

(1997) 04 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 20158 of 1989

Ramanlal B. Pandya

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-04-1997

Acts Referred:

Citation : (1998) 96 TAXMAN 443

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : K.R. Prasad, for the Appellant; M.V. Seshachala, for the Respondent

Judgement

P. Vishwanatha Shetty, J.—In this petition, the petitioners have sought for a direction quashing the order dated 19-7-1989, a copy of which has been produced as Annexure-D; and for a further direction to the 2nd respondent to issue no objection certificate to them as provided under sub-section (3) of section 269UL of the income tax Act, 1961 ("the Act"). Few facts that may be relevant for the disposal of this petition may be set-out as hereunder:

(a) The 1st petitioner in this petition who is the owner of a piece of land located within the Bangalore Urban Agglomeration area, had entered into an agreement to sell the said piece of land to the 2nd petitioner as per the terms and conditions fully set-out in detail in the agreement dated 20-4-1989. A copy of the said agreement has been produced as Annexure-A to this petition.

(b) Pursuant to the agreement Annexure-A, the petitioners filed a statement as required under sub-section (3) of section 269UC of Chapter XX-C of the Act, in Form No. 37-I under rule 48L of the income tax Rules, 1962 ("the Rules"), before the second respondent on 12-5-1989, seeking grant of "No objection" certificate for transfer of the land in terms of sub-section (3) of section 269UL of the Act. The second respondent by means of his communication Annexure-D dated 19-7-1989, rejected the statement filed by the petitioners as defective. Aggrieved by the said order, this petition has been filed.

2. Shri K.R. Prasad, the learned Counsel appearing for the petitioners, submitted that the impugned order Annexure-D is totally illegal and suffers from errors apparent on the face of the records, inasmuch as, the said order has been passed in total disregard of the provisions contained in Chapter XX-C of the Act. According to the learned Counsel, all the five reasons assigned in the impugned order are totally extraneous to the power conferred on the second respondent to consider the question as to whether respondent-2 should exercise the power conferred on it u/s 269UD or issue a certificate of "No objection" as provided u/s 269UL of the Act. He pointed out that it was not permissible for the second respondent to pass the impugned order on the basis of the materials on record rejecting the statement filed by the petitioner on the ground that it was defective. He submitted that in the agreement Annexure-A dated 20-4-1989 the market value of the property which was agreed to be sold by the first petitioner to the second petitioner was fixed at Rs. 2,27,96,188 (Rupees two crores twenty-seven lakhs ninety six thousand one hundred and eighty eight) and the said sale consideration was fixed on the basis that out of the total area estimated to be available for construction being 4,34,213.12 sq. ft., and the first petitioner as per the terms of the agreement was entitled for ownership of 21 per cent of the total constructed area which works out to be 91,184.75 sq. ft. He further submitted that petitioners 1 and 2, in the agreement Annexure-A for the purpose of sale consideration, had agreed that the second petitioner should put up the construction of the building and hand over 21 per cent of the total constructed area to the first petitioner; and that they have calculated for the said purpose the price of such newly constructed built-up area including the cost of the land at Rs. 250 per sq. feet and this position was made clear to the second respondent in letter dated 11 -7-1989, a copy of which has been produced as Annexure-C, written by the petitioners. It is useful to extract the relevant portion of the said letter, which reads as follows :

"Out of the total area estimated to be available for construction of 4,34,213.12 sq. ft., and on the basis of 21 per cent, the area coming to the share of the party of the First Part is 91,184.75 sq. ft. The rate of Rs. 250 per sq. ft. will be treated as a price. Thus the total price works out to Rs. 2,27,96,188 (Rupees two crores twenty-seven lakhs ninety-six thousand one hundred and eighty-eight only). Hence, the consideration works out to Rs. 2,27,96,188 as per revised area estimated to be available for construction."

He further submitted that the letter Annexure-C came to be written by the petitioners as some errors were committed by the petitioners in respect of the total area mentioned in Form No. 37-I and on that basis the total consideration was mentioned in Form No. 37-I as Rs. 2,49,90,000. Therefore, the learned counsel would submit that there was no ambiguity or uncertainty insofar as the total sale consideration fixed for the sale of the property in question was concerned and, therefore, the reasons assigned in Annexure-D that since the plans have not been sanctioned, the extent of built-up area is not known and, therefore, the apparent sale consideration which depends only on the built-up

area cannot be deter-mined was erroneous in law. The learned counsel would further submit that the total built-up area that the second party is required to construct on the land in question has been specified and out of that it was agreed that the second petitioner must hand over 21 per cent of the built-up area to the first petitioner which would be the consideration for sale of the land in question to the second petitioner. The view taken by the second respondent that the apparent sale consideration could not be determined at that stage was totally misconceived. He further submitted that the second reason assigned in the impugned order that until and unless clearance from the Urban Land Ceiling Authority is received, the transfer is not permissible, is also totally erroneous in law and the said reason is totally extraneous to the power conferred on the second respondent to exercise right of pre-emptive purchase conferred under Chapter XX-C. The learned counsel pointed out that the third reason assigned in the impugned order that since there was no sufficient road width available, the Bangalore Development Authority may not be in a position to sanction FAR of 2.5 or ground plus seven floors and the second respondent is also not clear whether the Bangalore Development Authority would sanction the group housing as claimed by the petitioner and, therefore, the whole project was at the preliminary stage etc., is totally erroneous in law. He also pointed out that the fourth reason assigned in the impugned order that against column 9(v)(c) i.e., discounted value of consideration on the date of agreement for transfer, the entry was made as "not applicable" and the said entry also did not represent the correct statement as the built-up accommodation is to be handed over to the first petitioner four years and nine months after the date of the agreement etc.; is also not a ground to reject the statement filed by the petitioners. He further submitted that the fifth reason assigned by the second respondent that the statement filed in Form No. 37-I was incomplete, inasmuch as, the income tax particulars of the first petitioner have not been indicated, cannot be a ground to reject the statement filed. According to the learned counsel, the only option before the second respondent, when the statement was filed by the petitioners as provided under sub-section (3) of section 269UC of the Act, was either to proceed to purchase the property as provided under sub-section (1) of section 269UD, or if the second respondent failed, to make an order for purchase, the only other option opened to the second respondent was to issue a certificate of "No objection" as contemplated under sub-section (3) of section 269UL in favour of the petitioners to enable them to complete the transaction. In support of his submissions, Shri Prasad relied upon the following decisions : (1) Savitri Devi Vs. Appropriate Authority and others, (2) Satwant Nakang Vs. Appropriate Authority, Income Tax Department, New Delhi, (3) Dwarkanath Chatterjee v. Union of India [1995] 213 ITR 470/ 82 Taxman 599 (Cal); (4) Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, ; (5) Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others, (6) J. Gala Enterprises Estate and Investments P. Ltd. and another Vs. W. Hassan, Commissioner of Income Tax and anothers, (7) Ranchhodbhai Galabhai Patel v. Union of India [1996] 2 19 ITR 427/ 87 Taxman 83 and (8) Gordhandas Purshottamdas Patel

and Others Vs. Appropriate Authority,

3. Shri M.V. Seshachala, the learned standing counsel appearing for the respondents, supported the order impugned. He submitted that the second respondent was fully justified in rejecting the statement filed by the petitioners for the reasons set-out in the order Annexure-D. According to Shri Seshachala, since the sanctioned plan has not been issued by the authorities, it was not possible to determine the total built-up area proposed to be constructed on the land in question, and in those circumstances, the 2nd respondent was justified in taking the view that unless the plan is sanctioned, the built-up area cannot be ascertained and, therefore, the apparent consideration which depends only on the built-up area cannot be determined at that stage. He also submitted that unless and until the clearance from the Urban Land Ceiling Authority was received, the transfer of the land in question was not permissible and, therefore, the reasons assigned in the impugned order to reject the statement filed by the petitioners cannot be termed as either capricious or collateral to the purpose for which the power is conferred on the authorities. He further submitted that if for any reason the order impugned is required to be quashed, the second respondent may be reserved liberty to reconsider the entire question afresh.

4. In the light of the submissions made by the learned counsel appearing for the parties, the two questions that would fall for my consideration are :

(1) Whether the order Annexure-D is liable to be quashed ?

(2) If the order Annexure-D is liable to be quashed, whether the matter is required to be remitted to the 2nd respondent for fresh consideration or the 2nd respondent should be directed to issue a certificate of "No objection", as contemplated under sub-section (3) of section 269UL of the Act ?

5. Before I proceed to consider the said questions, it may be useful to briefly refer to some of the provisions of Chapter XX-C of the Act, which will have a bearing to decide the question that would arise for consideration in this petition.

6. Sub-section (1) of section 269UC provides that notwithstanding anything contained in the Transfer of Property Act, 1882 or in any other law for the time being in force, no transfer of any immovable property of such value exceeding five lakhs rupees as may be prescribed shall be effected except after an agreement for transfer is entered into between the person who intends transferring the immovable property and the person to whom it is proposed to be transferred in accordance with the provisions of sub-section (2) at least three months before the intended date of transfer. Sub-section (2) of section 269UC provides that the agreement referred to in sub-section (1) shall be reduced to writing in the form of a statement by each of the parties to such transfer or by any of the parties to such transfer acting on behalf of himself and on behalf of the other parties. Sub-section (3) prescribes the details of what the statement should contain.

7. Section 269UD confers power on the appropriate authority to purchase the property agreed to be sold in respect of which a statement has been filed as provided u/s 269UC of the Act by the Central Government. It is useful to extract section 269UD, which reads thus :

"269UD. Order by appropriate authority for purchase by Central Government of immovable property. -(1) Subject to the provisions of sub-sections (1A) and (1B), the appropriate authority, after the receipt of the statement under sub-section (3) of section 269UC in respect of any immovable property, may, notwithstanding anything contained in any other law or any instrument or any agreement for the time being in force, make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration :

Provided that no such order shall be made in respect of any immovable property after the expiration of a period of two months from the end of the month in which the statement referred to in section 269UC in respect of such property is received by the appropriate authority :

Provided further that where the statement referred to in section 269UC in respect of any immovable property is received by the appropriate authority on or after the 1st day of June, 1993, the provisions of the first proviso shall have effect as for the words "two months", the words "three months" had been substituted :

Provided also that the period of limitation referred to in the second proviso shall be reckoned, where any defect as referred to in sub-section (4) of section 269UC has been intimated, with reference to the date of receipt of the rectified statement by the appropriate authority :

Provided also that in a case where the statement referred to in section 269UC in respect of the immovable property concerned is given to an appropriate authority, other than the appropriate authority having jurisdiction in accordance with the provisions of section 269UB to make the order referred to in this sub-section in relation to the immovable property concerned, the period of limitation referred to in the first and second provisos shall be reckoned with reference to the date of receipt of the statement by the appropriate authority having jurisdiction to make the order under this sub-section :

Provided also that the period of limitation referred to in the second proviso shall be reckoned, where any stay has been granted by any court against the passing of an order for the purchase of the immovable property under this Chapter, with reference to the date of vacation of the said stay;

(1A) Before making an order under sub-section (1), the appropriate authority shall give a reasonable opportunity of being heard to the transferor, the person in occupation of the immovable property if the transferor is not in occupation of the property, the transferee and to every other person whom the appropriate

authority knows to be interested in the property.

(1B) Every order made by the appropriate authority under sub-section shall specify the grounds on which it is made.

(2) The appropriate authority shall cause a copy of its order under sub-section (1) in respect of any immovable property to be served on the transferor, the person in occupation of the immovable property if the transferor is not in occupation thereof, the transferee, and on every other person whom the appropriate authority knows to be interested in the property."

8. Sub-section (1) of section 269UE provides that where an order under sub-section (1) of section 269UD is made by the appropriate authority in respect of an immovable property referred to in sub-clause (i) of clause (d) of section 269UA, such property shall, on the date of such order, vest in the Central Government in terms of the agreement for transfer referred to in sub-section (1) of section 269UC, etc.

9. Section 269UF of the Act provides that where an order for the purchase of any immovable property by the Central Government is made under sub-section (1) of section 269UD, the Central Government shall pay, by way of consideration for such purchase, an amount equal to the amount of the apparent consideration.

10. Sub-section (1) of section 269UG of the Act makes it mandatory on the part of the Central Government to deposit the amount of consideration payable in accordance with the provisions of section 269UF to the person or persons entitled thereto, within a period of one month from the end of the month in which the immovable property concerned vested in the Central Government under sub-section (1), or, as the case may be, sub-section (6) of section 269UE. It is useful to extract sub-section (1) of section 269UG, which reads as hereunder :

"269UG. Payment or deposit of consideration. - (1) The amount of consideration payable in accordance with the provisions of section 269UF shall be tendered to the person or persons entitled thereto, within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government under sub-section (1), or, as the case may be, sub-section (6), of section 269UE :"

11. Section 269UH of the Act provides that if the Central Government fails to tender under sub-section (1) of section 269UG or deposit under sub-section (2) or sub-section (3) of the said section, the whole or any part of the amount of consideration required to be tendered or deposited thereunder within the period specified therein in respect of any immovable property which has vested in the Central Government under sub-section (1) or, as the case may be, sub-section (6) of section 269UE, the order to purchase the immovable property by the Central Government made under sub-section (1) of section 269UD shall stand abrogated in the transferor after the expiry of the aforesaid period, etc.

12. Sub-section (3) of section 269UL provides that in a case where the

appropriate authority does not make an order under sub-section (1) of section 269UD for the purchase by the Central Government of an immovable property, or where the order made under sub-section (1) of section 269UD stands abrogated under sub-section (1) of section 269UH, the appropriate authority shall issue a certificate of "No objection" referred to in sub-section (1) etc.

13. Having referred to some of the provisions of Chapter XX-C of the Act, now let me examine the questions that have arisen for consideration.

14. In the impugned order as many as five reasons have been assigned to reject the statement filed by the petitioners. The substance of the five reasons could briefly stated as follows : (1) In Form No. 37-I filed against Column-1 (v) of the Annexure to the statement in Form No. 37-I, the income tax particulars of the transferor have not been indicated, and, therefore, the statement is incomplete in that respect; (2) The statement made that the discounted value of the consideration is not applicable was not correct, as the built-up accommodation was required to be handed over to the transferor by the transferee after four years and nine months from the date of the agreement, and, therefore, the value of the built-up area was required to be discounted for the said period; (3) Unless and until clearance is given by the Urban Land Ceiling Authorities, the transfer of the land was not legally permissible and, therefore, submission of statement in Form No. 37-I without the clearance of Urban Land Ceiling and Regulations Authorities was, therefore, premature; (4) The amount of apparent consideration indicated was on the basis of handing over of 21 per cent of the total constructed area to the transferor and neither the agreement nor the statement in Form No. 37-1 indicates the firm figure regarding the minimum built-up area which will be provided by the transferee to the transferor; and in the absence of sanctioned plan, the consideration remains vague; and (5) The letter Annexure-C dated 11 7-1989 written by the petitioners refers to minor variation in the development rights on the land in question; and, therefore, having regard to the built-up area proposed to be constructed on the land in question and the road width, it was uncertain as to whether the Bangalore Development Authority would be in a position to sanction group housing and, therefore, the whole project must be treated as at preliminary stage, as the built-up area which would be sanctioned by the Bangalore Development Authority, was available. In conclusion, it was observed in the impugned order as follows :

"In conclusion, it is observed that until and unless the clearance from the Urban Land Ceiling Authorities is received, transfer is not permissible. Further, unless plans are sanctioned, the extent of built up area is not known. Therefore, the apparent consideration which depends only on the built up area cannot be determined at present. Therefore, the statement submitted by you cannot be considered as a valid statement u/s 269UC(3) of the income tax Act, 1961. On the basis of such a statement, it is neither possible for this office to issue an order for preemptive purchase u/s 269UD(1) of the income tax Act, 1961, nor is it possible to issue a No Objection Certificate u/s 269UL(1) of the Act. The

Statement, being defective, is, accordingly, rejected."

14. From the reasons set out in the impugned order now the question that would arise for consideration is whether the order impugned came to be passed totally on account of extraneous and irrelevant considerations and not germane to the exercise of power conferred on the second respondent under Chapter XX-C and more particularly, section 269UD. In the light of the examination of various provisions of Chapter XX-C, as set-out above, I find considerable force in the submission of the learned counsel for the petitioners that it was not permissible for the second respondent to pass the impugned order for the reasons set-out in the impugned order. The object of introduction of Chapter XX-C was to confer right on the Central Government to purchase the properties at the apparent sale consideration shown in the agreement to sell entered into between the parties, with a view to curb the transfer of black money from one hand to another while transferring immovable properties. It is well settled that the right guaranteed to the Central Government is the right of pre-emptive purchase of the properties in respect of which an agreement to sell has been entered into between the parties. In this connection, it is useful to refer to the decision of the Supreme Court in the case of *C.B. Gautam v. Union of India* [1993] 199 ITR 530. In the said decision, the Supreme Court has pointed out that the provisions of Chapter XX-C can be resorted to only where there is a significant undervaluation of the property to the extent of 15 per cent or more in the agreement of sale as evidenced by the apparent consideration being lower than the fair market value by 15 per cent or more, and that the intending seller and the intending purchaser should be given an opportunity to show cause against the compulsory purchase order to be made. The Supreme Court has observed as follows :

"... In our opinion, before an order for compulsory purchase is made u/s 269UD, the intending purchaser and the intending seller must be given a reasonable opportunity of showing cause against an order for compulsory purchase being made by the appropriate authority concerned. As we have already pointed out, the provisions of Chapter XX-C can be resorted to only where there is a significant undervaluation of property to the extent of 15 per cent, or more in the agreement of sale, as evidenced by the apparent consideration being lower than the fair market value by 15 per cent, or more. We have further pointed out that, although a presumption of an attempt to evade tax may be raised by the appropriate authority concerned in case of the aforesaid circumstances being established, such a presumption is rebuttable and this would necessarily imply that the concerned parties must have an opportunity to show cause as to why such a presumption should not be drawn. Moreover, in a given transaction of an agreement to sell, there might be several bona fide considerations which might induce a seller to sell his immovable property at less than what might be considered to be the fair market value. For example : he might be in immediate need of money and unable to wait till a buyer is found who is willing to pay the fair market value for the property. There might be some dispute as to the title of the immovable property as a result of which it might have to be sold at a price

lower than the fair market value or a subsisting lease in favour of the intending purchaser. There might similarly be other genuine reasons which might have led the seller to agree to sell the property to a particular purchaser at less than the market value even in cases where the purchaser might not be his relative..."

15. A reading of various provisions of Chapter XX-C, and more particularly sections 269UD, 269UF, 269UG and sub-section (3) of section 269UL make it abundantly clear that the only two options available to the appropriate authority on receipt of the statement under sub-section (3) of section 269UE in respect of immovable property are either to make an order for purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration shown in the agreement or to issue a Certificate of no objection certifying that it has no objection to transfer such an immovable property for the amount equal to the apparent consideration stated in the agreement, in respect of which it has received a statement under sub-section (3) of section 269UE. To my mind, it appears that it is not permissible for the appropriate authority to go into the legality or otherwise of the agreement entered into between the vendor and the vendee, or desirability or advisability of certain stipulations provided in the agreement either looked at from the interest of the vendor or the vendee. The consideration, viz-, authorities of the Urban Land (Ceiling and Regulations) Act are not likely to grant permission and, therefore, the agreement entered into between the vendor and the vendee for transfer of the immovable property may become void; the authorities of the Bangalore City Corporation or the Bangalore Development Authority may not sanction the plan for any reason; and the value of the built-up area was required to be discounted as the agreement provides that the vendee should hand over the possession of 21 per cent of the built-up area after four years and nine months to the vendor; the income tax particulars of the transferor have not been indicated in column 1(v) of the Annexure to the Statement in Form No. 37-I, etc., these are totally irrelevant and extraneous for exercise of power for the purpose of pre-emptive sale to be exercised by the appropriate authority under Chapter XX-C. The only relevant consideration the appropriate authority is required to consider is as to whether the apparent sale consideration shown in the agreement is fair market value of the property agreed to be sold or is undervalued by 15 per cent or more than the apparent consideration shown in the agreement. Therefore, the only investigation the appropriate authority is required to make as soon as the statement as contemplated under sub-section (3) of section 269UC is made in Form No. 37-I is as to what is the apparent sale consideration shown in the agreement and what is the market value. As stated earlier, the nature of the transaction or the advisability of entering into an agreement of sale wherein the vendee agrees to purchase certain immovable property from a vendor, is not a matter which should be considered by the appropriate authority and on that basis proceed to reject the statement filed in Form No. 37-I as contemplated u/s 269UC. It may be that either the title is not clear or the vendee will have to carry out several things and acts to make the

property he purchases suitable for use or to be used for the purpose for which it is bought. These are the matters on which the vendor and the vendee, having regard to their capacity to bargain and depending upon their perception of the benefit each one of them is likely to get, will have to take a decision either to sell or purchase the property. Therefore, in a situation like that, it is for the appropriate authority to decide as to whether it should proceed to purchase the property in respect of which the agreement of sale has been entered into and a statement has been filed as provided under sub-section (3) of section 239UC for the apparent sale consideration shown in the agreement. The provisions contained in sub-section (1) of section 269UD is not mandatory. As stated earlier, the object of Chapter XX-C is to minimise the undervaluation of the properties in the agreement of sale to be entered into between the parties and thereby to prevent transfer of unaccounted money from one hand to the other.

16. Further, the reason assigned in the impugned order that unless the plan is sanctioned, the built-up area cannot be ascertained and, therefore, the apparent consideration which depends only on the built-up area cannot be determined, is also erroneous in law. In the agreement, it is agreed that the vendee has to hand over 21 per cent of the total constructed area to the vendor, after construction of the building. The value of the constructed area for the purpose of calculating the price including the cost of the land by way of saleable area was fixed at the rate of Rs. 250 per square foot, and the same was again to be treated as a price in respect of the said 21 per cent of the total area. It is useful to extract the relevant provision of the agreement, which reads as hereunder :

"It is agreed that for the purpose of calculating the price and/or rate of such duly constructed built up area including the cost of land and cost of construction by way of saleable, area the rate of Rs. 250 per sq. ft. will be treated as a price in respect of the said 21% of the total area."

Further, in Form No. 37-I, a copy of which has been produced as Annexure-B, the apparent consideration for the transfer of the property agreed to be sold on the basis of the total area originally understood between the parties was mentioned as Rs. 2,49,90,000. However, subsequently, by means of letter dated 11-7-1989, a copy of which has been produced as Annexure-C, the 2nd respondent was informed by the petitioners that there was some mistake with regard to the total area of the land and it was only to the extent of 5 acres 14.5 guntas the 2nd petitioner acquired the developmental rights and, therefore, the total price at which the land was agreed to be sold works-out to Rs. 2,27,96,188. The relevant portion of the said letter reads as follows :

"Out of the total area estimated to be available for construction of 434213.12 sq. ft., and on the basis 21%, the area coming to the share of the party of the first part is 91184.75 sq. ft. the rate of Rs. 250 per sq. ft., will be treated as a price. Thus, the total price works out to Rs. 2,27,96,188 (Rupees Two crores twenty-seven lakhs ninety six thousand one hundred and eighty-eight only). Hence, the consideration works out to Rs. 2,27,96,188 as per revised area estimated to be

available for construction."

17. Further, the stipulation in the agreement also specifically provides for the rate of saleable area. The said stipulation reads as follows :

"It is agreed that for the purpose of calculating the price and/or rate of such duly constructed built up area including the cost of land and cost of construction by way of saleable area the rate of Rs. 250 per sq. ft. will be treated as a price in respect of the said 21% of the total area."

18. Therefore, it is clear that the view taken by the 2nd respondent in the impugned order that the total sale consideration was left vague is totally incorrect. Further, though the agreement provides that the second party has to hand over 21 per cent of the constructed area to the 1st petitioner towards the sale consideration of the land in question and he will have right on the undivided interest in the land in question to the extent of 21 per cent of the total area of the land, the apparent consideration for the sale of the land in question fixed was Rs. 2,27,96,188. Under these circumstances, the view taken by the 2nd respondent that the apparent sale consideration was left vague and it was not possible to be determined in the absence of a sanctioned plan is totally erroneous in law. The said finding arrived at by the 2nd respondent is in utter disregard of the statement made in the agreement and also in Form No. 37-I. Therefore, on the basis of the statement filed by the petitioners, it must be held that it was open to the 2nd respondent to pass an order as provided under sub-section (1) of section 269UD, proposing to purchase the land in question for the apparent total sale consideration of Rs. 2,27,96,188. Therefore, I am of the view that the reasons assigned by the 2nd respondent to pass the impugned order are totally erroneous in law and plainly unsustainable. This view of mine is supported by the decision of the Delhi High Court in the case of Tanvi Trading & Credits (P.) Ltd. (supra). In the said decision the Division Bench of the Delhi High Court while considering the order similar to the one which is under challenge in this petition has taken the view that the said order is unsustainable in law. The Court has observed as follows :

"As we read section 269UD, it is clear that the only right which confers on the appropriate authority is to enable it to make an order for purchase of the immovable property at an amount equal to the amount of the apparent consideration. Furthermore, the first proviso stipulates the time within which such an order can be passed. Section 269UD, therefore, contains the pre-emptive right of purchase by the Central Government. The said provision does not give jurisdiction to the appropriate authority to adjudicate upon the legality of the transaction which is proposed to be entered into by the applicant. It is to be remembered that Chapter XX-C was incorporated in an effort to curb sales of immovable properties for apparent consideration which would be less than the actual consideration. In other words, the effort was to see that immovable property is not transferred by taking sale consideration in black. Section 269UD was not concerned with the validity of the sale. If there was any impediment or

defect in the title of the transferor or if there was any other law which was violated by such a sale, the same was to be of no consideration to the appropriate authority except that it could take all such factors into consideration while making up its mind whether to exercise the pre-emptive right of purchase or not. The appropriate authority cannot, on grounds of alleged infringement of law, exercise its right of purchase and, at the same time, refuse to grant the certificate sought for by the seller.

An authority constituted under the Act can exercise only those powers which are, expressly or by necessary implication, conferred on it. The only power which is conferred on the appropriate authority u/s 269UD is the power to decide whether to purchase the property or not. Of course, in exercise of this power, the authority will have other implied powers which will make such a power effective. The authority would be entitled to see materials and documents like documents of title, agreements, etc., in order to satisfy itself whether the apparent consideration is proper or not in order to come to the conclusion whether to purchase the property or not. The investigation which will be undertaken by the appropriate authority is only with a view to determine whether the pre-emptive right of purchase should be exercised or not.

If the appropriate authority has reservations or doubts with regard to the legality of the proposed sale, it is open to the authority not to exercise its right to purchase. Section 269UD, however, does not contemplate the rejection of any statement by the appropriate authority. Section 269UD speaks of only one type of order which can be passed by the appropriate authority and that is an order of purchase. If the appropriate authority chooses not to purchase the property in question, then section 269UD does not contemplate the passing of any order similar to the order which has been passed by respondent No. 1 in the present case. In fact, the proviso to section 269UD says that if no such order, meaning an order referred to u/s 269UD(1) for purchase, is passed and the period within which such an order can be passed has expired, then no order for purchase can at all be passed...."

Further, it is observed as follows :

"... The certificate issued u/s 269UL would, in effect, only indicate that the Government is not interested in purchasing the property. The certificate so issued does not pronounce on the legality or validity of the transaction. If the transaction is otherwise illegal or invalid, it will be for some other authority, in another forum, to decide on the same. As far as the appropriate authority is concerned, the certificate which is issued has relation only to the question whether the Government is interested in purchasing the property or not."

19. The said decision was confirmed by the Supreme Court in the case of Tanvi Trading & Credits (P.) Ltd. (supra). The Supreme Court while rejecting the special leave petition, has observed thus :

"We agree that two alternatives are open under the scheme of the legislation :

(i) the Union of India through the appropriate authority could buy the property, or (ii) in the event of its decision not to buy, it has to issue a "no objection certificate" leaving it open to the parties to deal with the property. In that view of the matter, the High Court was right in its conclusion...."

20. Another Division Bench of the Delhi High Court in the case of Mrs. Satwant Narang (supra), has also taken the view similar to the one taken by the Court in the case of Tanvi Trading & Credits (P.) Ltd (supra). In the case of Mrs. Satwant Narang (supra) the appropriate authority had held that the agreement of sale which was under consideration u/s 269UD itself was unlawful. The said order was set aside by the Court holding that the appropriate authority had no jurisdiction to go into the object or the purpose of the transaction, or its legality and validity. The Court has pointed out thus :

"The appropriate authority is a creature of the statute and can function within the four corners of Chapter XX-C of the income tax Act. Under this chapter, the appropriate authority has been constituted by the Central Government u/s 269UB of the Act. Section 269UC places restrictions on the transfer of any immovable property of the value exceeding Rs. 10 lakhs, unless and until an agreement for transfer is entered into between the person who intends transferring the immovable property and the person to whom it is proposed to be transferred in accordance with the provisions of sub-section (2) at least three months before the intended date of transfer, and every statement shall be furnished to the appropriate authority. u/s 269UD, the appropriate authority has been empowered to pass an order for the purchase of the said immovable property covered by the agreement at an amount equal to the amount of apparent consideration by the Central Government. The said order of purchase has to be passed within two months from the end of the month in which the statement in Form No. 37-I is received by the appropriate authority. When such an order is made by the appropriate authority, the said property shall, on the date of the order, vest in the Central Government free from all encumbrances by virtue of section 269UE. u/s 269UG, the Central Government is obliged to tender to the person or persons entitled thereto the amount of consideration within a period of one month in which case the immovable property concerned becomes vested in the Central Government. If the Central Government fails to tender or deposit the whole or any part of the amount of consideration required to be tendered thereunder within the specified period, the order of purchase shall stand abrogated and the immovable property shall stand re-vested in the transferor by virtue of the provisions of section 269UH. It comes to this that in case the appropriate authority does not make an order for the purchase of the property by the Central Government or where the order stands abrogated, the appropriate authority is obliged u/s 269UL to issue a certificate that it has no objection to the transfer of the immovable property for the consideration stated in the agreement.

A bare perusal of the abovesaid provisions of the Act indicates that the

jurisdiction of the appropriate authority is only limited to either passing an order within the specified period for purchase of property by the Central Government for consideration recorded in the agreement or issue of a no-objection certificate for transfer at that consideration. While considering the statement in Form No. 37-I, the appropriate authority is only to examine the adequacy of the consideration and to decide whether to order purchase or to grant a no objection certificate. It certainly has no jurisdiction to go into the object or the purpose of the transaction or its legality and validity. Furthermore, the appropriate authority has no jurisdiction to club one property with another with a view to find faults in the validity of the transaction which, otherwise, has been cleared by the Competent Authority under the Urban Land (Ceiling and Regulation) Act."

21. The view expressed by the Division Benches in the case of Tanvi Trading Credits. (P.) Ltd. (supra) and Mrs. Satwant Narang (supra) was also followed by another Division Bench of the Delhi High Court in the case of Savitri Devi (supra). A learned Judge of the Calcutta High Court in the case of Moi Engineering Ltd. and Another Vs. Appropriate Authority and Others, and a Bench of the Bombay High Court in the case of Irwin Almeida v. Union of India [1992] 197 ITR 609, expressed the similar view. Therefore, in view of the preponderance of views expressed by the Delhi, Bombay and Calcutta High Courts favouring the view I have taken, I find it unnecessary to dwell further on this question. Therefore, I am unable to accede to the submissions made by Shri Seshachala in support of the order impugned. In view of ray above conclusion, the order to Annexure-D is liable to be quashed.

22. The next question that requires to be considered is whether the matter has to be remitted to the second respondent for fresh consideration as submitted by Shri Seshachala, or a direction is required to be given to the second respondent to issue "no objection" certificate as provided under sub-section (3) of section 269UL. I am of the view that on the facts and in the circumstances of the present case, a direction is required to be issued to the second respondent for issue of "no objection" certificate as provided under sub-section (3) of section 269UL, for the reasons set out hereunder.

23. As stated earlier, sub-section (1) of section 269UD confers power on the appropriate authority to make an order for the purchase of the immovable property in respect of which a statement has been filed as provided under sub-section (3) of section 269UC. The proviso given to sub-section (1) of section 269UD further provides that no such order shall be made as contemplated under sub-section (1) of section 269UD proposing to purchase the property at an amount equal to the amount of apparent consideration shown in the agreement, after expiration of period of two months from the end of the month in which the statement referred to in section 269UC in respect of such property is received by the appropriate authority. The language employed in the proviso to sub-section (1) of section 269UD is explicit in terms and it is in the nature of an order of injunction or an order prohibiting the appropriate authority from making any

order under sub-section (1) of section 269UD, after the expiry of the period fixed. Further, sub-section (1) of section 269UF makes it obligatory on the part of the Central Government to pay an amount equal to the amount of apparent consideration in respect of an immovable property in respect of which an order for purchase has been made under subsection (1) of section 269UD. Sub-section (1) of section 269UG makes it mandatory to the Central Government to tender the amount to the person or persons entitled to within a period of one month from the end of the month in which the immovable property concerned vested in the Central Government under sub-section (1) of section 269UD. Sub-section (1) of section 269UH further provides that if the Central Government fails to tender under sub-section (1) of section 269UG, etc., the whole or any part of the sale consideration required to be tendered within the period specified in respect of any immovable property which has vested in the Central Government under sub-section (1) of section 269UE, etc., or to purchase the immovable property by the Central Government under subsection (1) of section 269UD shall stand abrogated and the immovable property shall stand vested in the transferor after the expiry of the period of one month, etc. Further sub-section (3) of section 269UL also makes it clear that where the appropriate authority does not make an order under sub-section (1) of section 269UD for the purchase by the Central Government of an immovable property, or where the order made under sub-section (1) of section 269UD stands abrogated under sub-section (1) of section 269UH the appropriate authority shall issue a certificate of no objection referred to in sub-section (1) or sub-section (2), etc., and deliver copies of no objection certificate to the transferor and the transferee. A reading of the provisions referred to above, in my view, does not give any scope for me to accede to the submission of Shri Seshachala that if the order impugned is liable to be quashed for any reason, the matter will have to be remitted back to the 2nd respondent for fresh consideration. In my view, if the appropriate authority fails to pass an order as has been done in the present case, as provided under sub-section (1) of section 269UD, the only option left to the appropriate authority is to issue a certificate of "no objection" as provided u/s 269UL. Apart from the language contained in various provisions of Chapter XX-C, referred to earlier, I am also of the view that if such a view is not taken, it will result in great injustice to the parties, for the reason that after lapse of considerable length of time if the appropriate authority has to be redirected to consider the matter afresh, it would cause serious financial loss to the parties as by passage of time the market value of the property would have gone up considerably and it would be advantageous to the Central Government to purchase the property to the detriment of the rights of the vendor and the vendee. The appropriate authority being a creature of the statute should only function within the four corners of the power conferred on it under the statute and, therefore, if the appropriate authority was required to do a particular thing in a particular manner and within the time specified, it cannot be permitted to do a thing which is not permitted under law by remitting the matter for fresh consideration. The several decisions referred to above by me also clearly support the view I have taken. In the case of Tanvi Trading & Credits

(P.) Ltd, (supra), the Court has held as follows :

"Where no order for purchase has been passed, then the appropriate authority shall issue a certificate of no objection referred to in subsection (1) of section 269UL."

Further, the observations of the Supreme Court in the case of Tanvi Trading & Credits (P.) Ltd. (supra), make it clear that in the event the appropriate authority decides not to buy the property, it has to issue no objection certificate leaving it open to the parties to deal with the property.

24. In the light of the conclusions I have reached above, I make the following order:

(i) Order dated 19-7-1989, Annexure-D, passed by the second respondent is hereby quashed;

(ii) The second respondent is directed to issue a certificate of "no objection" as provided under sub-section (3) of section 269UL, in respect of the immovable property for which Form No. 37-I has been filed by the petitioners, within a period of two months from the date of receipt of a copy of this order;

(iii) Having regard to the facts and circumstances of the case, no order is made as to costs.

Rule issued is made absolute and this petition is disposed of in terms stated above.