(1998) 11 DEL CK 0097

In the Delhi High Court

Case No : Civil Writ Petition No. 2946 of 1995 16 November 1998

RAKESH CHANDER RASTOGI	APPELLANT
Vs	
APPROPRIATE AUTHORITY	RESPONDENT

Date of Decision : 16-11-1998

Acts Referred:

Citation : (1999) 106 TAXMAN 52

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

Bench : Full Bench

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

Judgement

Lahoti, J.

The petitioners are aggrieved by the order dated 31-7-1995 passed by the appropriate authority, Income Tax department, New Delhi, u/s 269UD(I) of the Income Tax Act, 1961 ("the Act"), ordering to purchase by the Central Government the property forming the subject matter of air agreement to sell dated 26-4-1995.

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

3. The property belongs to one Dr. S. K. Sharma, 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 26-4-1995 (Annexure P-4) Form No. 37-1 (Annexure P-2), required by section 269UC of the Act signed by the vender and vendees - both were filed on 28-4-1995. 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 given. 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 of the ground rent and property tax on 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 1.50 to 2 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 same 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, Swasthiya Vihar, which is not a similarly situated property. 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 NOC 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 the 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 Serialtim.

7. The 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 The 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 dues of the local authorities (e.g., lease rent, water charges, the electricity bills, development charges, etc.)''. As against this column, the information often by the parties to the agreement was - ''NA'' - meaning thereby ''Not applicable''. It was an obligation case on the signatories to Form 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 the property at 135, Madhuban, but was the same as that of A-27, Swasthiya Vihar. Secondly, the sale instance of 13 5, Madhuban, was comparatively older than A-27, Swasthiya Vihar, and, Therefore, the same was not relied upon.

9. The]carried counsel for the petitioners also submitted that 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 submitted 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 the 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 percent and directed its purchase by the Central Government consistent with the view taken by the Supreme Court in the case of C.B. Gautam (supra). In view of that finding no fault can be found with the impugned order.

11. While hearing the writ petition against order made u/s 269U13(1), 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 is shown to exist.

12. Incidentally it may be mentioned, as was brought to the notice of the Court by the learned senior standing counsel for the respondents, that after 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 16-7-1997 this Court had directed that the auction may go on but confirmation shall be subject to the result of the petition. The learned senior standing counsel for the department pointed out that the auction was held on 16-7-1997 and the highest bid which has been accepted is of Rs. 85,25,000.

13. For the foregoing reasons, we find the petition devoid on any merit and liable to be dismissed. It is dismissed, accordingly, though without any order as to the costs. The interim order dated 16-7-1997 staying confirmation of sale is directed to be vacated.

CW NO. 2946/95

By an order separately passed today the petition has been directed to be dismissed. There was an interim order passed on 16-7-1997. In view of the petition having been dismissed the interim order stands vacated.

The learned counsel for the petitioner submits that the operations of the interim order may be allowed to continue for another period of three weeks so that the petitioner''s remedy to file an appeal may not be lost.

The prayer is reasonable and is allowed. It is directed that the interim order dated 16-7-1997 shall continue to remain in operation for a period of three weeks from today.

SUPREME COURT OF INDIA RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No. 19857198 (From the judgment and order dated 16-11-1998 in CWP2946195 of the High Court of Delhi at New Delhi)

Rakesh C. Rastogi v. Appropriate Authority.

Date: 4-1-1999. This Petition was called on for hearing today.

B.N. Kirpal, A.P. Misra, JJ.

Mr. H.N. Salve, Sr. Adv., Mr. Jagjit Singh, Adv., Ms. Bina Gupta, Adv., Mr. Ray, Adv. for the Petitioner.

It is, interalia, contended that the High Court ought to have gone into the question which was referred to in paragraph 9 of its judgment, namely, as to what is the market price of this property and then add or substract 15 per cent in order to determine whether the department has the jurisdiction to exercise the power u/s 269U1).

Issue notice returnable after four weeks. To be maintained till further Status quo orders.