority, Income Tax, Jaipur, sent a notice dated April 19, 1991, to respondent No. 4 as well as to the petitioner, to produce the documents detailed therein on any working day up to April 24, 1991, and it was proposed that the property shall be inspected on April 25, 1991, and the parties were requested to arrange for the same and to be present personally or through authorised agents. The District Valuation Officer with his subordinates inspected the property.

4. The appropriate authority (respondent No. 2) did not afford any opportunity of hearing to the petitioner or respondent No. 4 after furnishing the statement in Form No. 37-I and the petitioner received information, vide letter dated May 30,

1991, from respondent No. 3, i.e., the Deputy Commissioner of Income Tax, appropriate authority containing the findings of respondent No. 2 and this letter dated May 30, 1991, was received by the petitioner by registered post on June 1, 1991, which has been filed with the writ petition as annexure "D". Thereafter, a show-cause notice u/s 276AB of the Income Tax Act, 1961, dated June 3, 1991, issued by respondent No. 3 was received by registered post on June 5, 1991, requiring the petitioner and respondent No. 4 to show cause on or before June 20, 1991, as to why prosecution proceedings should not be launched against them u/s 276AB of the Act. This show-cause notice dated June 3, 1991, has been filed with the writ petition as annexure "E".

5. The petitioner sent a telegram dated June 14, 1991, requesting respondent No. 2 to issue no objection certificate u/s 269UL(3) of the Act, which was followed by a letter of confirmation dated June 14, 1991, but no reply or any other communication was received. At this juncture, the present writ petition was filed before this court on June 17, 1991, during vacation and on June 19, 1991, the vacation judge while directing that this writ petition involving challenge to the validity of the provisions of the Income Tax Act be laid before the Division Bench in the first week of July, 1991, ordered that no further action be taken against the petitioner in pursuance of the show-cause notice dated June 3, 1991, annexure "E". On July 17, 1991, the writ petition was admitted and notices were directed to be issued and the writ petition was directed to be listed along with D. B. Civil Writ Petitions Nos. 6162 of 1990, 6163 of 1990, 6164 of 1990, 6165 of 1990, 6210 of 1990, and 6211 of 1990. On the very same date, i.e., July 17, 1991, notices of the stay application were also ordered to be issued and in the meanwhile the prosecution of the petitioner u/s 276AB of the Income Tax Act, 1961, was stayed.

6. In this writ petition, the petitioner has prayed for the following reliefs :

(a) declare Chapter XX-C of the Income Tax Act as unconstitutional, ultra vires and null and void ;

(b) issue a writ of certiorari or any other writ, direction or order in the nature thereof quashing the order contained in letter dated May 30, 1991 (annexure "D") ;

(c) declare the letter dated May 30, 1991 (annexure "D") a nullity ;

(d) issue a writ of certiorari or any other writ, direction or order in the nature thereof directing respondents Nos. 2 and 3 not to take any action u/s 276AB of the Act ;

(e) grant a writ of mandamus commanding respondent No. 2 to issue a no objection certificate u/s 269UL(3) of the Act ;

(f) grant further writs, directions and orders as may be necessary, directing the respondents to desist from effecting" any of the provisions of Chapter XX-C of the Income Tax Act and the impugned letter and the show-cause notice or any

other relief as may be deemed just and proper on the facts and circumstances of the case ; and

(g) award the costs, of the writ petition.

7. A reply to the writ petition was filed on behalf of respondent No. 2, i.e., the appropriate authority, on August 30, 1991, and a rejoinder thereto was filed by the petitioner on October 8, 1991. Respondent No. 4, J.K. Rastogi, expired during the pendency of the writ petition on April 16, 1992, and an application for substitution of his legal heirs was filed on June 24, 1992, under Order 22, Rule 4, Civil Procedure Code, by the petitioner and Shri J.S. Rastogi, advocate, who entered appearance on behalf of the legal representatives of respondent No. 4 has supported the writ petition. Respondent No. 2 through the reply has traversed the petitioner's claim submitting therein, that the provisions of Chapter XX-C are fully constitutional, are neither bad, illegal, arbitrary or violative of the principles of natural justice or unconstitutional and further that it shall be showing the file to prove that there was understatement of consideration as well, that the notice had been issued to comply with the principles of natural justice, that after committing an offence the petitioner cannot get the certificate u/s 269UL(3), the respondent has acted in accordance with law, that the petitioner after committing an offence and transferring the property, could not have submitted an application in Form No. 37-I, that the petitioner is not entitled to any no objection certificate and the petitioner has no enforceable right and is, therefore, not entitled to any relief.

8. Shri N.M. Ranka, senior advocate, appearing on behalf of the petitioner, has not addressed any argument on the question of the constitutional validity of the provisions of Chapter XX-C of the Income Tax Act, 1961, and rightly so because the constitutional validity of the same has already been upheld by the Supreme Court. It was also stated by Shri N.M. Ranka during the course of arguments that D. B. Writ Petitions Nos. 6162 of 1990, 6163 of 1990, 6164 of 1990, 6165 of 1990, 6210 of 1990, and 6211 of 1990 have already been dismissed as withdrawn or not pressed as in these writ petitions the validity of the provisions of Chapter XX-C of the Income Tax Act was under challenge and the Supreme Court had already upheld the constitutional validity of these provisions. Mr. N. M. Ranka has challenged the validity; legality, Correctness and propriety of annexure "D" (May 30, 1991) and annexure "E", dated June 3, 1991, whereby, the decision of the appropriate authority was conveyed that the statement in Form No. 37-I had defeated the very provision of law under which it was purported to have been submitted and the same was void vis-a-vis Section 269UL(2) of the Act and the question of acting on such a void statement does not arise and the petitioner was afforded an opportunity to show cause as to why prosecution proceedings should not be launched against the petitioner u/s 276AB of the Act.

9. Mr. N.M. Ranka, on behalf of the petitioner, has made the following submissions :

1. Chapter XX-C is a self-contained Code in itself. It overrides the provisions contained in the Transfer of Property Act or any other law for the time being in force. Reference has been made to the provisions as under :

(i) Section 269UA :

(a) "agreement for transfer"

(b) "apparent consideration"

(c) "appropriate authority"

(d) "immovable property" .

(e) "persons interested"

(f) "transfer"

(ii) Section 269UB--appropriate authority

(iii) Section 269UC--Restrictions on transfer of immovable property

(iv) Section 269UD--Order by appropriate authority for purchase

(v) Section 269UE--Vesting of property in Central Government :

(1) free from all encumbrances ;

(2) possession to be delivered within 15 days by transferor or any other person who may be in possession ;

(3) may take possession and may use such force as may be necessary ;

(4) requisition the services of any police officer to assist.

(vi) Section 269UF--Consideration for purchase

(vii) Section 269UG--Payment or deposit of consideration.

(viii) Section 269UL,--

(a) restrictions on registration ;

(b) issuance of a certificate of no objection.

(ix) Section 269UM--Immunity to transferor against the claims of transferee for transfer.

2. That annexure "A" is an agreement for proposed transfer and not for transfer deed/sale deed. Regular sale deed has to be executed after fulfilling of various conditions contained therein including the obtaining of the no-objection certificate u/s 269UL(3) of the Act after submission of Form No. 37-I. Form No. 37-I is the bedrock or foundation for exercise of the option u/s 269UD(1) or in the alternative for issuance of a no-objection certificate. Any agreement inter se the parties, i.e., the petitioner, and respondent No. 4 is not to be recognised for

Chapter XX-C. Such agreement is only for the parties inter se. Any condition contrary to the provisions of law would be void ab initio and inoperative and Chapter XX-C does not recognise such terms and conditions. The terms and conditions contained in Form No. 37-I alone are recognised and such terms and conditions are binding on the transferor as well as the transferee. None of them can back out of the terms incorporated in Form No. 37-I. Annexure "A" when read as a whole and construed reasonably is an agreement for sale simpliciter. Overriding and omnipotent statutory powers have been conferred by the statute requiring the transferor or any other person in possession to hand over possession and the property vests free from all encumbrances on the making of an order u/s 269UD(i) by the appropriate authority. The transferor becomes entitled to receive the apparent consideration from the Central Government.

10. It is an elementary rule or compelling rule or settled rule that an instrument like a statute is to be read as a whole to find out the intention of the parties or the Legislature. Lord Halsbury said in *Charles Robert Leader v. George F. Duffey* [1888] 13 AC 294

"that you must look at the whole instrument and inasmuch as there may be inaccuracy and inconsistency, you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it. "

11. That there was no transfer in the nature of Section 53A of the Transfer of Property Act.

12. That the appropriate authority is only to make up its mind on the basis of Form No. 37-I as to whether the apparent consideration being understated, it would like to opt to make an order u/s 269UD(1) of the Act for the Central Government and as functionary of the Central Government--the appropriate authority has no right to examine the title or legality or illegality or invalidity of the transaction or other deficiencies in the transaction. If the appropriate authority fails to exercise its right within the specified period, such right is extinguished. On the non-making of an order u/s 269UD(1) within the specified period it is duty-bound to issue a no objection certificate u/s 269UL(3) of the Act. There is no power to extend the time u/s 269UD(1) of the Act. In support of his submissions, Mr. Ranka has placed reliance on the following cases :

(i) *Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others*,

(ii) *Satwant Nakang Vs. Appropriate Authority, Income Tax Department, New Delhi*,

(iii) *Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others*,

(iv) *Megsons Exports Vs. Union of India and others*,

- (v) Naresh M. Mehta Vs. Appropriate Authority,
- (vi) Appropriate Authority, Government of India Vs. Naresh M. Mehta,
- (vii) T. Amudha and others Vs. Members, Appropriate Authority and others,
- (viii) Mount Plaza Builders Pvt. Ltd. Vs. Appropriate Authority and others,
- (ix) Irwin Almeida and others Vs. Union of India and others,
- (x) Kelvin Jute Co. Ltd. and Another Vs. Appropriate Authority and Others,
- (xi) Moi Engineering Ltd. and Another Vs. Appropriate Authority and Others,
- (xii) R Mrs. Rajalakshmi Narayanan Vs. Mrs. Margret Kathleen Gandhi and others,
and
- (xiii) C.B. Gautam Vs. Union of India and Others, .

13. That annexure "D" has not been signed and issued by the appropriate authority. It is not an order under Chapter XX-C. The Deputy Commissioner has no power and competence. It is in violation of the principles of natural justice and void ab initio. In this regard, Mr. Ranka has placed reliance on the following cases ;

- (i) Mount Plaza Builders Pvt. Ltd. Vs. Appropriate Authority and others,
- (ii) Government of India and another Vs. Maxim A. Lobo and another,
- (ii) C.B. Gautam Vs. Union of India and Others,
- (iv) Union of India and Another Vs. Tulsiram Patel and Others, .

14. That an agreement for sale does not create any encumbrance or charge or interest in favour of the transferee in view of the provisions contained in Section 54 of the Transfer of Property Act as has been held in Taherbhoy Feeda Ally and Others Vs. State of West Bengal and Others, and in Nathulal Vs. Phoolchand, .

15. Lastly, it was contended by Mr. Ranka that it is well-settled that in respect of a Central Act, the view expressed by a High Court deserves to be respected, if conflict of opinion exists between the different High Courts, the view in favour of the assessee deserves to be taken. The appropriate authority functioning in Delhi was bound by the decision of the Delhi High Court in Megsons Exports Vs. Union of India and others, . Reference has been made to the case of K. Subramanian, Ito and another Vs. Siemens India Ltd. and another, .

16. Mr. J.S. Rastogi, advocate, appearing for the legal representatives of respondent No. 4, has supported the petitioner's case in entirety.

17. Mr. G.S. Bafna, advocate, on behalf of respondents Nos. 1 to 3, has made submissions as under :

- 1. That u/s 269UA, the words "agreement for transfer", "apparent consideration"

and "transfer" have been defined and according to the definition of "transfer" given in Clause (f), the transfer of any immovable property as defined in Clause (d)(i) means, the transfer of such property by way of sale or exchange or lease for a term of not less than 12 years, and includes allowing possession of such property to be taken or retained in part performance of the contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882 (4 of 1882). On this basis, it has been submitted that in the case at hand, admittedly, the possession of part of the property has been transferred by respondent No. 4 and taken over by the petitioner and it has to be agreed on all hands that part performance of the contract has been duly achieved.

18. Once it is admitted that immovable property of value, exceeding the limit fixed u/s 269UC has been transferred before furnishing the statement referred to in Sub-section (2) of Section 269UC to the appropriate authority as required u/s 269UC(3), the violation of the provisions of Section 269UC is apparent. The petitioner and respondent No. 4 had already effected the transfer before submitting the application in Form No. 37-I and, therefore, the provisions for grant of a no objection certificate could not be invoked and the appropriate authority was not obliged to issue a no objection certificate. The petitioner and respondent No. 4 had precipitated a situation in which the respondents were hustled up in a manner that if at all the appropriate authority orders for the purchase of the property in question by the Central Government, it could only do so by blocking public money and then litigate for possession of the property because the requirement u/s 269UG is that the amount of apparent consideration payable u/s 269UF has to be tendered to the person or persons entitled thereto, within a period of one month from the end of the month in which the concerned immovable property becomes vested in the Central Government under Sub-section (1), or, as the case may be, Sub-section (6), of Section 269UE and thus in the case of purchase of the property by the Central Government it has to act fast to make the payment.

3. That in view of the application itself being incompetent and invalid, there was no question to act upon the same and it would have been a case of invalid exercise of the power to the peril of the Department itself.

4. That the petitioner has violated the law and, therefore, he is not entitled to any relief in the writ jurisdiction. Mr. Bafna has placed reliance on the case reported in R. Venkata Subbu and Others Vs. The Director of Enforcement and Another, .

19. We have considered the submissions made on behalf of both the sides. According to us, the matter has to be examined with reference to the provisions as contained in Section 269UA(f), Section 269UC and Section 269UD of the Income Tax Act and Rule 48L of the Income Tax Rules, 1962, and Form No. 37-I under Rule 48L. The prescribed form of Form No. 37-I under Rule 48L is as under (see [1986] 162 ITR 47) :

"FORM No. 37-I

(See Rule 48L)

Statement of transfer of immovable property to be, furnished to the appropriate authority u/s 269Uc

I/We,

[name(s) and address(es) of the transferor(s)]

intend to transfer the immovable property located at

to

[name(s) and address(es) of the transferee(s)]

The total apparent consideration for the transfer of the above property is(.....). The particulars of the agreement

(in words) (in figures) for transfer of the said property are furnished in the annexure to the statement.

VERIFICATION

In my/our opinion and to the best of my/our knowledge and information, the particulars furnished above and in the annexure hereto are true and correct.

Transferor(s) Transferee(s)

1..... 1.....

s/o., d/o., w/o. s/o., d/o., w/o.

2..... 2.....

s/o., d/o., w/o. s/o., d/o., w/o.

3..... 3.....

s/o., d/o., w/o. s/o., d/o., w/o.

* Note : Any change in the address of the transferor(s) or the transferee(s) should be communicated in writing immediately to the appropriate authority to whom this statement of transfer has been furnished."

20. A bare reading of the prescribed form would reveal that the statement of the transfer of immovable property, which is required to be furnished under the statute uses the words "intend to transfer" and the amounted total apparent consideration has to be mentioned and the particulars of the agreement for transfer of such property have to be furnished in the annexure to the statement. Thus the statement is with regard to the intention of transfer with the mention of apparent consideration along with the particulars of the agreement for transfer. In our considered opinion, the parties may, therefore, enter into an agreement

for transfer of the immovable property for apparent consideration and may furnish the statement with regard to the property intended to be transferred under such an agreement. This means that beyond the question of mutual agreement for transfer for apparent consideration, the parties cannot act further in pursuance of such an agreement for transfer before making the statement of such transfer under Form No. 37-I. Now the question arises whether in case the parties act in pursuance of an agreement for transfer, any amount of consideration is passed on and received and possession of part of the property is also given and taken, it still remains a case of only intention to transfer and there is no transfer of any property as such ? There is no gainsaying that Section 269UC starts with a non obstante clause and the provisions contained in the Transfer of Property Act as such have been excluded, but in a given case for the purposes of the provisions of the Income Tax Act, whether there is a case of transfer or not, the provisions as contained in Section 269UA(f) defining the term "transfer" cannot be lost sight of and, therefore, despite the non obstante clause in Section 269UC the word "transfer" wherever it occurs has to be given a meaning in accordance with Clause (f) of Section 269UA and the same is reproduced as under :

"269UA. In this Chapter, unless the context otherwise requires,-- . . .

(f) "transfer", --

(i) in relation to any immovable property referred to in Sub- Clause (i) of Clause (d), means transfer of such property by way of sale or exchange or lease for a term, of not less than twelve years, and includes allowing the possession of such property to be taken or retained in part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882 (4 of 1882)."

21. It would thus appear that in the scheme of the Act while defining the term "transfer", if possession of the property has been allowed to be taken or retained in part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act, it has to be understood accordingly. Therefore, the nature referred to in Section 53A of the Transfer of Property Act has been incorporated while defining the term "transfer", in order to ascertain as to whether a transfer has been effected or not if possession of any property has been given and taken for the purposes of the Income Tax Act. The nature referred to in Section 53A cannot be given a complete go-by. Section 53A of the Transfer of Property Act is reproduced as under :

"53A. Part performance.--Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some

act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract ;

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof. "

22. The very definition of the term "transfer" as contained in Section 269UA(f) read with the provisions of Section 53A of the Transfer of Property Act shows that the factum of transfer has to be ascertained with reasonable certainty and in case the transferee has in part performance of the contract taken possession of the property or any part thereof, it would constitute a transfer. The petitioner himself has come with the case that possession of part of the property in question has been taken over by him in part performance of the contract. In view of this admitted factual position, there is no escape from the logical conclusion in the light of the definition of the term "transfer" as given in the Income Tax Act that in the case at hand part of the property in question had already been transferred to the petitioner by respondent No. 4 before the filing of the statement in Form No. 37-I and it cannot be said that the statement which was made by the petitioner and respondent No. 4 in Form No. 37-I was a statement of intended transfer. There is a lot of difference between actual transfer and intended transfer and the statute has taken due care to prohibit the actual transfer before the filing of the statement in Form No. 37-I and the only stage which has been permitted to be reached is to enter into an agreement for transfer and to act upon such an agreement even for a limited purpose beyond the intention to transfer is forbidden. In view of this position of law, we do not find any substance in the argument of Shri N.M. Ranka that the present one is only a case of permissive possession for restrictive use and occupation not amounting to transfer. Mr. Ranka may be right in his submission that we have to look at the whole instrument and the meaning of the instrument has to be taken as a whole, but we fail to understand as to how this proposition helps the case of the petitioner for the simple reason that the agreement on which the whole case of the petitioner is based itself mentions that the petitioner shall be entitled to use, occupy, hold and enjoy the portion described in schedule "A" and it is the petitioner's own case that he took over possession of the portion detailed in schedule "A" on March 7, 1991, and. in our opinion, it constitutes a definite case of transfer of part of the property in question within the meaning of Section

269UA(f) for the purposes of the Income Tax Act. Submissions Nos. 1 and 2 made by Shri N.M. Ranka are, therefore, devoid of any force in view of the admitted factual position and the same are, therefore, rejected.

23. While considering the third submission urged by Shri Ranka that the appropriate authority has to make up its mind on the basis of Form No. 37-I as to whether the apparent consideration has been understated, the appropriate authority has no right to examine the title or legality or illegality or invalidity of the transaction or other deficiencies in such transaction ; it will be sufficient to observe that if the particulars of the agreement for transfer furnished in the annexure to the statement made in Form No. 37-I disclose that the transfer has already been effected, even if the appropriate authority does not enter into the question of title, etc., it has no valid basis for the purposes of exercising its rights within the specific period and, therefore, the question of exercising such rights does not arise. If a statement in Form No. 37-I is made after crossing the stage of intended transfer and after the transfer within the meaning of the provisions under the Income Tax Act, it can safely be said that the parties by effecting the transfer of the property or part of the property have already created a situation in which the appropriate authority has no occasion to exercise its right and as such the stage of making an order u/s 269UD(1) is not even available to the appropriate authority and in fact the parties by their conduct of effecting transfer in advance seek to deprive the appropriate authority of an opportunity of exercising its option and power u/s 269UD(1) and, therefore, this submission made by Shri N. M. Ranka is based on a legal fallacy and the petitioner cannot be allowed to take advantage of such a position and to say that since the order has not been made u/s 269UD(1), the appropriate authority became duty-bound to issue the no objection certificate u/s 269UL(3). It is the settled position of law that no party can be allowed to take advantage of its own wrong. Mr. G.S. Bafna has rightly argued that the provisions for grant of no objection certificate could not be invoked because the petitioner and respondent No. 4 had already effected the transfer before submitting the application in Form No. 37-I and, therefore, the appropriate authority was not obliged to issue the no objection certificate. Mr. N.M. Ranka had made repeated reference to the case of Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, first decided by the Delhi High Court and thereafter by the Supreme Court, and contended that only two alternatives were open to the appropriate authority, i.e., either to buy the property or in the event of its decision, not to buy it, it has to issue a no objection certificate leaving it open to the parties to deal with, the property. True it is that the petition against the decision of the Delhi High Court in Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, was dismissed by the Supreme Court, but the order of the Supreme Court reported in Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others, shows that the no objection certificate had already been issued on January 15, 1991, when the order was passed on April 23, 1991, and the Supreme Court itself has observed that the suggestions that the no objection

certificate was issued under pressure and threat of contempt proceedings, are made out from the record. In the later part of this "order, the Supreme Court has agreed that two alternatives are open under the scheme of legislation, i.e., either to buy the property or even in the event of its decision not to buy it, it has to issue the no objection certificate leaving it open to the parties to deal with the property. In the case of Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, there is no violation of the provisions of the Income Tax Act as such before the filing of the statement in Form No. 37-I and it was observed by the Delhi High Court that it was not certain as to which portion of the land would be surrendered to the State Government in view of the orders having been passed under the Urban Land Ceiling Act and that the agreement to sell was not capable of being made certain and was void as per Section 29 of the Indian Contract Act, the appropriate authority had found that the agreement to sell was a contingent contract depending upon the orders of the competent authority under the Urban Land Ceiling Act and thus the appropriate authority took objections with regard to the legality of the transaction, which had nothing to do with violation of any of the provisions of the Income Tax Act and, therefore, the Supreme Court agreed that two alternatives were open under the scheme of the legislation, i.e., either to buy the property or to issue a no objection certificate. Such is not the fact situation in the case at hand. We have come to a positive finding that the parties had effected the transfer before filing the statement in Form No. 37-I and thus the parties in the present case had violated the relevant provisions of the Income Tax Act itself and had made it well nigh impossible for the appropriate authority to pass an order for purchase of such a property u/s 269UD(1), even if it wanted to pass such an order because the petitioner and respondent No. 4 in this case had acted in a manner so as to pre-empt a situation in their favour in which the appropriate authority could ill afford to pass an order of purchase by the Central Government and we agree with Shri G.S. Bafna that in this case when possession of part of the property had already been taken over by the petitioner before filing the statement in Form No. 37-I, had the appropriate authority still ordered for the purchase of the property by the Central Government, the Central Government could not have stopped the limit of making the payment to respondent No. 4 and it would have done so only to its "detriment and then to fight for possession with the petitioner and go on litigating the matter for years after years after blocking a huge sum without the advantage of the property so purchased. Therefore, in the facts of the present case, in addition to the two options which have been mentioned by the Supreme Court in Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others, we agree with Shri G. S. Bafna that third the option was also available to the appropriate authority, i.e., not to act upon the invalid statement in Form No. 37-I filed by the parties after effecting the transfer and violating Section 269UC(1) and the parties had thus rendered themselves liable to action for violating the provisions of the Income Tax Act. We are of the considered opinion that when the parties have violated the provisions of the Income Tax Act and have acted in a manner so as to thwart the very purpose of the provisions

relating to the restrictions" on transfer of immovable property and to thwart the Central Government's pre-emptive right of purchase, besides the alternatives of either purchasing or issuing a no objection certificate, the option is also available not to act upon the statement in Form No. 37-I which is found to be violative of the provisions of the Income Tax Act and to prosecute the concerned parties by taking resort to the machinery under the Act. Mr. Ranka has failed to cite any case in which there is a direct violation of the relevant provisions of the Income Tax Act itself relating to the Central Government's right to pre-emptive purchase and the restrictions on transfer of immovable property and, therefore, none of the decisions cited by Mr. Ranka, except the decision of the Delhi High Court in Megsons Exports Vs. Union of India and others, are of any assistance for the purposes of the controversy, which we are called upon to decide in this case.

24. We have gone through the decision of the Delhi High Court in Megsons Exports Vs. Union of India and others, and we find that the case has been decided on the basis of Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, and the case of Satwant Nakang Vs. Appropriate Authority, Income Tax Department, New Delhi, . When the matter was taken to the Supreme Court, the Supreme Court dismissed the SLP filed by the appropriate authority in the case of Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others, as has already been mentioned hereinabove. There is no doubt that in Megsons Exports Vs. Union of India and others, decided by the Delhi High Court, the appropriate authority did not grant the no objection certificate nor did it exercise the right of pre-emptive purchase and he came to the conclusion that the agreement which had been entered into by the owner with the proposed transferee had resulted in creation of certain rights in favour of the transferee in accordance with the provisions of Section 53A of the Transfer of Property Act ; according to the appropriate authority, possession of the property had been handed over to the transferee and there had been a part performance of the contract and the later part of the provisions of Chapter XX-C of the Income Tax Act had been violated and there had been a breach committed of this Chapter and prosecution could be initiated. Thus Megsons Exports Vs. Union of India and others, appears to be the nearest relevant case for the purposes of present controversy, but what we find is that in the decision in Megsons Exports Vs. Union of India and others, the Delhi High Court applied the decision in the case of Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, and Satwant Nakang Vs. Appropriate Authority, Income Tax Department, New Delhi, without considering that the aforesaid two earlier decisions were not cases in which the parties could be held liable for prosecution for violating the relevant provisions of the Income Tax Act. The difference between cases where the agreement for sale is otherwise illegal or contrary to general laws and cases in which there is a direct violation of the provisions of the Income Tax Act itself impinging upon the Central Government's pre-emptive right to purchase so as to avail of the opportunity of exercising such power, has not been noticed or examined in Megsons Exports Vs.

Union of India and others, . The restriction is against transfer and if the transfer is effected before submitting Form No. 37-I, what remains to be done except prosecuting the violator. Thus, the Delhi High Court in Megsons Exports Vs. Union of India and others, did not go into the question that the third alternative may also be open when pre-emptive right to purchase has been defeated by the parties. We are, therefore, of the opinion that Megsons Exports Vs. Union of India and others, cannot be said to be an authority for the purposes of a case in which there is a violation of the provisions of the Income Tax Act and the Central Government's pre-emptive right to purchase has been defeated by the conduct of the parties. There is no reasoning on this aspect of the matter in Megsons Exports Vs. Union of India and others, and, therefore, this decision of the Delhi High Court reported in Megsons Exports Vs. Union of India and others, cannot be taken to be an authority giving any reasoning so as to cover the controversy involved in the case at hand and, consequently, the third submission urged by Mr. N.M. Ranka is also rejected.

25. The fourth submission of Mr. N.M. Ranka that annexure "D" has not been signed and issued by the appropriate authority and, therefore, it is not an order under Chapter XX-C and that it is in violation of the principles of natural justice, has to be examined with reference to the provisions of Chapter XX-C itself.

26. Section 269UB provides that the Central Government may constitute as many appropriate authorities, as it thinks fit and to define the local limits within which the appropriate authorities shall perform their functions under this Chapter. It has been provided in Section 269UA(c) that it means the authority constituted u/s 269UB to perform the functions under this Chapter. There is no basis for the contention that the Deputy Commissioner of Income Tax is not such an appropriate authority. The document, annexure "D" has been signed by the Deputy Commissioner of Income Tax as an appropriate authority and no material has been placed on record to show that he is not such an authority within the meaning of Section 269UA(c) read with Section 269UB and, in our considered opinion, there has been no violation of the principles of natural justice in issuing annexure "D". The question of violation of the principles of natural justice would have assumed importance only if any order had been passed by the appropriate authority exercising its pre-emptive right to purchase and if any order with regard to the purchase had been passed in favour of the Central Government and, therefore, the decision rendered in C.B. Gautam Vs. Union of India and Others, by the Supreme Court is of no avail to the petitioner and the fourth submission of Shri Ranka is accordingly rejected.

27. The fifth submission of Shri N.M. Ranka that the agreement for sale does not create, any encumbrances, charge or interest in favour of the transferee, stands answered in view of our findings on the first and second submissions made by Shri Ranka. So far as the facts of the present case are concerned, it stands conclusively established by the petitioner's own case that possession had been taken over by him and according to the agreement in question, the petitioner

had acquired the rights to use, occupy, hold and enjoy the portion described in schedule "A". Merely because such an entitlement was coupled with the condition that the petitioner shall not be entitled to make any new construction in the said portion till registration Of the sale deed of the property, it does not mean that no right or interest was created in favour of the petitioner because the property did not vest with reference to the title as owner in his favour. For all practical purposes, this part of the property was under the control of the petitioner for use, occupation, holding and enjoyment. The ancillary submissions of Shri Ranka in this regard are that according to the scheme of the Act, even if any party has taken possession of part of the property in case of exercise of pre-emptive right to purchase and the purchase of such property in pursuance of an order under Sub-section (1) of Section 269UD, such property shall vest in the Central Government and, therefore, the agreement is to be ignored, does not render any help to the petitioner's case because the stage of vesting of property in the Central Government was made impossible by the conduct of the parties and the Central Government cannot be expected, to invest a huge amount of money in purchasing the property, of which it cannot get the immediate benefit. Such properties are sought to be purchased by the Central Government for use of such properties for public purposes and if the Central Government though interested in purchasing the property, cannot afford to invest the money and then invoke the provisions of Section 269UE(1) and (2) for the purposes of claiming legal claim of vesting of such property and Section 269UE(2) to claim and litigate that any person in possession of the immovable property shall surrender or deliver possession thereof to the appropriate authority and such litigation, the Central Government can ill afford as it cannot stop the time fixed by the statute for making the payment and, therefore, the fifth submission made by Shri N.M. Ranka also fails.

28. We also do not agree that there is any conflict of opinion between the different High Courts. The appropriate authority functioning in the Delhi High Court may be certainly bound by the decision of the Delhi High Court rendered in Megsons Exports Vs. Union of India and others, so far as the parties to that case are concerned, but it cannot be said that there is any conflict of opinion because we have already held that the decision in Megsons Exports Vs. Union of India and others, is not an authority for the controversy involved in the case at hand and, accordingly, the sixth submission of Mr. Ranka that in case of conflict of opinion between different High Courts, the view in favour of the assessee deserves to be taken, is rejected.

29. Before parting with the judgment, we may also deal with the objection raised by Mr. G.S. Bafna that the petitioner has violated the law, inasmuch as it has effected the transfer of the property and taken over possession of part of the property before filing the statement in Form No. 37-I and, therefore, the petitioner is not entitled to any relief under Article 226 of the Constitution of India. It is a fact that the transfer has been effected before submission of the statement in Form No. 37-I and if the appropriate authority came to the

conclusion that the petitioner had violated the provisions of the Income Tax Act, it was certainly within its right not to act upon the statement filed in Form No. 37-I by the parties and the appropriate authority has, in our opinion, acted fairly in informing the petitioner through annexure "D" that the statement could not be acted upon and it was also within its right to issue the show-cause notice, annexure "E", u/s 276AB of the Income Tax Act for failure to comply with the provisions of Section 269UC. Therefore, in our considered opinion, when we have already come to the conclusion on the merits that annexures "D" and "E" do not suffer from any infirmity, we do not consider it appropriate to throw away the writ petition only on the ground that the petitioner has violated the law, although there cannot be any quarrel with the proposition of law that the petitioner having violated the law may not be entitled to any relief in the writ jurisdiction under Article 226 of the Constitution of India.

30. All the contentions raised by Shri N.M. Ranka, therefore, fail and the upshot of the discussion is that this writ petition has no merit and is liable to be dismissed.

31. Consequently, the writ petition is dismissed with costs of Rs. 5,000 to be paid to the respondents. The interim orders dated June 19, 1991, and July 17, 1991, stand automatically vacated.