

(1999) 03 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No"s. 39054 to 39057, 39309 to 39311, 39758 to 39760, 40040, 40041 and 43689 to 43692 of 1995, 11th March, 1999

SABARI TRUST and Others

APPELLANT

Vs

APPROPRIATE AUTHORITY and Another

RESPONDENT

Date of Decision : 11-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 269 UD (113), 269 UD (1A)

Citation : (1999) 03 KAR CK 0018

Hon'ble Judges : V.K. Singhal, J

Bench : Division Bench

Judgement

V.K. SIMGHAL, J.

All these petitions are disposed by this common order since the controversy involved is common. Petitioners are aggrieved of the order passed by the Appropriate Authority of the IT Department for pre-emptive purchase of the property in dispute.

2. For the sake of convenience, facts of M/s Sabari Trust Ltd. are taken into consideration. M/s Sabari Trust Ltd. is constituted under the Indian Trust Act and owns land bearing Nos. 25 to 34 situated at Kolar Road (Old Madras Road), Indiranagar, Bangalore 38. It entered into development agreement with M/s Srinivasa Builders on 24th Jan., 1990, for development of the property by construction of multistoried residential apartment. 35 per cent of the super built area was to remain with the trust, and M/s Srinivasa Builders who were to construct and develop the property were entitled for 65 per cent of the super built area in lieu of the cost of construction. The supplementary agreement dt. 25th Jan., 1990, was also entered into between the parties providing the manner in which 35 per cent of the constructed area was to be handed over to the trust. On 20th July, 1995, the land owner and the developer referred to above entered into an agreement with Mr. N. Malik and Mrs. Meena Malik to sell the undivided

share of the land and flat No. 442 situated at 4th floor measuring approximately 2,700 sq.ft. along with two car parking space for a consideration of Rs. 40,45,000. It is stated that the undivided share of the property comes to 1,047.14 sq.ft. A statement in Form 37-1 as required under Chapter XX-C of the IT Act filed along with a copy of the agreement dt. 20th July, 1995. Show-cause notice was issued for pre-emptive purchase. On the ground that the consideration of the flat would be Rs. 31,75,393 after deducting the car parking which was notionally valued at Rs. 2 lakhs, the net value was assessed at Rs. 29,75,393 at the rate of Rs. 1,424 per sq.ft. Compared to other flats in Bangalore the consideration was stated to be grossly understated. Apartment No. 302, 3rd floor of Raheja Mansion situated at Militant Street, Cooke Town, was sold at the rate of Rs. 2,241 per sq.ft. of super-built area and Flat No. 310 of Raheja Residency situated at Koramangala was sold at Rs. 2,158 per sq. ft. of super-built area. Apartment No. B-2 situated in Defence Colony, Indiranagar, was sold at Rs. 2,686 per sq.ft. These examples were shown in the show-cause notice for comparison.

The petitioner submitted a reply stating that Raheja flats in Cooke town and Koramangala flats are not comparable as they are situated in high class residential area and that the Appropriate Authority has issued no-objection certificate to the neighbouring flat No. 441 with a super-built up area of 3,200 sq. ft. for a consideration of Rs. 34 lakhs which works out to Rs. 1,062 per sq.ft. of super-built-up area. The difference of period in the two agreements is stated to be a year and three months giving rise of more than 40 per cent. Another multistoried apartment (Ramaya Residency) constructed by M/s Ramaya Housing and Development (P) Ltd. is valued at Rs. 870 per sq.ft. of super-built area and the Appropriate Authority granted NOC in 1995. The contention of under valuation was also denied in the additional statement of objection.

It is stated that the land area is 57,742 sq.ft. and super-built area of the building is 1,48,885 sq. ft. There is transfer of land and the flat separately. The test laid down in C.B. Gautam Vs. Union of India and Others, have not been applied and that there being more than one co-owners the matter should have been examined separately as held in Appropriate Authority and others Vs. J.S.A. Raghava Reddy and others, . There can be separate owner of land and building for which reliance is placed on the decision given in AIR 1927 135 (Privy Council) , Commissioner of Income Tax Vs. Fazalbhoy Investment Co. Pvt. Ltd., : and Saifuddin Vs. Commissioner of Income Tax, : . It is stated that the detailed reply and location map have also been filed. The property is situated in slum area having liquor shop and other disadvantages. On comparison basis the value cannot exceed Rs. 1,300 per sq. ft. The rate, per square feet of Rs. 1,062 in March, 1994 justifies the sale in July 1995, at Rs.1,402. The instances cited by the petitioner were comparable and cases cited by the Appropriate Authority were not comparable. The observations in Anagram Finance Ltd. vs. Appropriate Authority (1995) 127 CTR (Guj) 193 : , Gordhan Das Purshottam Das Patel & Ors. vs. Appropriate Authority (1995) 128 CTR (Guj) 239 : and Hunaida

Jamnagarwala & Anr. vs. Appropriate Authority `(1995) 127 CTR (Guj) 109: relied on the proposition that the provisions of s. 269UC(IM and (113) are not complied with. It was also submitted that the Appropriate Authority has committed an error in not placing reliance on the two sale instances of property-1 and property-2 on which the petitioners based their claim that consideration was adequate and sufficient. On the basis of the judgments cited it is stated that the Appropriate Authority has not given any positive finding regarding the market value of sin-flare flat in the same locality and thereafter considering the difference of 15 per cent in the value the Authority has come to the conclusion of the intention of evasion of tax of understatement of consideration. A consolidated order is passed in respect of the two properties.

In the order of the Appropriate Authority dt. 30th Oct., 1995, it is stated that M/s Srinivasa Builders and Sabari Trust have been shown as transferors and Sri N. Malik and Mrs. Meena Malik are shown as transferees who have entered into an agreement of sale of schedule property, all piece and parcel of land together with building standing thereon for a total consideration of Rs. 40 ,45,000. Discount value was taken at Rs. 39,86,596. The property was inspected on 9th Oct., 1995. The valuation report of the Engineering wing was taken into consideration and it was observed that apparent consideration is less than 15 per cent of the market value. The rate per square feet was arrived at Rs. 1,402 for super-built area and the flat was constructed with very good specification. The flats were considered comparable to the instances cited in the notice. It was observed that the consideration declared under the agreement for sale is less than the fair market value by 15 per cent or more and, therefore, drawn the presumption of under valuation with a view to evade tax.

2.1. The learned standing counsel for the Department stated that the High Court under Art. 226 of the Constitution has to exercise supervisory powers as held in In the Matter of the Appropriate Authority and Another Vs. Smt. Sudha Patil and Another, wherein it was observed that "the power being supervisory in nature in exercise of such power, a finding/conclusion of an inferior Tribunal can be interfered with, if the High Court comes to the conclusion that in arriving at the conclusion the Tribunal has failed to consider some relevant materials or has considered some extraneous and irrelevant materials or that the finding is based on no evidence or the finding is such that no reasonable man can come to such a conclusion on the basis of which the finding has been arrived at. This being the settled position, it is difficult to sustain a plea that when the order of the Tribunal does not provide for an appeal, the High Court can get its jurisdiction enlarged and exercise an appellate power while examining the correctness of the conclusion arrived at be such Tribunal." It was further observed that "It may be stated here that on the materials if two views are possible, one which has been given by the inferior Tribunal and the other which the High Court may on examining the materials itself came to a conclusion, then also it would not be possible for the High Court to substitute its conclusion for that of the Tribunal. In the aforesaid premises, we are of the considered opinion that merely because no

appeal is provided for against the order of the Appropriate Authority, directing compulsory acquisition by the Government, the supervisory power of the High Court does not get enlarged nor the High Court can exercise an appellate powers. "

3. I have considered over the matter. The principles for valuation of immovable property were summarised by Justice Sabyasachi Mukharji (as he then was), in *Debi Prosad Poddar Vs. Commissioner of Wealth Tax*, as under :

"(i) Attempt must be made to find out the price which the immovable property would fetch on the valuation date, imagining a willing buyer to purchase the property from a willing seller in respect of the property.

(ii) In respect of the immovable property there is no fixed market such as market for shares or for other commodities, like sugar, cloth, etc. In order to arrive at a valuation in respect of the property there must necessarily be certain element of guess. But the guess must be based on certain facts and according to certain principles which would be, in the facts and circumstances of the each case, as fair as possible to the Revenue as well as to the assessee in trying to imagine reasonable and intelligently and price which was expected to be fetched if it was possible to sell the property in question on the relevant valuation date.

(iii) Such a determination, therefore, involves adopting certain methods in determining the valuation and there are different kinds of methods as mentioned in the circulars of the Board and the principles enunciated in the several decisions of the Court as noticed before.

(iv) Which one of the various methods would be suitable for a particular case must depend upon the nature of the property, the location of the property, the purpose for which the property is used, and several other objective factors, viz., the time when the valuation is made, the prospect of buying and selling in respect of the property at the relevant time and also special features in respect of the property, if there be any. Taking all these factors into consideration it is, therefore, necessary to determine which one of the various methods will be most suitable to reach as accurate as possible a guess as to the valuation on the valuation date.

(v) Another factor which has to be borne in mind is that such a method should be preferred which has more objective reliable data to rely upon than mere subjective opinions. For instance, if there are more objective data to work out in respect of one method more reliable than another, then that method for a particular land should be preferred. If, however, there is any objective reliable evidence of any transaction of sale of the land or property similar in quality or of the same type and in approximately same time then that would, however, provide more reliable method to follow."

In *Shrichand Raheja and another Vs. S.C. Prasad*, (Appropriate Authority) and others, : , Bombay High Court observed thus :

"The principles to determine the fair market value of property are well settled by a catena of decisions of the Supreme Court. The principles are adopted while determining the compensation payable in respect of property acquired under the Land Acquisition Act, 1894. The determination is to be made on the basis of what a hypothetical purchaser willing to purchase land from the open market and prepared to pay a reasonable price would offer, It has to be assumed that the vendor is willing to sell the land at a reasonable price. While determining the price, normally the authority has to take into account genuine instances. The most comparable instances out of the genuine instances have to be identified on the consideration of proximity from the time angle and proximity from the situation angle, After identifying the instances which provide the index of market value, the price reflected therein may be taken as a norm and the value of the land in question may be deducted by making suitable adjustments for the plus and minus factors, vis-a-vis, the land under consideration by placing the two in juxtaposition. The plus factors are proximity to a road, frontage on a road, regular shape, etc. while the minus factors are situation in the interior at a distance from the road, narrow strip of land with small frontage, compared to depth and some special disadvantageous factor which would deter the purchaser. It is not possible to lay down any hard and fast rule to ascertain the fair value by adopting instance method but the authority should determine the fair value after taking an overall view of situation. A reference can be made in this connection to the decision of the Supreme Court in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, . "

Kerala High Court in Commissioner of Wealth-tax Vs. Mrs. Sara Varghese, : 0 has observed thus :

..... that for valuation a hypothetical market is contemplated. Imponderables are involved in the matter of valuation.

The market value of the property is the price which a willing buyer will pay to a willing seller. It will vary from case to case. Valuation is not an exact science.

Mathematical calculation is not possible. The money value attributable to the asset should be decided and estimated by the concerned statutory authority in a reasonable and judicial manner on the basis of the facts and circumstances available. The valuation should be made objectively and should be based on some material. The qualitative and quantitative analysis in the matter of the valuation will differ from asset to asset, from place to place, and also considering the particular statute for which the valuation and price of the property has to be determined. It cannot be a wooden rule. Different methods and approaches, necessary in the context of different statutes under which the market value of an asset has got to be determined, pose difficult problems. The market value has got to be fixed with reference to the particular statute. The approach will differ, according to the nature of the statute, between fiscal statutes or non-fiscal statutes. Among the non-fiscal statutes, the Land Acquisition Act is an important legislation. Among the fiscal statutes, the IT Act, the WT Act, the GT Act, the

Municipalities Act, etc., are important. In fixing the market value of a particular asset or property, the approach and analysis are likely to vary according to the subject-matter of legislation. The principles that are ordinarily applied in the case of non-fiscal statutes like the Land Acquisition Act cannot be applied mechanically to cases arising under the fiscal statutes."

Viscount Simon J., in *Gold Coast Selection Trust Ltd. vs. Humphrey* (1949) 17 ITR 19 (RL) observed :

Valuation is an art, not an exact science, mathematical certainty is not demanded, nor is it possible ? A certain element of guess has to be there based on objective factors having reasonable nexus with the evidence on record. The various factors are there on the basis of which out of the various methods by which the valuation of the immovable property can be made, appropriate method is to be adopted. It depends on the location of the property, the purpose for which the property is used, the nature of the property, the time

when the agreement is entered into and similar other objective factors. The valuation, therefore, has to be done by a method which is more objective and could furnish reliable data to arrive at a just conclusion."

In 1. *Mrs. Kailash Suneja* (C.W. NO. 5220 of 1993 AND C.M. No. 1988 of 1994) 2. *Shatabdi Trading and Investments Pvt. Ltd. and others.* (C.W. NO. 4153 of 1993 and C.M. No. 3199 of 1994) 3. *Chauhan Builders and Constructions Pvt. Ltd.* (C.W. NO. 4589 of 1994) 4. *Shashi Sehgal* (C.W. No. 3726 of 1994) 5. *R. C. Chawla and Another* (C.W. No. 3884 of 1994) Vs. *Appropriate Authority and Others.* DR. *A. K. Garg and Another* (C.W. No. 3139 of 1993) v. *Kailash Nath and Associates and Others.* *Chiranji Estates Pvt. Ltd.* (C.W. No. 5613 of 1993) v. *Union of India and Others.* *Express Towers Pvt. Ltd. and Another* (C.W. No. 4357 and C.M.S. Nos. 7857 of 1993, 2043 of 1994 and 1811 of 1995) v. *Deputy Commissioner of Income Tax and Others.* *Mahesh Chandra Agarwal and Another* (C.W. No. 3594 of 1990 and C.M. No. 6632 of 1993) v. *Union of India and Others.*, : , it was observed by the Delhi High Court :

"A combined reading of s. 269UD(1A) and (113) of the Act leaves no room for doubt that it is a question of objective decision making process by taking into consideration all the relevant materials which have come before the hearing authority and considering the rival aspects of the matter. Moreover, the requirement of law is to specify the grounds on which the order of the preemptive purchase is made. The obligation does not stop by merely rejecting the submissions made before it. The rejection of submissions made by the vendors or the transferee or the persons interested in the property, does not lead to a consequence that grounds for making pre-emptive purchase exist. The sine qua non is that reasons must wdst, on the material placed before it, for supporting the action taken for pre-emptive purchase under s. 269UD of the Act. The order clearly falls short of this requirement. "

[Editorial Comments-The above extract are from the Gujarat High Court in

Anagram Finance Ltd."s case as quoted in Mrs. Kailash Suneja"s case-Editors]

In Barium Chemicals Ltd. vs. Company Law Board (1966) 36 Comp. Cas. 639 Guj, it was observed :

"The combined reading of s. 269UD(1A) and (113) of the Act leaves no room for doubt that it is a question of objective decision making process by taking into consideration all relevant materials which have come before the hearing authority and considering the rival aspects of the matter. Moreover, the requirement of law is to specify the grounds on which the order of pre-emptive purchase is made. That obligation does not stop by merely rejecting the submissions made before it. The rejection of submissions made by the vendors or the transferee or the person interested in the property, does not lead to a consequence that grounds for making pre-emptive purchase exist. The sine qua non is that the reasons must exist on the material placed before it, for supporting the action taken for pre-emptive purchase under s. 269UD of the Act. The order clearly falls short of this requirement."

[Editorial Comments-It may be noted that the above extract has not been taken from the case of Barium Chemicals Ltd. vs. Company Law Board. Instead the same is from the judgment of Anagram Finance Ltd. vs. Appropriate Authority, as quoted in Mrs. Kailash Suneja & Ors. vs. Appropriate Authority]

In Laboni Developers Vs. Appropriate Authority and Others, : , it was observed :

"In our view, the Appropriate Authority has not given any positive finding to the effect that there was an attempt to evade tax or that the apparent consideration was lower than the real consideration. The Authority could have raised a presumption about intention to evade tax in the show-cause notice. After hearing the parties, the Authority could have held that the presumption was not rebutted and given the finding that the apparent consideration mentioned in the agreement was understated with a view to evade tax. However, since the mandatory requirement of giving such a positive finding is not complied with, in our opinion, the order deserves to be quashed and set aside. "

In Commissioner of Income Tax, Gujarat II Vs. Vimlaben Bhagwandas Patel and Kamlaben Kanjibhai Patel, it was observed :

"In the perspective of this settled legal position of law, we have to examine as to what would be the contents of the principles of natural justice in the inquiry before the competent authority. By and large, it can be said that in the enquiry under Chapter XX-A of the IT Act, 1961, the transferor and/or transferee as well as the occupant and any other known interested person should be told the nature of allegations against him including the material collected so far by the competent authority, and be furnished copies of the statements recorded and those of the documents collected by the competent authority on which he intends to rely so as to give the person interested or affected an opportunity to state his case and to correct or controvert the material sought to be relied upon, and the

competent authority should act in a just manner at all stages of such inquiry which would necessarily imply that the authority shall furnish any other additional material which it might have collected after the initiation of the proceedings in the course of the inquiry to the person interested or affected by the proposed acquisition."

Bombay High Court in Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, : observed that if the order of purchase was made after considering the materials on record, it cannot be set aside unless the order is perverse. In C.B. Gautam vs. Union of India & Ors. (supra) presumption for revaluation of tax could be drawn if the under valuation is more than 15 per cent. In Mrs. Rajalakshmi Narayanan Vs. Mrs. Margret Kathleen Gandhi and others, .. , it was observed by the apex Court thus :

"We may clarify that whether interest should be paid to the owner of an immovable property who has entered into an agreement to sell the same which cannot be completed by reason of an order of purchase under s. 269UD of the IT Act and at what rate, will have to be decided in the facts and circumstances of each case. All that can be observed by way of a general principle is that where such a seller has raised no objection or obstruction either to the purchase of his property by an order under s. 269UD or to the completion to the agreement of sale entered into by him but is unable to get the purchase price by reason of the said order and the stay order or orders passed by a Court, interest at an appropriate rate can, if equity so requires, be paid to him."

4. On the basis of the various judgments referred to above, it is evident that the Appropriate Authority has to take into consideration various factors including the advantages and disadvantages about the location of the property, comparable sale instances of that area where the property is situated and if such sale instances are not available, then the nearest comparable sale instances, etc., an objective decision has to be taken.

5. The Appropriate Authority by order dt. 13th Oct., 1995, considered the engineering wing report and came to the conclusion that the apparent consideration of the schedule property is less than 85 per cent of the market value of the property on the date of agreement. Discounted value and value of two car parking was reduced from the agreement consideration and the rate per sq. ft. of super-built area of the flat were sold at Rs. 1,402 per sq.ft. Comparison with Apartment No. 302, 3rd floor, in Raheja Mansion, Milton Street, Cooke town, Bangalore, is taken. Cooke town is on Banaswadi Road. Rs. 2,241 per sq. ft. was taken as comparable sale instance. Specifications are stated to be inferior to the flat under dispute. Another instance of the two flats of Koramangala and Defence Colony, Indiranagar, have been taken into consideration. The rate per sq.ft. of Koramangala was Rs. 2,158 and that of Indiranagar Rs. 2,686 per sq.ft. Even after reducing the highest land rate prevailing in these two localities, it was found that the amount shown in the agreement is much lesser than the rates of that area. The flat in these writ petitions is situated at Kolar Road (Old Madras Road,

Indiranagar) at the National highway. The flats were considered to be of a value not less than Rs. 2,000 per sq.ft. super-built area and thus the under valuation was considered at 29.90 per cent. Since it was more than 15 per cent a presumption was drawn that it was with a view to avoid tax. The petitioner referred an instance of Flat No. 441 which was cleared by the Appropriate Authority vide under valuation Certificate No. 4(9)7/94-95 in respect of the agreement dt. 31st March, 1994, and the rate was Rs. 1,062 per sq. ft. It is stated that even if 20 per cent as escalation on account of lack (sic-lapse) of time is taken into consideration the value cannot be exceeded Rs. 1,300. Similarly, in Ramaiah Building, Apartment No. 305.3.F was also cleared by the Appropriate Authority, vide no-objection certificate No. 1(655A/94-95 under the agreement dt. 11th Jan., 1995, where the value was Rs. 870 per sq.ft.

5.1. The Appropriate Authority considered the representation submitted by the petitioner and the disadvantages pointed out were also liable to be ignored on account of the situation of the property at two important roads of Old Madras Road and Indiranagar. The value of the land was arrived at Rs. 486.50 as a contribution which is to be attributed to the developer. The land rate of Koramangala property was Rs. 765 per sq. ft. It was also found that the delivery in respect of the compared property is at a later date while the present property is at the stage of nearing completion. Specification of the flat under construction was found superior than the sale instance having marble floor, teak-wood doors, aluminium windows etc. Agreements of the instances cited by the petitioner were stated to be 16 months earlier. The price increase was considered more in comparison to other property. In all purchases of Flat No. 441 on 1st April, 1994, was held not the criteria.

6. Increase in the cost of construction as reflected in CPWI) indices cannot be equated with the increase in the fair market value of the property. The property situated at Koramangala and Cooke town are not on the same locality in which the property in dispute is situated. Old Madras Road, where the property is situated, is near to Indiranagar. The properties which are situated in the proximity line are to be taken into consideration. According to the Appropriate Authority one of such property is said to be in Defence colony in Indiranagar, while according to the petitioner the sale instance has been given of the flats situated in that very building for which no-objection certificate was given when the flat rate was only Rs. 1,062 per sq.ft. as on 31st March, 1994. At the time when the agreement was entered into, the building was under construction. The Appropriate Authority found that there was sea-change in property value particularly in Indiranagar area. In Appropriate Authority & Anr. vs. Smt. Sudha Patil & Anr. (supra) it was observed by the apex Court that the finding of the Tribunal can be interfered with if the High Court comes to the conclusion that in arriving at the conclusion the Tribunal has failed to consider some relevant materials or has considered some extraneous and irrelevant materials or that the finding is based on no evidence or the finding is such that no reasonable man can come to such a conclusion on the basis of which the finding has been arrived

at.

7. In Barium Chemicals Ltd.'s case, [Editorial Comments-Please substitute the reference to the case of Mrs. Kailash Sunela & Ors. vs. Appropriate Authority-Editorial] referred to above, the decision-making process was considered relevant and for that purpose the material placed by the petitioner was required to be considered. The reason for rejecting the materials placed in support of the action for preemptive purchase has to be given. The Appropriate Authority has taken all the contentions raised by the petitioner and the reasons why the instances cited by the petitioner are not acceptable. Even in the case of Smt. Sudha Pad] referred to above, it was observed that this Court has a limited jurisdiction and even if on the material two views are possible, then it would not be proper for the High Court to substitute its conclusion for that of the Tribunal. The supervisory power contemplated could be exercised when this Court comes to the conclusion that the Tribunal has failed to consider some relevant material or the finding is based on no evidence or that the finding is such that no reasonable man can come to such a conclusion on the basis of which the finding has been arrived at. Nothing of the sort exists in these petitions. The order passed by the Appropriate Authority is well reasoned and does not require any interference. It may also be observed that the contention for valuation of the land and building separately was not raised before the Appropriate Authority and as such I do not consider it proper to examine that contention at this stage.

8. The writ petitions having no force are accordingly dismissed.

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