(2003) 08 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1475 of 1990 29 August 2003

Ratnalaya Diamond (P) Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 29-08-2003

Acts Referred:

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

Citation : (2004) 138 TAXMAN 128

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Division Bench

Advocate : Paras Kuhad for the Assessee R.B. Mathurand R.S. Rathore, for the Revenue, for the Appellant;

Judgement

1. As questions of law and fact involve in the instant writ petitions are analogous, 1 propose to dispose them by a common order.

2. The petitioners in these writ petitions seek the following reliefs:

(a) To quash and set aside the order dated 28-12-1989.

(b) To declare that the provisions of section 269UG were not attracted in the instant case and that the recourse to the said provisions was clearly without jurisdiction and absolutely illegal.

(c) To declare that the provisions of section 269UG(1) are clearly attracted and the respondent Authorities were liable to tender the amount equal to the apparent consideration to the respondent Nos. 5 and 6 within the period prescribed u/s 269UG(I) of the Act of 1961.

(d) To declare that on account of the respondent authorities failure to tender the amount equal to the amount of apparent consideration to the respondent Nos. 5 and 6 within the period of 30 days from the date on which the property vested in the Central Government i.e. before 31-12-1989 the order of purchase dated

29-11-1989 stood abrogated on 31-12-1989 and that the property in question i.e. the building along-with land being plot No. D-46, Subhash Marg, C-Scheme, Jaipur stood revested in the respondent Nos. 5 and 6.

(e) To direct the respondent authorities to issue the necessary no objection certificate in terms of provisions of Chapter XXC of the Income Tax Act, 1961 to the respondent Nos. 5 and 6 so as to enable them to execute the sale deed in favour of Ms. Ratnalaya Diamonds Pvt. Ltd.

3. The case of the petitioners is that the property in dispute i.e. D-46 situated at Subhash Marg, C-Scheme, Jaipur was purchased by Shri Nand Lalji, who was father-in-law of Sushila Devi and father of Mahesh Chandra, who is father of petitioner No. 2 Vaibhav Mishra on 4-8-1940. Mahesh Chandra expired on 29-10-1962 who is husband of petitioner Sushila Devi. The property in dispute is property of Hindu Undivided Family and it was treated as HUF property with a clear understanding between the petitioners and late Shri Nand Lalji that ownership of half undivided portion thereof vested in both the petitioners and the ownership other undivided half share of the property vested in late Shri Nand Lalji. After the demise of Shri Mahesh Chandra a return of Estate Duty was filed. Consequent to that the Asstt. Controller of Estate Duty, Rajasthan by order dated 25-7-1989 assessed the Estate Duty payable on the Estate of Mahesh Chandra. In 1972 Rajasthan State Co-operative Bank was inducted as tenant by Shri Nand Lal. Nand Lal Mishra expired on 2-10-1974. After his death return of Estate Duty was filed. In 1982 Smt. Sushila petitioner inducted Joint Director of Agricultural Ajmer Division, Jaipur was inducted as tenant. On 31-8-1989 the petitioners executed a composite agreement for sale and declaration with respect to the property with M/s. Ratnalaya Diamonds Pvt. Ltd. as the purchaser and M/s. Alpha Builders Pvt. Ltd. as the confirming third party. The agreement to sale executed by the petitioners with M/s. Alpha Builders was abrogated by the parties in the month of 9-8-1989 and it was agreed that the petitioners shall pay a sum of Rs. 11.25 lakhs as refund considerations and damages.

4. The petitioners averred that on 29-11-1989 Deputy Commissioner (appropriate authority), New Delhi under Chapter XXC of the Income Tax Act, 1961 initiated proceedings in respect of immovable property situated at D-46, Subhash Marg, C-Scheme, Jaipur. The petitioners were directed to surrender or deliver the possession of the immovable property to the Valuation Officer, Income Tax, Jaipur and they were further directed to intimate in advance before 14-12-1989 to intimate the date and time to surrender or deliver of the possession of the immovable property. Along with this notice copy of order u/s 269UD(1) of the Income Tax Act was also enclosed. By the order dated 29-11-1989, appropriate authority ordered u/s 269UD(1) for purchase by the Central Government of the immovable properties described in the Schedule enclosed with the order i.e. Plot No. D-46, Subhash Marg, C-Scheme, Jaipur. By another communication dated 5-12-1989 the Deputy Commissioner Jaipur in pursuance to the order dated 29-11-1989 authorised the Chief Commissioner,

Rajasthan, Jaipur to tender the amount equal to the amount of apparent consideration under sections 269UF and 269UG of the Act and the petitioner of writ petition 1605/90 was directed to hand over the possession. In the said letter dated 5-12-1989, the Chief Commissioner was also directed to tender the payment and the petitioner was directed to produce receipts for payment of the following taxes, dues etc.:

(i) Receipts for payment of House-tax/Property-tax to JDA/Municipal Counsel/ Urban Land & Building Tax Department upto the date of handing over possession.

(ii) Receipts for payment of Ground rent to JDA/Municipal Counsel/ Urban Land & Building Tax Department Jaipur and also interest if any levied or leviable upto the date of handing over possession.

(iii) Receipts for payment of Water Charges to Public Health Engineering Department upto the date of handing over possession (Please also give water connection numbers).

(iv) Receipts for payment of electricity charges to Rajasthan State Electricity Board upto the date of handing over possession (Please also give electric connection Nos.)

(v) Receipts for payment of unearned increase if levied/leviable to Jaipur Development Authority, Jaipur.

(vi) Receipts for payment of Society Charges upto the date of handing over possession.

5. The petitioners further pleaded that by another order dated 28-12-1989 as there was a dispute regarding ownership of the property the amount of consideration of Rs. 18 lacs were deposited with the appropriate authority as per provisions of section 269UG of the Income Tax Act by the Chief Commissioner, Jaipur. On 29-12-1989 the Valuation Officer wrote a letter to the Secretary, Jaipur Development Authority, Jaipur informing that in accordance with the provisions of section 269UF the property i.e. D-46, Subhash Marg, C-Scheme, Jaipur vest in the Central Government free from all encumbrances and a further request was made that the records of the rights of the above property may be corrected and a fresh certificate declaring co-ownership of the Central Government may be issued. By another letter dated 29-12-1989 M/s. Rajasthan State Co-operative Bank was requested to deposit 50 per cent of the rent of the premises to the appropriate authority. By letter dated 9-1-1990 issued to the respondent No. 6 the Chief Commissioner, Jaipur requested him to hand over the original title deed of any the property latest by 12-1-1990. The Deputy Commissioner i.e., appropriate authority New Delhi vide letter dated 16-1-1990 in view of the letter of M/s. Ratnalaya Diamond Pvt. Ltd. i.e. the petitioner of writ petition 1475/90 was advised to sort out the matter with the transfer to whom the earnest money was paid by him i.e. Rs. 14,35,000.

6. The respondent No. 3 filed reply to the writ petition. The respondent Nos. 5 to

7 (private parties Smt. Manjulika Mishra, Ku. Ambika Mishra and Ku. Aditi Mishra, who are wife and daughters of petitioner Vaibhav Mishra) have also filed separate reply to the writ petition.

7. The respondent No. 3 averred in the reply that the impugned order has been passed by the appropriate authority after complying with the provisions of the Act. The reasons have been recorded in the order-sheet and are not required to be recorded in the order itself. The petitioner was not entitled to any opportunity because the Central Government has purchased the property at the same price and considerations as mentioned in the agreement. M/s. Ratnalaya Diamonds Pvt. Ltd. has no locus standi and cannot claim the amount. The agreement between M/s. Ratnalaya Diamonds Pvt. Ltd. and the petitioner is a matter which can be decided by the Civil Court. Since there was a dispute with regard to the title the amount has been deposited with the appropriate authority in accordance with the provisions of section 269UG of the Act. There was no probate in favour of the petitioners nor any satisfactory evidence and the allegations of malice, fraud, arbitrariness or illegality are without any basis. The respondents have not modified the orders of the Central Government. Provisions of section 269UG (ii) and (iii) are not attracted and the only provisions of sub-section (i) are attracted. The property was not reverted with the petitioners.

8. The respondent Nos. 5 to 7 submitted reply to writ petition and prayed that the writ petition be dismissed and the entire amount of apparent consideration be paid to the petitioners and no objection certificate be ''issued'' to petitioners to enable them to execute the sale deed in relation to the property sold in the agreement dated 31-8-1989 in favour of M/s. Ratnalaya Diamonds Pvt. Ltd. It was further prayed that the balance amount of maintenance till date out of the share of petitioner Vaibhav Mishra from apparent consideration lying deposited with the appropriate authority be paid to them.

9. I have heard the rival submissions and scanned the material on record.

10. Before proceeding further it would be appropriate to refer to the relevant provisions of section 269 of the Income Tax Act, which are as follows :-

"269UG.(1) The amount of consideration payable u/s 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 u/s 269UG.

(2) If any dispute arises as to the apportionment of the amount of consideration amongst persons claiming to be entitled thereto the Central Government shall deposit with the appropriate authority the amount of consideration required to be tendered under sub-section (1) within the period specified therein.

(3) If the persons entitled to the amount of consideration does not consent to receive it, or if there is any dispute as to the title to receive the amount of consideration, the Central Government shall deposit with the appropriate

authority the amount of consideration required to be tendered under sub-section (1) within the period specified therein :

Provided that nothing in the said section shall affect the liability of any person who may receive the whole or any part of the amount of consideration for any immovable property vested in the Central Government to pay the same to the person lawfully entitled thereto.

(4) Where any amount of consideration is deposited with the appropriate authority he may order the same to be invested in securities and may direct the interest or other proceeds of such investment tobe accumulated and paid in any such manner as well in its opinion give the parties interested therein, the same benefits therefrom as they might have had from the immovable property in respect of where all such amount has been deposited."

11. The Division Bench of the Andhra Pradesh High Court in Sooni Rustam Mehta and Others Vs. Appropriate Authority, Income Tax Department, indicated that the Word "dispute" is used in a wide sense and implies any controversy as to title whether as between the actual claimants or with respect to a single claim. Merely because there is no rival claimant to the consideration, section 269UG(3) does not necessarily compel the authority to tender the apparent consideration u/s 269UG(I) of the Act. If the authorities have a bona fide genuine doubt as to the title of the apparent vendor, it is open to them not to tender consideration under sub-section (1) of section 269UG but make a deposit u/s 269UG(3). The word "title" in sub-section (3) of section 269UG should be considered not merely as relating to the "ownership" of the part or whole of the consideration but as referable to the "entitlement" of the persons to receive the consideration.

12. A look at the impugned order dated 28-12-1989 demonstrates that the appropriate authority recorded satisfaction as there was a dispute regarding the ownership of the property by Smt. Sushila Devi and Shri Vaibhav and there was no document of the joint ownership of the property as mentioned in the will and the remaining 1/2 share for which the will was executed and as there was a dispute as to the title to receive the amount of consideration, the amount of consideration was deposited with the appropriate authority as per the provisions of section 269UG of the Act.

13. I have closely scanned the case law placed before me by Mr. Paras Kuhad, the learned counsel for my perusal. 1 find myself unable to agree with the submissions advanced before me by the learned counsel for the petitioner. According to me the orders under challenge do not suffer from any infirmity. 1 am of the opinion that the provisions of section 269UG(3) are attracted in the instant cases and section 269UG(I) is not applicable. Thus, no declaration or directions sought in the writ petitions can be made under article 226 of the Constitution of India.

14. The writ petitions being devoid of merit stand dismissed, without any order as to costs.

