

(1996) 06 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 3687 of 1989 and Chamber Summons No. 166 of 1993

Ruparel Bros. (Bombay) (P) Ltd. and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-06-1996

Acts Referred:

Income Tax Act, 1961 — Section 269UD, 28

Citation : (1996) 4 BomCR 240 : (1997) 226 ITR 172

Hon'ble Judges : M.B. Shah, C.J.;P.S. Patankar, J

Bench : Division Bench

Advocate : Deokinandan., K.M.L. Majele, for the Appellant;

Final Decision : Dismissed

Judgement

M. B. Shah, C.J.—The first petitioner-company agreed to purchase from respondent No. 6-company land bearing survey No. 143 (at present CTS Nos. 1397 & 1398) admeasuring approximately 6,229 square metres situate at village Marol, Andheri Kurla Road, Bombay (hereinafter referred to as "the said land"), for a sum of Rs. 50 lakhs. A part of the said land was already notified by the Municipal Corporation of Greater Bombay as reserved for recreational open space and/or setback for road widening under the Draft Development Plan prepared for Marol Village. For that purpose, an agreement dt. 5th September, 1989 (Exhibit "A" to the petition), was executed between the first petitioner and the sixth respondent. The said agreement itself provided that parties would be filing Form No. 37-I under the IT Act, 1961 (hereinafter referred to as "the Act"), with the Appropriate Authority and that if no order for the purchase of the said land by the Central Government is made by the Appropriate Authority, then Crawford Bayley & Co., Advocates and Solicitors, would pay the said sum of Rs. 50 lakhs to the owners. The agreement also provided that if such an order for purchase of the said land is made by the Appropriate Authority, then Crawford Bayley & Co., shall pay the said sum of Rs. 50 lakhs to the developers/purchaser. The

agreement also mentions that the owners have filed a declaration under s. 6 of the Urban Land (Ceiling and Regulation) Act, 1976, and have applied to the Government of Maharashtra under s. 20 of the said Act for exemption of the said land from the provisions of Chapter III of the said Act and will also apply under s. 21 for permission of the competent authority to enable the owners to develop the said land for weaker sections of the society.

It is also stated that the owners filed in Form No. 37-I under the Act and finally on 29th November, 1989, by the impugned order (Exhibit "C") the Appropriate Authority decided that the said property be purchased by the Central Government at an amount equal to the amount of apparent consideration. It is also averred that on 15th December, 1989, respondent No. 6 handed over possession of the land in question to respondents Nos. 3 to 5 voluntarily without any protest.

The aforesaid order dt. 29th November, 1989 (Exhibit "C"), is challenged by filing this petition on 27th December, 1989. On 29th December, 1989, the Court passed ad interim relief restraining the first respondent from making any payment of apparent consideration to respondent No. 6 until further orders. Thereafter the matter was placed for admission on 31st January, 1990, before a learned single judge of this Court, who passed the following order on that day :

"Rule, returnable on 4th April, 1990.

As the petitioners were not agreeable to usual conditions on the interim relief, the interim relief refused.

Ad interim order dt. 27th December, 1989, and other ad interim order, if any, to stand vacated."

On 2nd February, 1990, respondents Nos. 3 to 5 paid the amount of apparent consideration to respondent No. 6. Respondent No. 6 accepted the said amount without any protest.

On 13th February, 1990, the advocates for respondent No. 6 with whom the deposit was made by the petitioners, returned the amount of Rs. 50 lakhs to the petitioners.

Further, the petitioners preferred Appeal No. 217 of 1990 against the order dt. 31st January, 1990, refusing interim relief. That appeal was heard by a Division Bench of this Court on 12th March, 1990. In that appeal, an order in terms of minutes of order was passed wherein it is stated that respondents Nos. 1 to 5 would inform all prospective offerers at the public auction about the pendency of Writ Petition No. 3687 of 1989. Respondents Nos. 1 to 5 were also directed to inform the petitioners of the names of the prospective purchasers.

Thereafter, on 23rd March, 1990, the property in question was auctioned. The highest offer of Rs. 1,42,00,000 was that of respondents Nos. 7 to 13. Undisputedly, petitioner No. 2 attended the auction and had offered to purchase

the said property at Rs. 1,32,00,000. On 2nd April, 1990, respondents Nos. 2 to 4 addressed a letter to the petitioners informing them that the said land had been sold by an auction held on 23rd March, 1990, to Atlanta Construction Company (I) (P) Ltd.

Thereafter, Chamber Summons No. 824 of 1990, was taken out by the petitioners and by an order dt. 19th February, 1993, the petitioners were allowed to add respondents Nos. 7 to 13 as party respondents to the writ petition.

In August, 1993, the petitioners took out Notice of Motion No. 426 of 1993, for restraining the auction purchaser respondent No. 7 from constructing and/or developing the said land and/or from creating third party rights. That notice of motion was heard by a Division Bench and on 26th November, 1993, after considering the various contentions raised therein, the Court ordered as under :

"12. After hearing counsel for the parties we are of the opinion that having regard to the amended prayers in the writ petitioner which are required to be examined in the light of the decision of the Supreme Court in C.B. Gautam Vs. Union of India and Others, , it would be appropriate to maintain status quo as of today. But, however, the petitioners-applicants cannot be granted interim relief and status quo order without any condition. We accordingly grant reliefs in terms of prayers (a) and (b), on condition that the applicants/writ petitioners deposit in this Court with the prothonotary and senior master a sum of Rs. 75,00,000 (seventy five lakhs) on or before 24th December, 1993, and the balance of Rs. 67,50,000 (sixty seven lakhs fifty thousand) on or before 24th January, 1994. In the event of any default on the part of the applicants/petitioners, the interim order granted today to stand vacated without any reference to the Court. The prothonotary to invest the aforesaid amounts as and when deposited in the fixed deposit in any nationalised bank initially for a period of one year and renew the same from time to time.

13. It is made clear that this will operate prospectively and if any third party interests are created in respect of the property already constructed on the writ property, this order will not affect the same. It is also made clear that the findings recorded in this order are prima facie and tentative."

On the basis of the above order, the petitioners were required to deposit the amounts stated therein. However, the petitioners failed to deposit the said amounts, with the result that the interim relief granted by the Court stood vacated.

Against that order, the petitioners preferred a SLP before the Supreme Court. The said SLP was dismissed on 10th January, 1994. It may also be mentioned that against the order dt. 17th September, 1993, partly allowing Chamber Summons No. 107 of 1993 taken out by the petitioners, respondent No. 7 filed a SLP before the Supreme Court. The said SLP also came to be dismissed by observing that the order under appeal does not preclude respondent No. 7 auction purchaser from putting forward or urging such defences, both of fact and

law, as are open to them in accordance with law.

2. At the time of the hearing of this petitioner, learned counsel for the petitioners vehemently contended that the impugned order (Exhibit "C") is required to be quashed and set aside in view of the decision rendered by the Supreme Court in the case of C. B. Gautam vs. Union of India (supra). It is submitted that no hearing was given to the petitioners before the passing of the impugned order and admittedly a reasoned order was not communicated to the petitioners. The auction purchaser-respondent No. 7 - purchased the property knowing full well that the writ petition was admitted and was pending for hearing and, therefore, they cannot claim any equitable relief. If the order is null and void as it violates principles of natural justice, it is required to be quashed and set aside and respondents Nos. 1 to 5 be directed to follow the prescribed procedure.

As against this, learned counsel for the respondents submitted that this would not be a fit case for exercise of writ jurisdiction under Art. 226 of the Constitution, especially looking to the conduct of the petitioners and taking into consideration the fact that it is a completed transaction as observed by the Supreme Court in C. B. Gautam's case (supra).

3. In our view, the contention raised by learned counsel for the respondents requires to be accepted considering the following facts :

(a) On 15th December, 1989, respondent No. 6 voluntarily handed over possession of the land in dispute in question to respondents Nos. 3 to 5 :

(b) On 2nd February, 1990, respondent No. 6 accepted the amount of apparent consideration without any protest; the payment of the amount was delayed by one month or thereabout because the Court had granted ad interim relief restraining respondents Nos. 1 to 5 from making any payment of the apparent consideration to respondent No. 6 by order dt. 29th December, 1989;

(c) On 13th February, 1990, the petitioners withdrew the consideration amount of Rs. 50 lakhs from the advocates for respondent No. 6 with whom deposit was made by the petitioners;

(d) Opportunity was given by this Court to the petitioners to abide by the usual conditions of depositing the amount so that interim relief could be continued in favour of the petitioners. However, the petitioners refused to abide by the usual terms and the Court vacated the ad interim relief by its order dt. 31st January, 1990. With regard to these usual conditions, it has been pointed out in the affidavit-in-reply filed by the Asstt. CIT that at the relevant time it was the practice that till the matter was decided, a uniform approach was adopted in the matter to the effect that in order to protect rightful interest, the Department was prevailed upon not to either take possession of the property and/or in different circumstances not to auction such property which was purchased under impugned order. Under such interim orders, the transferor or transferees were also burdened with certain conditions. The sine qua non was that the transferee

was permitted to adopt and/or to obtain substantial relief to prevent further transaction in respect of the property, provided he accepts the burden of parting with monetary consideration. At the relevant time, the petitioners were not prepared to accept the said usual condition of depositing the amount and hence the Department was required to part with consideration and deal with the property.

(e) Thereafter the petitioners took out a chamber summons praying that the auction purchasers be added as party respondents to the writ petition. The said chamber summons was granted on 19th February, 1993.

(f) Subsequently, the petitioners took out Chamber Summons No. 107 of 1993, for amending the plaint. The said chamber summons was partly allowed, that is, amendments to the extent that they set out the subsequent events and ask for consequential reliefs are allowed as they are consequences that may follow if the petition succeeds. The Court observed that there was no reason to enlarge the scope of the petition, particularly taking into consideration the fact that respondents Nos. 1 to 5 were permitted to auction the property and, therefore, the auction purchaser should not be subjected to additional challenges on the new grounds raised in the petition. As stated earlier, that order was challenged by filing a special leave petitioner before the Supreme Court which was dismissed.

(g) Thereafter, the petitioners took out Notice of Motion No. 426 of 1993. That notice of motion came up for hearing before a Division Bench of this Court. In its order dt. 26th November, 1993, the Court has noted the decision rendered by the Supreme Court in the case of C. B. Gautam vs. Union of India (supra) as also the decision rendered by the High Court of Karnataka in Appropriate Authority and others Vs. Mass Traders Pvt. Ltd. and others, and after considering the same the Court directed the petitioners to deposit a sum of Rs. 1,42,50,000 as a condition precedent for grant of interim stay as prayed for in paragraphs (a) and (b) of the notice of motion.

(h) Even though time was given to the petitioners to deposit the amount, they did not deposit the amount and, therefore, interim order stood vacated. Against that order, the petitioners preferred SLP (Civil) No. 21932 of 1993, before the Supreme Court which was also dismissed. However, we would note at this stage that before the Supreme Court, an affidavit-in-rely was filed by respondent No. 7 on behalf of respondent Nos. 7 to 13. A copy of the said affidavit is annexed as Exhibit-2 to the affidavit dt. 6th July, 1994, filed by respondent No. 12 in this petition. In that affidavit before the Supreme Court, which was filed on 25th January, 1994, it has been specifically mentioned that for a period of three and half years the petitioners had not challenged the legality of the auction sale and that a substantial portion of the said property has already been fully developed; that a building consisting of basement, ground and five upper floors consuming an FSI of about 16,000 square feet has already been erected thereon and that the units therein have already been sold and disposed of to third parties on ownership basis. With regard to the balance portion of the plot, it is stated that

respondents Nos. 7 to 13 have taken various steps and have invested large amounts of money for erecting a hotel building thereon.

4. From the aforesaid facts it is apparent that -

(a) the petitioners have not availed of the opportunity of continuing the stay by depositing the amount as ordered by the Court;

(b) thereafter, when further opportunity was given by granting interim relief restraining respondents Nos. 7 to 13 from constructing on the property purchased on the condition that they shall deposit the amount as stated therein, the said opportunity also was not availed of by depositing the amount;

(c) respondents Nos. 7 to 13 have constructed on the land purchased by them and flats have already been transferred to third parties.

5. It appears that the purpose of continuing the petition was only to take a chance without any stake and without complying with the interim directions. Hence, in our view, this would not be a fit case in which any relief should be granted to the petitioners in exercise of our jurisdiction under Art. 226 of the Constitution on the ground that the principles laid down in C. B. Gautam's case (supra), are not followed in this case.

Apart from the conduct of the petitioners as discussed above, it is rightly pointed out by learned counsel for the respondents that even following the directions issued by the Supreme Court in C. B. Gautam's case (supra), in this case the Court is not required to set at naught a completed transaction. In C. B. Guatam's case (supra), with regard to a completed transaction, the Supreme Court has clarified as under :

"We may clarify that, as far as completed transactions are concerned, namely, where after the order of compulsory purchase under s. 269UD of the IT Act was made and possession has been taken over; compensation was paid to the owner of the property and accepted without protest, we see no reason to upset those transactions and hence, nothing we have said in the judgment will invalidate such purchases. The same will be the position where public auctions have been held of the properties concerned and they are purchased by third parties. In those cases also, nothing which we have stated in this judgment will invalidate the purchase."

6. In the present case, admittedly, the agreement was executed on 5th September, 1989; the order of compulsory purchase was passed on 29th November, 1989; the possession was handed over by vendor-respondent No. 6 on 15th December, 1989, without any protest; thereafter on 27th December, 1989, this petition was filed challenging the validity of the order of compulsory purchase; on 27th December, 1989, ad interim relief was granted by the Court; further on 29th December, 1989, the Court restrained respondents Nos. 1 to 5 from making any payment of apparent consideration to respondent No. 6 until further order; that order was vacated on 31 January, 1990, and on 2nd February,

1990, the amount of apparent consideration was paid to respondent No. 6 and respondent No. 6 has accepted it without any protest. Further, on 13th February, 1990, the petitioners withdrew the amount of Rs. 50 lakhs which were deposited by them with the advocates for respondent No. 6. Considering these facts, in our view, this case squarely falls within the first exception carved out by the Supreme Court in C. B. Gautam's case (supra).

7. Even with regard to the second exception carved out by the Supreme Court this case also would be covered. In the present case, even though the petition was filed and the Court was inclined to grant interim relief on usual terms and conditions of depositing the amount, the petitioners did not avail of the interim relief and permitted respondents Nos. 1 to 5 to auction the property. The property was auctioned on 23rd March, 1990, and was purchased by respondents Nos. 7 to 13 by paying Rs. 1,42,00,000 as against the agreed consideration of Rs. 50 lakhs between the petitioners and respondent No. 6. After 1990, third parties have constructed over the land by spending large amount. In this set of circumstances, in our view, the second exception for not applying the ratio carved out by the Supreme Court in C. B. Gautam's case (supra), would be applicable to this case.

8. Learned counsel for the petitioners further contended that the transaction in the present case cannot be said to be a completed transaction because the petitioners have already filed the writ petition before the amount was paid to respondent No. 6 vendor. In our view, this submission is not required to be accepted because prior to the filing of the writ petition, respondent No. 6 had already handed over possession of the land and was waiting for consideration to be paid by respondents Nos. 1 to 5 and before respondent No. 1 could tender the amount the petitioners obtained stay order from this Court. As soon as the stay was vacated the amount was paid to respondent No. 6 which was accepted by it without any protest.

9. Learned counsel for the petitioners further submitted that once the petition is pending and the transaction is completed, it cannot be said to be a completed transaction covered by the clarification made by the Supreme Court in C. B. Gautam's case (supra). This submission is required to be rejected even by taking into consideration the fact that the petitioners themselves had on 13th February, 1990, withdrawn the amount of Rs. 50 lakhs deposited by them with the solicitors for respondent No. 6.

10. Learned counsel for the petitioners further contended that in the present case the Court has specifically directed that the purchasers should be informed that a writ petition challenging the order of compulsory purchase was pending before the Court and, therefore, purchase by the purchasers at the time of auction would be subject to the result of the petition. It is true that in normal circumstances when a person knowing about the pending litigation enters into a sale transaction, then it must be subject to the consequences and the result of the petition. But in the present case, there is no question of applying that normal

rule because it falls within the exceptions carved out by the Supreme Court in C. B. Gautam's case (supra), for not giving the benefit of the law laid down by the Court. We are also required to consider this along with the conduct of the petitioners who only intended to get benefit of the pending litigation without fulfilling their obligation of depositing the amount of consideration of Rs. 50 lakhs before the Court. Even in a suit for specific performance of a contract, the petitioners would have been required to establish their readiness and willingness to perform their part of the contract.

11. Thirdly, the fact that in the present case the agreed sale consideration was Rs. 50 lakhs and as against this the auction price received for the said property is Rs. 1,42,50,000 apparently indicates that the apparent consideration was highly undervalued. Even petitioner No. 2 offered to purchase the property at Rs. 1,32,00,000 at the time of the public auction. To this learned counsel for the petitioners submitted that when the property was purchased by the Central Government, the restrictions under the Urban Land Ceiling Act were not applicable and, therefore, at that time it was categorically stated in brochures and advertisements given in various newspapers that the land is encumbered as surplus vacant land under the Urban Land Ceiling Act. This fact is admitted by the second petitioner in his affidavit-in-reply dt. 20th July, 1994. Therefore, it would be difficult for us to arrive at a conclusion that the land fetched Rs. 1,42,50,000 because it was not subjected to the provisions of the Urban Land Ceiling Act. The purchasers purchased the property knowing full well that it was subject to the provisions and regulations of the Urban Land Ceiling Act. Even the second petitioner himself had agreed to purchase it with such clear understanding and that is reflected in the agreement to sell.

In this view of the matter, in our view this would not be a fit case for exercise of writ jurisdiction for setting aside the impugned order of compulsory purchase.

12. We would note at this stage that the additional affidavit-in-rejoinder which was tendered by the petitioners has been withdrawn by them. We would also note that as the petitioners have withdrawn their affidavit, further affidavit-in-rejoinder filed by respondents Nos. 7 to 13, pointed out that they have constructed over the land in dispute, is merely taken on record and not relied upon.

In the result, petition is dismissed. Rule is discharged with no order as to costs.

As the writ petition is dismissed, Chamber Summon No. 166 of 1993 taken out for bringing on record third party purchasers, respondents Nos. 7 to 13, would not survive and the same accordingly stands disposed of.

13. Issuance of certified copy of this judgment is expedited.