(1998) 11 DEL CK 0102

In the Delhi High Court

Case No : Civil Writ Petition No. 2946 of 1995

Rakesh Chander Rastogi and Another APPELLANT

Vs

Appropriate Authority and Another RESPONDENT

Date of Decision : 16-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 269UD

Citation : (2000) 159 CTR 46 : (1999) 239 ITR 197

Hon'ble Judges : R.C. Lahoti, J;C.K. Mahajan, J

Bench : Division Bench

Advocate : Jagjit Singh, for the Appellant; R.D. Jolly and Ajay Jha, for the Respondent

Judgement

This Judgment has been overruled by : Rakesh C. Rastogi and Another Vs. Appropriate Authority and Another, AIR 2002 SC 2373 : (2001) 171 CTR 185 : (2002) 253 ITR 94 : (2001) 2 JT 211 Supp : (2002) 10 SCC 335 : (2002) 120 TAXMAN 125 : (2002) AIRSCW 2537

R.C. Lahoti, J.—The petitioners are aggrieved by the order dated July 31, 1995, passed by the Appropriate Authority, Income Tax Department, New Delhi, u/s 269UD(1) of the Income Tax Act, 1961, ordering purchase by the Central Government of the property forming the subject-matter of an agreement to sell dated April 26, 1995.

2. The property forming the subject-matter of dispute is No. 142, Madhuban, Delhi, having 330 sq. yards of land built-up areas of 2 floors with a mezzanine floor and basement.

3. The property belongs to one Dr. S. K. Sama, who entered into an agreement to sell the said property in favor of the two petitioners for a consideration of Rs. 50 lakhs vide agreement dated April 26, 1995 (annexure P-1). Form No. 37-1 (annexure P-2), as required by Section 269UC of the Act signed by the vendor

and vendees both were filed on April 28, 1995. The appropriate authority raised certain queries and then issued a show-cause notice calling upon the parties to the agreement to show cause why an order to purchase by the Central Government be not passed. The petitioners as well as the vendor filed replies. After affording the notices an opportunity of hearing the impugned order has been passed. The Appropriate Authority has formed an opinion that keeping in view the market value of properties similarly situated, the value of the property in question works out to Rs. 62,85,042 which is more than 15 per cent, of the apparent consideration of Rs. 50 lakhs which is undervalued.

4. According to the petitioners, the impugned order is vitiated mainly on two grounds. Firstly, there was liability for the ground rent and property tax of the property which was taken over by the transferees which factor should have been taken into consideration by the appropriate authority. The value of such accumulated rent and tax would be approximately within a range of Rs. 1.50 to two lakhs which fact was specifically brought to the notice of the appropriate authority but the authority failed to take into consideration the same. If only this relevant fact would have been kept in view and the sale consideration loaded therewith then the difference between the apparent consideration and the market value would not have exceeded 15 per cent. Secondly, it is submitted that the appropriate authority compared the property in question with the sale price of A-27, Swasthia Vihar, which is not a similarly situated property. The attention of the Appropriate Authority was invited to the sale transaction of property situated at 135, Madhuban to which transaction the Appropriate Authority had issued its no objection certificate it was an ideally comparable property. If only the appropriate authority would have kept in view the facts relevant to 135, Madhuban there would have been no occasion to deny no objection certificate to the transaction entered into by the petitioners.

5. On behalf of the respondents, it was submitted that all the relevant factors were kept in view and order to purchase made by the appropriate authority is a very just order not liable to be interfered with by this court in exercise of its writ jurisdiction.

6. We would deal with the two contentions canvassed before this court Seriatim.

7. Learned counsel for the petitioners has invited the attention of the court to Clause 13 of the agreement annexure P-1 which provides that all the ground rent, property tax or any other charges payable in respect of the said property shall be paid by the vendees. However, during the course of hearing it was conceded that the liability on account of the ground rent and property tax was not quantified and, Therefore, there was no authentic basis available wherefrom to spell out the quantum of the liability. Learned senior standing counsel for the respondents has pointed out that the plea is not even available to be raised on behalf of the petitioners. It is pointed out that in the annexure forming part of Form No. 37-1, jointly filed by the parties to the agreement which is entitled, "Statement of agreement for transfer of immovable property", there is column 7

which is entitled "Details of liabilities in respect of the local authorities, (e.g., lease rent, water charges, electricity bills, development charges, etc.)". As against this column the information given by the parties to the agreement was "NA" meaning thereby "not applicable". It was an obligation cas''t on the signatories to Form No. 37-1 to have very clearly stated the nature and extent of the liability on account of ground rent and property tax against column-7 above said which if done the appropriate authority could have taken the same into consideration but that was not done. This fact has been noted by the appropriate authority at the end of para. 4 of its order.

8. As to the second contention, it is pointed out by the learned senior standing counsel for the respondents that the FAR of the property in question was different from the FAR of property at 135, Madhuban, but was the same as that of A-27, Swasthia Vihar. Secondly, the sale instance of 135, Madhuban, was comparatively older than A-27, Swasthia Vihar and, Therefore, the same was not relied upon.

9. The learned counsel for the petitioners also submitted that the formula applied by the appropriate authority is in violation of the principle laid down by the Supreme Court in the case of C.B. Gautam Vs. Union of India and Others, . It was contended that the Appropriate Authority should have found out the market value, and then calculated the amount of 15 per cent. reduced it from market value and then compared the figure so arrived at with the apparent consideration. Instead, the Appropriate Authority has calculated 15 per cent, of the apparent consideration as recited in the agreement to sell and added the figure to it and then compared such total with the market value. Without expressing any opinion on the nicety involved in the submission, suffice it to observe that calculated either way the difference between the apparent consideration and the market value arrived at by the appropriate authority shall be more than 15 per cent.

10. At the end, it was submitted by learned counsel for the petitioners that the Appropriate Authority has nowhere recorded a finding that the property in question was sought to be sold by undervaluing the apparent consideration with a view to evade tax and for want of such finding the order cannot be sustained. In our opinion, such a finding is not a sine qua non of the validity of the order for compulsory purchase. The Appropriate Authority has found the difference between the apparent consideration and market value of the property to be more than 15 per cent, and directed its purchase by the Central Government consistently with a view taken by the Supreme Court in the case of C.B. Gautam Vs. Union of India and Others, . In view of that finding no fault can be found with the impugned order.

11. While hearing a writ petition against an order made u/s 269UD(1) of the Act, we are not to hear the matter like an appellate authority sitting in judgment over the order of the Appropriate Authority and reviewing and reappreciating the findings recorded by it. We are basically concerned not with the decision but with

the decision-making process. We may also interfere where the rules of natural justice are shown to have been violated or the order suffers from perversity. In the case at hand none of these circumstances are shown to exist.

12. Incidentally, it may be mentioned, as was brought to the notice of the court by learned senior standing counsel for the respondents, that after the filing of this petition, the petitioners had sought for the operation of the impugned order being suspended, pursuant to which order the property was proposed to be sold by public auction. By order dated July 16, 1997, this court had directed that the auction may go on but confirmation shall be subject to the result of the petition. Learned senior standing counsel for the Department pointed out that the auction was held on July 16, 1997, and the highest bid which has been accepted is of Rs. 85,25,000.

13. For the foregoing reasons, we find the petition devoid of any merit and liable to be dismissed. It is dismissed accordingly though without any order as to the costs. The interim order dated July 16, 1997, staying confirmation of sale is directed to be vacated.