(2012) 06 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 23405 of 2006

Sakhubai Raju Shinde and Others — APPELLANT

Vs

Appropriate Authority and Another — RESPONDENT

Date of Decision : 26-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20

Citation : (2012) 346 ITR 518

Hon'ble Judges : Harsha Devani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : B.D. Karia for R.K. Patel for Petitioners Nos. 1 to 8, for the Appellant; M.R. Bhatt , with Mrs. Mauna M. Bhatt, for the Respondent

Final Decision : Allowed

Judgement

Harsha Devani, J.—In this petition under article 226 of the Constitution, the petitioners, who are the owners of land admeasuring 5999.96 square metres of survey No. 9/5/B/l at Kothrud in P.M.C. area in Pune (hereinafter referred to as "the subject land"), have challenged the order dated April 28, 1993, at exhibit E and the order dated October 14, 2005, at exhibit L respectively, for compulsory purchase and possession passed by the Appropriate Authority, Ahmedabad, under the income tax Act, 1961. Alternatively, it is prayed that the respondent be directed to pay consideration in terms of fair market value on the date of taking possession and not as per the purchase price of 1993. The facts as stated briefly are that on July 21, 1987, petitioners Nos. 1 to 7 executed a general power of attorney in favour of petitioner No. 8, a registered partnership firm, to deal with the subject land. By an order dated March 22, 1988, the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the ULC Act"), declared the subject land to be excess vacant land. On March 31, 1987, petitioners Nos. 1 to 7 made an application to the State Government for exemption u/s 20 of the ULC Act in respect of the subject land, which came to be sanctioned by an order dated October 10, 1990. Petitioner No. 8 entered into agreement of assignment on May 13, 1992, with M/s. Ellora Constructions for development and sale of the subject land for a consideration of Rs. 18 lakhs. In respect of the said agreement of assignment, the petitioners filed their statement in Form No. 37-1 of the Act. Respondent No. 1-Appropriate Authority passed order dated July 31, 1992, u/s 269UD(1) of the Act declaring its intention to purchase the subject land for a net consideration of Rs. 17,08,169. Initially, M/s. Ellora Construction challenged the said order before the Bombay High Court in Writ Petition No. 3487 of 1992 which came to be disposed of on April 1, 1993, by directing the Appropriate Authority to initiate proceedings in terms of the decision of the Supreme Court in the case of C.B. Gautam Vs. Union of India and Others, .

2. Pursuant to the order passed by the Bombay High Court, on April 28, 1993, the Appropriate Authority passed a fresh order u/s 269UD(1) of the Act holding that the property is undervalued and is fit for preemptive purchase and determined the net consideration payable by the Central Government at Rs. 17,08,169 including Rs. 2,75,000 payable to the transferee as earnest money. By an order dated May 4, 1993, the Appropriate Authority observed that on April 28, 1993, the subject land has vested in the Central Government u/s 269UE(1) of the Act and ordered the transferor to deliver vacant possession on May 17, 1993, of the property free from all encumbrances to the person authorised by it. Against the aforesaid order dated April 28, 1993, passed by the Appropriate Authority u/s 269UD(1) of the Act, M/s. Ellora Construction filed a writ petition before the Bombay High Court being Writ Petition No. 1822 of 1993, wherein a Division Bench of the said court granted stay of further proceedings in connection with the order dated April 28, 1993. The petitioners herein were respondents Nos. 8 and 9(a) to (g) in the said petition. By an order dated September 20, 2005, the said writ petition came to be dismissed on the ground that M/s. Ellora Construction which claimed to have been put in possession of the property as developer has no locus stand to maintain the writ petition.

3. In the meanwhile, it appears that the petitioners had also instituted a suit, being Special Civil Suit No. 192 of 2004, in the court of the learned Civil Judge, Civil Division, Pune, for cancellation of the deed of assignment and for a declaration that the order dated April 28, 1993, for compulsory acquisition is null and void. Upon dismissal of the above referred writ petition, the first respondent passed an order dated October 14, 2005, for execution of the order passed u/s 269UE(2) of the Act on May 4, 1993, calling upon the transferor to deliver vacant possession of the subject property, which came to be communicated to the petitioners by a letter dated October 18, 2005. On October 19, 2005, the petitioners filed objections to the said order praying that the same be cancelled forthwith.

4. Being aggrieved by the aforesaid order dated October 14, 2005, as well as the earlier order dated April 28, 1993, the petitioners preferred a writ petition before the Bombay High Court, being Writ Petition No. 8333 of 2005, which came to be

dismissed by an order dated September 5, 2006, on the ground that the remedy for the petitioners is to file a petition before the Gujarat High Court as the order under challenge had been passed by the Competent Authority in Ahmedabad though the property was situated in Pane. Thereafter, the petitioners have presented the present petition before this court.

5. Mr. Bhargav Karia, learned advocate for the petitioners, submitted that the initial order u/s 269UD(1) of the Act had been made on April 18, 1993. In view of the provisions of section 269UF of the Act, where an order for the purchase of immovable property by the Central Government is made under sub-section (1) of section 269UD, the Central Government is required to pay by way of consideration for such purchase, an amount equal to the amount of apparent consideration. The Central Government had, accordingly, fixed the amount at Rest. 17,08,169. By virtue of the provisions of section 269UG of the Act, the amount of consideration payable in accordance with the provisions of section 269UF is required to 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. It was submitted that upon an order being made under sub-section (1) of section 269UD of the Act, such property vests in the Central Government. Under the circumstances, the first respondent was required to tender the amount of consideration payable in accordance with the provisions of section 269UF to the petitioners within one month from the date of the order u/s 269UD, that is, within one month from April 28, 1993. However, till date no such payment has been made. It was further submitted considering the fact that in the writ petition filed by M/s. Ellora Constructions before the Bombay High Court, the proceedings pursuant to the said order had been stayed, at best, the period for making such payment would stand extended till the date when the said petition came to be disposed of. However, even after the petition came to be disposed of in September, 2005, and the stay came to be vacated, the first respondent has not deposited the amount in terms of section 269UG of the Act. Under the circumstances, in the light of the law laid down by the Supreme Court in case of Union of India (UOI) and Another Vs. Dr. A.K. Garg and Others, , the purchase order stood abrogated u/s 269UH of the Act, as the Central Government had not tendered the amount of apparent consideration by the date fixed by section 269UG and as such, the petition deserves to be allowed on the ground that the order u/s 269UD stands abrogated.

6. Vehemently opposing the petition Mr. Manish R. Bhatt, senior advocate, learned counsel for the respondents, submitted that the petitioners were never aggrieved by the order dated April 28, 1993, made u/s 269UD(1) of the Act and, hence, they had not challenged the same at the relevant time. It was M/s. Ellora Constructions with whom the petitioner had entered into an agreement of assignment who had challenged the said order before the Bombay High Court. According to the learned counsel for the petitioner was never aggrieved by the

order dated April 28, 1993. It was only after the dismissal of the writ petition filed by M/s. Ellora Constructions and passing of the order dated October 14, 2005, section 269UE(2) of the Act for the execution of the order u/s 269UD(1) of the Act, that the petitioner has. thought it fit to challenge the stay order as well as the earlier order dated April 28, 1993, and as such after this length of time the petitioner cannot be permitted to challenge the same. The petition, therefore, deserves to be dismissed on the ground of delay and laches alone.

7. Next it was submitted that under the provisions of section 269UG of the Act, the amount of consideration as payable u/s 269UF is required to 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 stands vested in the Central Government. Before the aforesaid period of one month was over, M/s. Ellora Constructions had approached the Bombay High Court by way of a writ petition, wherein further proceeding had been stayed. Under the circumstances, the Appropriate Authority was precluded from tendering the amount of consideration in relation to the subject land. It was contended that once the period of one month from the date of vesting is over, section 269UG would cease to operate and as such the period of limitation prescribed there under would no longer be applicable. Hence, there would be no limitation for tendering the amount of consideration thereafter. Reliance was also placed on the averments made in the affidavit-in-reply filed on behalf of the respondents. It was submitted that in the aforesaid premises, the submission that the order u/s 269UD(1) stands abrogated u/s 269UH of the Act does not merit acceptance and the petition deserves to be dismissed.

8. In the backdrop of the aforesaid facts and contentions, two questions arise for consideration, firstly, as to whether the present petition is barred by delay and laces and, secondly, as to whether the order dated April 28, 1993, passed u/s 269UD(1) stands abrogated u/s 269UH of the Act.

9. As regards the first question, viz., delay caused in filing the present petition in so far as the order dated April 28, 1993, is concerned, it may be noted that at the relevant time when the petition came to heard at the admission stage, an objection had been raised as regards the delay caused in filing the petition, pursuant to which the petitioners had filed a civil application being Civil Application No. 13797 of 2006 for condoning the delay caused in filing the petitioner challenging the order dated April 28, 1993, as well as the order dated October 14, 2005. The respondent had filed an affidavit-in-reply in response to the averment made in the said application. By an order dated April 16, 2007, the said application came to be allowed after hearing the learned counsel for the respective parties, after which the petition came to be listed for admission and notice came to be issued on the petition on May 10, 2007. Subsequently, by an order dated July 11, 2008, rule came to be issued. In the aforesaid premises, it is apparent that the question of delay had already been decided prior to issuance of notice in the matter, under the circumstances, it is not permissible for the

respondents to repaginate the issue again.

10. As regards the second issue, from the facts noted hereinabove, it is apparent that the order u/s 269UD of the Act came to be made on April 28, 1993, whereupon, by virtue of the provisions of section 269UE, the subject property stood vested in the Central Government from the date of such order. A perusal of the impugned order dated April 28, 1993, indicates that the net consideration payable by the Central Government for purchase of the subject property as contemplated u/s 269UF of the Act was determined at Rs. 17,08,169 including Rs. 2,75,000 payable to the transferee paid as earnest money. Section 269UG of the Act makes provision for "Payment or deposit of consideration" and postulates that 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. In the facts of the present case, it is an admitted position that the consideration for purchase of immovable property as determined u/s 269UF of the Act has not been paid to the petitioner till date. Considering the fact that the order u/s 269UD of the Act had been passed on April 28, 1993, in view of the provisions of section 269UG, the consideration determined u/s 269UF was required to be paid within a period of one month from the end of April, 1993. However, it appears that immediately thereafter, on May 4, 1993, M/s. Eliora Constructions presented the above referred Writ Petition No. 1822 of 1993 before the Bombay High Court. A perusal of the affidavit filed by the petitioners in the said petition indicates that by an order dated August 11, 1993, the Bombay High Court had granted interim relief staying the execution and operation of the order dated April 28, 1993, with the condition that the petitioner, that is, M/s. Eliora Constructions would not in any manner deal with the said property or develop the same. Thus, from April 28, 1993. to August 11, 1993, there was no order restraining the respondent from depositing the amount of consideration in terms of section 269UG of the Act. Apart from the fact that the amount of consideration determined u/s 269UF was not paid within the period prescribed u/s 269UG at the relevant time, even after the dismissal of the said writ petition on September 20, 2005, respondent No. 1-Appropriate Authority has not thought it fit to deposit the amount of consideration till date. Now, it is sought to be contended that once the initial period of one month from the date when the immovable property becomes vested in the Central Government under sub-section (1) or sub-section (6) of section 269UE of the Act elapses and the respondent is restrained by an order of the court from proceeding further, the period of limitation would cease to operate and it is thereafter permissible for the respondents to tender the consideration at any time.

11. At this juncture it may be germane to refer to the decision of the Supreme Court in Union of India (UOI) and Another Vs. Dr. A.K. Garg and Others, In the facts of the said case, on a writ petition, a Division Bench of the Delhi High Court

had quashed the order of the Appropriate Authority of pre-emptive purchase u/s 269UD of the Act of the immovable property, the subject-matter of an agreement for sale, inter alia, on the ground that the purchase order stood abrogated u/s 269UH since the Central Government had not tendered the amount of apparent consideration by the date fixed by section 269UG. The Central Government preferred an appeal to the Supreme Court, and, put forth a case that the amount had been deposited with the Appropriate Authority. However, there was no material to show that the same was tendered or offered to the parties concerned. On behalf of the Central Government reliance was placed a letter in regard to the amount to be tendered or deposited in terms of section 269UG of the Act whereby the Chief Commissioner of income tax, New Delhi, had been authorised to tender the amount, on the basis of which it was claimed that the apparent consideration had been tendered to the vendor in time. The Supreme Court observed that all that was sought to be done by the letter was that the Chief Commissioner is authorised by the Central Government to tender the amount to the party and that there was no material to show that such offer was made within the stipulated period u/s 269UG of the Act and dismissed the appeal.

12. In Hotel Mardias Pvt. Ltd. Vs. Union of India and Others, , a Division Bench of this court has held thus (pages 97 and 98):

Assuming that the order u/s 269UD(1) has been made in accordance with law u/s 269UG it is required that the amount of consideration payable to the person entitled to such consideration 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 269UE. It further provides that from the consideration so paid, the amount of any liability for a tax or any other sum remaining payable under the income tax Act, the Wealth-tax Act, the Gift-tax Act, the Estate Duty Act, the Companies (Profits) Surtax Act, by such person then the Appropriate Authority may in lieu of the payment of consideration set off such outstanding liability. Such adjustment is equivalent to payment to the person entitled to consideration inasmuch as it results in the discharge of his liability. It also envisages what are the contingencies when the amount of consideration instead of being paid or tendered to the person entitled, may be deposited by the Central Government, with the; Appropriate Authority. These contingencies are--(1) where any dispute arises as to the apportionment of the amount of consideration amongst the persons to be entitled thereto; (2) where the person entitled to the amount of consideration does not consent to receive it or if there is dispute as to the title to receive the amount of consideration. Such deposit is in fact postponement of payment to a future date. The two eventualities : (i) adjustment against existing liability, and (ii) deposit with the Appropriate Authority for payment at some future date are quite different.

The provisions of section 269UG as to payment within the time stipulated therein or deposit of money in contingencies stipulated in sub-sections (2) and (3) of section 269UG are mandatory/ in character. This is obvious from the consequence of failure to pay or tender the consideration in time or deposit the same in circumstances mentioned u/s 269UG provided u/s 269UH. The consequence of failure is abrogation of the order of purchase made u/s 269UD and revesting of the property in the transferor on the expiry of the period stated u/s 269UG without fulfilment of its requirement.

13. Examining the facts of the present case in the light of the principles enunciated in the decisions cited hereinabove, the order u/s 269UD of the Act came to be made on April 28, 2003, pursuant to which the subject land stood vested in the Central Government u/s 269UE(1) of the Act. Under the circumstances, in view of the provisions of section 269UG, the amount of consideration payable in accordance with the provisions of section 269UF was required to be tendered within a period of one month from the end of the month in which such vesting took place, that is, within one month from the end of April, 1993. In other words, the amount was required to be tendered by the end of May, 1993. It is an undisputed position that the said amount has not been tendered till date. As noted earlier, no stay had been granted by the Bombay High Court till August, 1993, and as such, the respondent-Appropriate Authority was not in any manner restrained from complying with the provisions of section 269UG of the Act; even at the relevant time when the order u/s 269UD of the Act fame to be passed. Assuming for the sake of argument that since proceedings had been filed by M/s. Ellora Constructions before the Bombay High Court before the stipulated period of one month was over, which was entertained and as such pending the litigation the respondents could not proceed further and tender the amount, at best, the period during which the writ petition was pending could be excluded. The facts reveal that the said writ petition came to be dismissed on September 20, 2005, after which there was no reason for the respondents not to tender the amount. The present petition came to be filed on or about November 1, 2006, and no interim relief has been granted therein. However, till date even in the year 2012, the consideration payable in accordance with the provisions of section 269UF has not been tendered to the petitioners. Resultantly, on account of failure on the part of the respondents to tender the amount of consideration payable u/s 269UF of the Act, the order dated April 28, 2003, passed by the Appropriate Authority for purchase of the subject land by the Central Government u/s 269UD(1) of the Act stands abrogated in view of the mandatory provision of section 269UG(1) of the Act and the Central Government stands divested of the title which was vested in it. The subject land would, accordingly, stand retransferred to the transferor, namely, the petitioner herein.

14. The contention that when in view of any order passed by a court of 15 competent jurisdiction further proceedings pursuant to an order made u/s 269UD(1) are stayed, after the statutory period of one month is over, the period of limitation prescribed u/s 269UG for tendering the amount payable u/s 269UF would no longer operate, requires to be stated only to be rejected. When the Legislature has enacted a statutory provision imposing mandatory period of limitation of one month, it can by no means be contended that the said period

would stand extended without any limitation merely because such proceedings had been stayed for a particular period. At best the Appropriate Authority would be entitled to exclude the period during which the stay was operating while computing the period of one month, however, the period of limitation would not be lifted for all times to come. Moreover, in the facts of the present case, wherein the period of one month as stipulated u/s 269UG of the Act was over even before the proceedings came to be stayed by the Bombay High Court, even if for the sake of assumption, the said argument were to be accepted, the same would not be applicable. In the light of the aforesaid discussion, the, petition succeeds and is, accordingly, allowed. The impugned order dated April 28, 1993, passed by the Appropriate Authority u/s 269UD(1) of the Act as well as the impugned order dated October 14, 2005, for execution of the order dated April 28, 1993, are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

