
(2014) 04 BOM CK 0074
In the Bombay High Court
Case No : Suit No. 2094 of 2006

Sasmita Investments Ltd.

APPELLANT

Vs

Appropriate Authority and Others

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 10, Order 14 Rule 2, 9
Constitution of India, 1950 — Article 136, 226, 227
Income Tax Act, 1922 — Section 67
Income Tax Act, 1961 — Section 132, 132(11), 132(5), 132B, 269
Maharashtra Regional and Town Planning Act, 1966 — Section 149, 155(1)

Citation : (2014) 04 BOM CK 0074

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : Mahesh Jethmalani, Senior Advocate, Mr. Zal Andhyarujina, Mr. Mahesh Agarwal, Mr. Darshan Mehta, Ms. Pooja Shah and Ms. Gunjan Mangala, i/b M/s. Dhruv Liladhar and Co, Advocate for the Appellant; Kevic Setalwad, learned ASG, Mr. Beni Chatterji, Senior Advocate, Abhay Ahuja, Sushma Nagaraj and Yashdeep Deshmukh for defendant Nos. 1 and 2, Mr. Devansh Shah, i/b M/s. Kanga and Co. for Defendant Nos. 3 to 17, Advocate for the Respondent

Judgement

R.D. Dhanuka, J.—By an order dated 29th January, 2013 passed by this court, three issues were framed as preliminary issues under the provisions of order XIV rule 2 of Code of Civil Procedure, 1908 which are set out hereinafter and are answered in the later part of the judgment. By the said order dated 29th January, 2014 this court clarified that the parties shall advance their submissions on these three preliminary issues and settlement of remaining issues was accordingly postponed till decision of this court on those three issues was rendered.

Sr. No

ISSUES

FINDING

1

Whether the jurisdiction of the Hon"ble Court to try, entertain and dispose of the present suit is barred u/s 269UN of the Income Tax Act, 1961 as pleaded in paragraph 1 of the Written Statement and/or Section 293 of the Income Tax Act, 1961?

In the affirmative

2

Whether the law of limitation bars the present suit?

Need not be answered

3

Whether the plaintiff has the locus standi to maintain the present suit as pleaded in paragraph 11 of the written statement and/or is estopped from instituting the present suit?

Need not be answered

For the purpose of deciding these three issues, it would be appropriate to refer to the relevant facts emerged from the pleadings and documents filed by both the parties. None of the parties have led any oral evidence on these three issues.

2. Plaintiff is engaged in business of investment in properties. First defendant is the appropriate authority constituted under the provisions of chapter XX-C of the Income Tax Act, 1961 (hereinafter referred to as the said authority). Defendant no. 2 is Union of India. Defendant nos. 3 to 19 have alleged to have entered into a deed of conveyance dated 16th May, 2006 and have sold their rights, title and interest in the suit property to the plaintiff. Defendant no. 3 to 19 have been impleaded as parties to the suit in the year 2008. On 16th May, 1981, one Mr. Jaysingh Gopaldas Mulani and others entered into an agreement for sale of 12916 sq. ft. of unutilized floor space index forming part of the plot of land bearing city survey No. 152 admeasuring about 1962 sq. yards., equivalent to 1636.30 sq. mtrs., situated at Walkeshwar Road, Mumbai to one Mr. Omprakash Navani on the terms and conditions contained in the said agreement. (hereinafter referred to as the suit property).

3. By an agreement dated 13th July, 1991, the Mulanis and Mr. Omprakash Navani entered into an agreement with M/s. Seawell Interdrill Services Pvt. Ltd., on the terms and conditions contained therein (for short "the said Act").

4. Mulani submitted Form 37-I under the provisions of section 269UC of the Income Tax Act, 1961 with the said authority showing their intention to sell the suit property in the terms of the said agreement dated 13th July, 1991. (For short "the said Act").

5. By an order dated 27th Sept. 1991 the said authority passed an order of

compulsory purchase of the suit property u/s 269UD of Income Tax Act, 1961 on the ground that the consideration mentioned in the agreement dated 13th July, 1991 was understated. Mulanis filed a writ petition in this court (3159 of 1991) and challenged the validity of the order dated 27th Sept. 1991 and sought a writ of certiorari for quashing of the said order. M/s. Trikaya Investment Limited also filed a writ petition (3251 of 1991) and challenged the said order dated 27th Sept. 1991 and prayed for quashing of the said order.

6. By an order dated 12th April, 1993, this court set aside the order dated 27th September, 1991 in the petitions filed by Mulani and Trikaya Investment Ltd. and remanded the matter back to the said authority for disposal of the application of Mulanis for approval in form 37-I in accordance with law and keeping in view the judgment of the Supreme Court in case of C.B. Gautam Vs. Union of India and Others, .

7. On 29th June, 1993, the said authority passed a fresh order u/s 269UD(1) of the Act for compulsory purchase on the ground that the consideration mentioned in the agreement dated 13th July, 1991 was understated. The Mulanis as well as M/s. Trikaya Investment Ltd. filed writ petition (2131 of 1993) and (1782 of 1993) respectively impugning the order dated 29th June, 1993 passed by the said authority.

8. By an order dated 11th June, 2002, this court disposed of the writ petition filed by Trikaya Investment Ltd. quashing and setting aside the order dated 29th June, 1993 and remanded the matter back to the said authority with a direction that in case the said authority decides again to compulsorily purchase the suit property, Trikaya Investment Ltd. will be free to approach this court if necessary against such decision of the authority. The authority was directed to give a fresh hearing and decide within a period of three months from the date of the said order.

9. By an order dated 12th Sept. 2002, the said authority passed a fresh order u/s 269UD(1) of the said Act for Compulsory purchase of the suit property. It is the case of the plaintiff that the said order was not passed within the time prescribed by this court by its order dated 11th June, 2002 which expired on 10th Sept. 2002.

10. It is the case of the authority that pursuant to the order dated 29th October, 1991, the authority deposited a sum of Rs. 7,64,03,644/- with the Prothonotary and senior Master of this court. This court modified the order in writ petition no. 314 of 1991 on 29th April, 1992 and allowed the said authority to withdraw the said sum deposited in this court along with interest accrued thereon. It is the case of the authority that the order of deposit made earlier by this court was passed on the understanding that in the event of any settlement being arrived at between original vendors and their purchasers as also the tenants and other interested persons, the amount could be accordingly made available to them leaving the dispute as regards the quantum of compensation to be determined in

the petition by the court. Since no settlement was arrived at, the amount was allowed to be withdrawn on application of defendant nos. 1 and 2 for carrying out their statutory process. It is the case of the authority that by letter dated 22nd July, 1993, the authority by their letter to the vendors called upon them to discharge their contractual and legal obligations including those under chapter XX-C and also to give possession of the suit property but the vendors failed to comply with. The authority therefore, took forcible possession of the suit property and deposited the apparent consideration in PD Account. It is the case of authority that on 29th July, 1993 the authority deposited the entire consideration amount of Rs. 8,78,20,232/- as mandated by section 269UG(3) which according to the authority was a valid tender contemplated u/s 269UG (1). The said account was later converted into STDR account in State Bank of India as per section 269UD(4) on 17th Nov. 1993.

11. The authority by its letter dated 24th September 2002 informed the Mulanis and Om Prakash Navani that it was willing to pay the apparent consideration after the possession of the suit property free from encumbrances alongwith documents and relevant papers in original were handed over to the authority and on the liabilities of the vendors as per their agreement with the transferee were discharged.

12. By a letter dated 4th October, 2002 to the authority, the Mulanis contended that the suit property stood vested with the Central Government u/s 269UE of the said Act, the amount of Rs. 7,74,99,000/- as provided in the agreement for sale must be immediately deposited with the advocate of the co-owners and shall not insist upon the co-owners to handover documents and papers relating to the suit property to the authority and stated that the authority will carry out their part of obligation, under the agreement by depositing Rs. 7,74,00,000/- with M/s. Kanga and Co. advocates for the co-owners.

13. By a letter dated 4th October, 2002 the defendant no. 6 acting on behalf of the vendors called upon the authority to deposit the apparent consideration with their advocates M/s. Kanga & Co. It is case of the plaintiff that the authority however neither offered the consideration to the vendors nor the vendors refused to accept the same nor the authority deposited the said amount anywhere after the third order of compulsory purchase passed on 12th September 2002.

14. On 12th December 2002 Trikaya addressed a letter to the authority and contended that the order dated 12th September 2002 was invalid by virtue of the said authority having passed the said order after the time stipulated by this court while disposing of the earlier petition and therefore the said order was ultra virus thereof. In the alternative it was contended that since the authority had failed to tender the amount of sale consideration in accordance with section 269UG, the suit property even if was validly vested with defendant no. 2 consequent to the order for compulsory purchase dated 12th September, 2002 stood statutorily re-vested in the Mulanis by virtue of section 260UH of the said Act.

15. By a letter dated 12th December, 2002 Seawell, the original intending purchaser addressed a letter to the said authority for issuance of the declaration under the said Act to the effect that the order dated 12th September 2002 stood vested with the vendors. No such declaration was however issued by the authority.

16. On 31st January, 2003 the authority addressed a letter to Seawell informing that their representation dated 12th December, 2002 was under consideration. It is case of the plaintiff that during the period between January 2003 to May 2005, the Mulanis made various visits and requested the authority to pass formal orders declaring that the compulsory purchase stood abrogated. However, there was no decision or response made by the authority to various requests including the written representation dated 12th December, 2002 made by M/s. Trikaya Investment Ltd.

17. By an order dated 15th October, 2004 passed by this court M/s. Trikaya Investment Ltd. was amalgamated with the plaintiff. By letter dated 20th May, 2005 the plaintiff requested for issuance of certificate to the effect that the order of compulsory purchase dated 12th September, 2002 stood abrogated and that the property stood vested with the vendor. The authority however did not issue any such certificate.

18. On 20th May 2005 M/s. Trikaya Investment Ltd. made another representation to the authority and requested to declare that the order dated 12th December, 2002 stood abrogated.

19. The said authority by letter dated 10th June, 2005 to Seawell contended that the vendors had not complied with their request for handing over peaceful possession alongwith title documents and other papers pertaining to the suit property and in absence of which the payment of apparent consideration had to be withheld by the office.

20. M/s. Trikaya addressed a letter dated 19th December 2005 to the said authority alleging non compliance on the part of the authority and requested to confirm that the order dated 12th September 2002 stood abrogated in view of section 269UH of the said Act.

21. It is case of the plaintiff that the Mulanis, Mr. Om Prakash Navani and Trikaya terminated the agreement dated 13th July, 1991. It is case of the plaintiff that by a deed of conveyance dated 16th May 2006, plaintiff had purchased the suit property and from Mulanis and Mr. Omprakash Navani for total consideration of Rs. 18.25 crores which consideration has been already paid to the vendors. The said deed of conveyance is duly registered.

22. Mr. Setalwad learned Additional Solicitor General appearing for the Appropriate Authority submits that u/s 9 of the Code of Civil Procedure, 1908, the court shall have jurisdiction to try all suits of a civil nature except suits of which their cognizance is either expressly or impliedly barred. It is submitted

that order dated 12th September, 2002 of compulsory acquisition of the suit property u/s 269UD(1) of the said Act is final and conclusive and cannot be questioned in any proceedings under the said Act. Learned ASG placed reliance on section 269UN and 293 of the said Act and would submit that the present suit would fall within the ambit of the words "any proceedings under this Act". The reliefs sought in the present suit are pursuant to the provisions of the Income Tax Act and are therefore, barred. It is submitted that the term "any proceeding" is used in the widest amplitude by the legislature which would include in this case the proceedings of acquisition under chapter XX-C initiated by the appropriate authority and the orders passed therein.

23. Learned ASG placed reliance on Notes on clauses to the Finance bill 1986 which provided that Section 269UN provides that any order made by the appropriate authority u/s 269UD or any order made by that authority u/s 269UF shall be final and conclusive and shall not be called into question in any proceeding under the Income Tax Act or under any other law for the time being in force. It is submitted that the intension of the legislature to bar any recourse against an order section 269UN is explicitly captured in section 269UF of the Income Tax Act, 1961. Learned ASG placed reliance on the judgment of Supreme Court in case of C.B. Gautam Vs. Union of India and Others, and would submit that Supreme Court has recognized in that judgment that an order passed by the appropriate authority u/s 269UD(1) is not appealable or revisable.

24. Reliance is placed on the judgment of Madras High Court in case of Government of India and another Vs. Maxim A. Lobo and another, in support of his submission that an order passed u/s 269UD(1) is not appealable or revisable and its validity can be tested only by High Courts under Article 226 and 227 of the Constitution of India and by the supreme Court under Article 136. Paragraph 24 of the said judgment of Madras High Court, reads thus:

24. Since an order u/s 269UD(1) is neither appealable nor revisable, its validity can be tested only by High Courts under articles 226 and 227 and by the Supreme Court under article 136 of the Constitution. The non-disclosure of reasons in the order impugned or non-communication of the same, where separately recorded, is not a proper compliance with the requirements of section 269UD(2). The aggrieved party is handicapped inasmuch as it is unable to question the order with reference to the reasons given by the authority. Where the reasons are withheld, both the High Court and the Supreme Court are also placed at a great disadvantage to examine whether the reasons given are sufficient for the purpose of unholding the decision. An affected party, in all fairness to him, is entitled to know the "reasons" to be able to appreciate as to how the matter has been considered by the appropriate authority, and to question its validity by reference to those reasons. That the Revenue can produce the reasons already recorded for scrutiny of the court, whenever demanded by the court, is not a substitute for passing and communicating a reasoned order to the affect party. Neither on the plain language of the section

nor on the application of the rule of "natural justice", can be stand of the Revenue be countenanced.

25. Learned ASG placed reliance on the judgment of the Madras High Court in case of Rangammal and Others Vs. Union of India and Others, and in particular paragraph 2 and 4 thereof in support of his submission that though the plaintiffs have asked for a declaration that the suit property is re-vested in the vendors and the order of compulsory purchase are abrogated, such reliefs would be barred u/s 293 of the Income Tax Act. It is submitted that Madras High Court in the said judgment had considered section 67 of the Income Tax Act, 1922 which was in para materia with section 293 of the Income Tax Act, 1961. Para 2 and 4 of the said judgment of Madras High Court read thus:

2. Two main questions arose for consideration by the learned subordinate judge. The first was whether the business started by the adult members of the family after the death of Palaniappa Mudaliar were not joint family businesses and consequently, whether the assessments of Income Tax on the profits of those businesses were not payable by the present plaintiffs. The second question was whether the suit as such was barred by section 67 of the Indian Income Tax Act. The learned judge answered both these questions against the appellants. Hence this appeal.

4. On the second point, the statute itself is very clear. Section 67 of the Indian Income Tax Act prohibits the institution of any suit for cancelling or modifying an assessment of the Income Tax authorities. It is true the prayer in the plaint is not couched in terms which will attract the operation of section 67 of the Income Tax Act, because the prayer is for a declaration that the properties in question are not liable to be proceeded against for the satisfaction of the demand due under the assessment. Merely by casting the prayer in the form of a declaration, the substance of the prayer could not be hidden. The substance here is that the share of the minors in the joint family property is not liable which were not joint family businesses. If the appellants were well advised they could have moved the Income Tax authorities u/s and section which make provision for a claim made on behalf of a member of a Hindu family on the ground that the assessment should not proceed as though the family was undivided. If such a claim had been made to the Income Tax authorities, it was their duty to investigate the claim and record an order embodying their conclusion. Failing that, the appellants could have at least asked for a prayer in the partition suit, O.S. No. 92 of 1948, on this question impleading the tax authorities as parties to the suit. Not having done this, the mere fact a partition is effected in pursuance of the preliminary decree in the suit would not affect the question of the liability of the properties now in suit for the tax arrears. We agree with the learned judge in the court below that section 67 of the Income Tax Act is a bar to the maintainability of the suit, even though the declaration asked for did not in terms refer to cancellation of the assessment made by the authorities. The appeal, therefore, fails and is dismissed. There will be no order as to costs.

26. Learned ASG submits that various provisions in several Acts which are in para materia with section 293 of the Income Tax Act, 1961 have been construed by Supreme Court and this court which provides for a bar against filing of a civil suit for impugning various orders. The learned ASG placed reliance on the judgment of this court in case of Bales Sardara Paracha Versus Municipal Corporation of Greater Bombay 2005 (4) Bombay Cases Reporter 577 and in particular paragraphs 10, 11, 15 to 24 and submits that language of section 293 and section 269UN is unambiguous and clear and clearly bars the filing of a civil suit. It is submitted that section 149 of the Maharashtra Regional Town Planning Act which in para materia with section 293 of the Income Tax Act, 1961 has been construed and interpreted by this court and has held that the suit on the ground cannot be entertained in view of section 149 of the MRTP Act. Paragraph 10, 11, 15 to 24 of the said judgment read thus:

10. Mr. J. Xavier, the learned counsel for respondent No. 1/defendant No. 1, on the other hand, contended that the trial court has correctly appreciated the relevant provisions of the MRTP Act. Section 149 of the MRTP Act clearly bars the jurisdiction of civil court. The language of the section is unambiguous and, therefore, the trial court cannot be faulted for having taken a view that the instant suit was not maintainable. In order to appreciate the submissions of the learned counsel, it is necessary to see what are the principles on the basis of which the Court has to ascertain whether there is exclusion of civil court's jurisdiction.

11. In Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh, , the Supreme Court was dealing with the Madras General Sales Tax Act, 1939. Section 18-A thereof provided that no suit or other proceeding shall, except as expressly provided in this Act, be instituted in any court to set aside or modify any assessment under the said Act. It was common ground that there was no express provision made in the said Act under which the suit of the appellant therein against the State of Andhra Pradesh seeking to recover a sum of Rs. 8,349/- on the ground that it was illegally recovered under the said Act could have been filed. The prohibition was express and unambiguous, and the Supreme Court observed that on a fair construction of the section, there could be no doubt that a suit could not be entertained by a civil court if, by instituting the suit, the plaintiff wanted to set aside or modify assessment made under the said Act. While coming to this conclusion, the Supreme Court observed that in dealing with the question whether civil court's jurisdiction to entertain a suit was barred or not, it was necessary to bear in mind the fact that there was a general presumption that there must be a remedy in the ordinary civil court to a citizen claiming that an amount had been recovered from him illegally and that such a remedy could be held to be barred only on very clear and unmistakable indications to the contrary. It was further observed that the exclusion of the jurisdiction of the civil court to entertain civil causes would not be readily inferred, unless the relevant statute contained an express provision to that effect or led to a necessary and inevitable implication of that nature.

15. Section 149 which gives finality to the orders passed or directions issued by the State Government or orders passed or notices issued by any Regional Board, Planning Authority or Development Authority under the MRTTP Act, reads thus:-

Finality of orders. Save as otherwise expressly provided in this Act, every order passed or direction issued by the State Government or order passed or notice issued by any Regional Board, Planning Authority or Development Authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings.

16. In my opinion, the language of Section 149 is unambiguous and clear. The bar is clear and admits of no confusion. If Section 149 is read in the light of the Supreme Court's judgment in Illuri Subbayya's case, there can be no doubt that jurisdiction of the civil court is barred.

17. It is, however, necessary to deal with Mrs. Moily's contention that the MRTTP Act provides no adequate and effective alternative remedy, and, therefore, the exclusion of jurisdiction of the civil court cannot be inferred.

18. In Dhruv's case (supra), on which the learned counsel has placed reliance, the Supreme Court was dealing with Section 13 read with Section 10-A of the Punjab Village Common Lands (Regulation) Act, 1961 ("the Act", for short). A suit was filed by the respondent therein, challenging the validity of the lease of land granted by Gram Panchayat Madnaka for a period of 10 years in favour of the appellant on 1st October, 1997. The question was whether in view of Section 13 read with Section 10-A of the Act, a civil suit could be entertained. After taking a resume of the relevant cases on the point, the Supreme Court stated the principles which a court has to follow while ascertaining whether civil court's jurisdiction is excluded or not. I may quote the principles enunciated by the Supreme Court:-

(1) If there is express provision in any special Act barring the jurisdiction of a civil court to deal with matters specified thereunder the jurisdiction of an ordinary civil court shall stand excluded.

(2) If there is no express provision in the Act but an examination of the provisions contained therein leads to a conclusion in regard to exclusion of jurisdiction of a civil court, the court would then inquire whether any adequate and efficacious alternative remedy is provided under the Act; if the answer is in the affirmative, it can safely be concluded that the jurisdiction of the civil court is barred. If, however, no such adequate and effective alternative remedy is provided then exclusion of the jurisdiction of the civil court cannot be inferred.

(3) Even in cases where the jurisdiction of a civil court is barred expressly or impliedly, the court would nonetheless retain its jurisdiction to entertain and adjudicate the suit provided the order complained of is a nullity.

19. From the above observations of the Supreme Court, it is clear that where the bar in the Special Act is express and clear, the jurisdiction of the civil court

stands excluded. The question of the court embarking upon any enquiry to find out whether there is any adequate or efficacious remedy provided under the Special Act would arise only when there is no express bar but the examination of the provisions of the Special Act leads to a conclusion that the civil court's jurisdiction is barred. In such cases, availability of effective alternative remedy assumes importance because the legislative intent to bar the jurisdiction of the civil court is not explicit. In such cases, on the principle that ordinarily every person has a right to approach a civil court to redress his grievance, it becomes necessary to investigate whether other efficacious remedy is available or not. However, in cases where the order complained of is a nullity, even if the jurisdiction of the civil court is barred expressly or impliedly, the court would still retain its power to entertain the suit. There can be, therefore, no doubt that since in the present case, Section 149 creates an express bar whether the alternative efficacious remedy is available or not need not be investigated into.

20. On the basis of the judgment of the Supreme Court in Shiv Kumar's case (*supra*), Ms. Moily contended that the notice issued by defendant No. 1 u/s 149 of the M.R.T.P. Act is a nullity and, therefore, civil court could entertain the suit. It is, therefore, necessary to see what the Supreme Court has said in Shiv Kumar's case.

21. In Shiv Kumar's case, on which the learned counsel has placed reliance, the Supreme Court was dealing with the Delhi Municipal Corporation Act, 1957 ("the Corporation Act", for short). Section 347-E of the Corporation Act contained the provision regarding bar of jurisdiction of courts. Sub-section (5) of Section 343 of the Corporation Act provided that no court shall entertain any suit or application or order or proceeding for injunction or other relief to restrain from taking any action or making any order in pursuance of the provisions of the said section. Sub-section (5) provided that subject to an order made by the Administrator on appeal u/s 347-D, every order made by the Appellate Tribunal on appeal under the said section, and subject to the orders of the Administrator and the Appellate Tribunal on an appeal, the order of demolition made by the Commissioner shall be final and conclusive. The Supreme Court was considering whether in the face of these provisions, a suit could be filed in a civil court challenging an order of demolition or stoppage of construction. The Supreme Court observed that the court should not, ordinarily, entertain a suit in connection with the procedure initiated for demolition by the Commissioner. In terms of Section 343(1) of the Corporation Act, the court should direct the persons aggrieved to pursue the remedy before the appellate tribunal, and then before the administrator, in accordance with the provisions of the Corporation Act. The Supreme Court then observed that the court could entertain a suit questioning the validity of an order passed u/s 343 of the Corporation Act, only if the court is of *prima facie* opinion that the order is nullity in the eyes of law because of any jurisdictional error in exercise of the power by the Commissioner or that the order is outside the Corporation Act.

22. Ms. Moily would have been justified in submitting that the judgment of the Supreme Court in Shiv Kumar's case is applicable to the present case only if the notice challenged in the suit was a nullity. It is only then that the civil court could have retained its jurisdiction. However, in this case, it is not possible to hold that the impugned notice is a nullity because of any jurisdictional error in the exercise of power by respondent No. 1. Hence, this submission of Ms. Moily must fail. She has also submitted that the trial court had failed to notice that the plaintiff had asked for a declaration that the impugned notice is void ab initio and that the said declaration is equivalent to a declaration that the impugned notice is a nullity. In my opinion, the plaintiff has not specifically urged that the impugned notice is a nullity. The declaration sought is that the impugned notice is void ab initio. Even if it is assumed that the words "void ab initio" and "nullity" are equivalent, since I have already held that there is no jurisdictional error in exercise of power by defendant No. 1 while issuing the impugned notice, this argument of Ms. Moily must also fail.

23. Having read the relevant provisions of the MRTP Act, I am of the confirmed opinion that Section 149 of the MRTP Act clearly excludes the jurisdiction of civil courts so far as the challenge to the orders passed or directions issued by the State Government or orders passed or notices issued by any Regional Board, Planning Authority or Development Authority under the MRTP Act are concerned. I am supported in my view by a decision of this Court (F.I. Rebello, J.) dated 18th October, 2002 in Appeal from Order No. 912 of 2002 and judgment dated 29th November, 2004 in Dr. Mohan N. Bhawe v. The Municipal Corporation of Greater Bombay, delivered by Smt. Nishita Mhatre, J., in Appeal from Order No. 634 of 2003.

24. In view of the above, in my opinion, the trial court has rightly dismissed the plaintiff's suit on the ground that in view of Section 149 of the MRTP Act, it cannot be entertained. There is no merit in the appeal. The appeal is, therefore, dismissed.

27. The learned ASG also placed reliance on the judgment of this court in case of Dr. Mohan N. Bhawe Vs. The Municipal Corporation of Greater Bombay, in which case this court again construed section 149 of the MRTP Act and held that there was a bar to the jurisdiction of the civil court in respect of the challenge to the notice issued u/s 155(1) of the MRTP Act.

28. Learned ASG placed reliance on the judgment of the Supreme Court in case of Commissioner of Income Tax, Bhubaneshwar and Another Vs. Parmeshwari Devi Sultania and Others, in support of the submission that the Supreme Court has construed section 293 of the Income Tax Act, 1961 and has held that the said section is specific and does not admit filing of a suit which has the effect of even indirectly setting aside or modifying any proceedings taken under the Income Tax Act, 1961 or order made thereunder. Paragraphs 3, 9, 11, 16 and 17 of the said judgment which are relevant and relied upon read thus:

3. From the facts, it is quite obvious that the plaintiff would not have filed the suit for partition as there was no dispute to her claim by other relatives but for the fact that gold ornaments were then in the custody of the Income Tax Department. Notices of the suit were served on Defendants 6 and 7. They filed an application in the Court on August 7, 1992 challenging the very maintainability of the suit in view of Section 293 of the Act. The Section is as under:

293. Bar of suits in civil courts. No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act, and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act.

9. We do not think that the High Court approached the question in its proper perspective. It failed to consider the effect of the decree if passed in the suit on the order u/s 132(5) of the Act or other proceedings u/s 132B of the Act. When Section 293 originally stood, it provided that "no suit shall be brought in any civil court to set aside or modify any assessment or order made under this Act". The word "assessment" was omitted and the words "proceeding taken" were inserted in its place. This made the section more comprehensive in nature. Direct effect of the decree in the suit would be that the gold ornaments, subject matter of this suit, would be taken out of the order of the Income Tax Officer u/s 132(5) of the Act and would not be available to be applied in proceedings u/s 132B of the Act. It is immaterial if the proceeding u/s 132 gives no finality to the order passed u/s 132(5) or 132(11) of the Act. It is not the case of the Revenue that Income Tax Authority can grant decree for partition. It is not also material for the decision of the case if the will now set up by the plaintiff was genuine or not. The question that felt squarely for consideration was the right of the plaintiff as a third party in the proceedings u/s 132 of the Act. If we analyse the section, the following steps are visualised:

- (1) search is conducted under the authorisation of the named authority;
- (2) seizure of the assets, books of accounts, documents etc. in pursuance thereto;
- (3) to examine on oath any person during the course of search or seizure operations who is found to be in possession or control of any of the assets, books of account, documents etc.;
- (4) statements so recorded can be used in evidence in any proceeding under the Act;
- (5) there is a presumption that assets, books of account or documents found in control of any person in the course of search belong to him and that the contents of books of account and documents are true and that signatures, books of account and documents which purported to be in the writing of any particular

person are signed or in the hand-writing of that particular person;

(6) after affording a reasonable opportunity of being heard and after making enquiry as prescribed, the Income Tax Officer is to pass an order keeping in view the requirements of sub-section (5) of Section 132 of the Act;

(7) if the Income Tax Officer passes order for retention of assets, these are to be dealt with in accordance with Section 132B;

(8) if the income tax Officer is satisfied that the seized assets or any part thereof belongs to any other person, the income tax Officer may proceed under sub-section (5) against any such person; and

(9) if any person objects for any reason to the order made under sub-section (5), he can approach the Chief Commissioner or Commissioner for redressal of his grievance.

11. In *Raleigh Investment Co., Ltd. v. Governor-General in Council*, a suit was filed by Raleigh Investment Company Ltd. claiming repayment of Rs. 4,35,295, part of a larger sum paid by it under an assessment of income tax made upon it. The basis of this claim was that in the computation of assessable income, effect had been given to a provision of the income tax Act, 1922 which in the submission of the plaintiff was ultra vires the legislature and that the assessment was, therefore, wrong. One of the contentions raised was that the suit was barred by reason of Section 67 of the Income Tax Act, 1922. Section 67 contained bar of suits in civil court. Section 67 provided as under:

67. Bar of suits in Civil Court, No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution suit or other proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act.

16. Principles of law are, therefore, well settled where a civil court will not assume jurisdiction. In *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, this Court laid 7 principles for the courts to see if the suit was barred u/s 9 of the Code or not. It is not necessary to set out all the 7 principles as we find that the present suit would be barred under the second principle laid by this Court which we reproduce as under:

Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions

about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

17. We have seen above that the scope of Section 293 of the Act has been widened now even to include any proceeding under the Act and it is not merely confined merely to set aside or modify any order. Form of suit is not relevant. It is the substance which is to be seen. When the statute prescribed certain procedure and proceedings thereunder are held and order passed, it is difficult to accept a contention that the proceeding and order can be modified or set aside in a civil suit filed by a third party. Section 293 is specific and does not admit filing of a suit which has the effect of even indirectly setting aside or modifying any proceeding taken under the Act or order made thereunder. In the present case, search and seizure were effected as per the provisions of the Act, assets and documents seized and statement of Babulal recorded under sub-section (4) of Section 132 of the Act wherein he admitted that the gold was acquired from his and his brother's undisclosed income which he was even prepared to surrender to tax. It was thereafter in the course of further enquiry that he came up with a version that the gold ornaments in question belonged to his step-mother who bequeathed the same for the benefit of children of the plaintiff and other children that would be born to the second wife of his father. This version did not find favour with the income tax Officer and he was not satisfied that gold ornaments in question did not belong to Babulal. It was, therefore, not necessary for him to issue any notice under sub-section (7) of Section 132 of the Act to the plaintiff. In any case, the plaintiff was well aware of the proceedings before the income tax Officer and she could have also filed objection to the order made by the income tax Officer u/s 132(5) of the Act to the Chief Commissioner or Commissioner u/s (11) thereof which remedy she did not avail. Considering the whole gravamen of the plaintiff in the suit and the law on the subject, we are of the opinion that the Subordinate Judge and the High Court were not correct in rejecting the contention of the Revenue and holding that the suit was not barred u/s 293 of the Act.

29. Learned ASG invited my attention to various averments made in the plaint and the prayers. It is submitted that in so far as prayer a(i) is concerned, the plaintiff seeks a declaration that the order dated 12th Sept. 2002 of compulsory purchase of the property stood abrogated on and from 31st October, 2002 which is a direct attempt or in any view of the matter an indirect attempt of the plaintiffs to set aside the order dated 12th Sept. 2002 which is clearly barred. The suit has been filed with a view to set aside the order dated 12th Sept. 2002 and the proceedings initiated under chapter XX-C of the Income Tax Act, 1961. It is submitted that the declaratory relief prayed by the plaintiff in this suit including possession would fall u/s 269UH(ii) of the Income Tax Act, 1961. Learned ASG submits that all other reliefs sought by the plaintiff in the present suit flow from the said relief sought by the plaintiff and are consequential reliefs. It is submitted that section 269UN and section 293 of the Income Tax Act, 1961

interdict the present action of the plaintiff. This court has no jurisdiction to entertain this suit. The original vendor had filed a writ petition admittedly impugning the earlier two orders passed by the authority u/s 269UD(1) and not a civil suit. The learned ASG submits that this court shall consider the averments made in the plaint and the prayers sought meaningfully to ascertain the intention of the plaintiff and the true and real controversy involved. Learned ASG submits that unless order u/s 269UD(1) is not set aside no relief can be granted in favour of the plaintiffs as prayed and thus suit is barred and deserves to be dismissed on that ground.

30. Per contra Mr. Jethmalani, learned senior counsel appearing for the plaintiff submits that the order passed by the appropriate authority u/s 269UD(1) is neither subject matter of the suit, nor is challenged by the plaintiff in this suit. Suit is for declaration that order dated 12th Sept. 2002 of compulsory purchase of the suit property stands abrogated on and from 31st October, 2002 and all rights, title and interest in the suit property stood re-vested in the Mulanis and Omprakash Navani respectively and the plaintiff is the absolute owner of the suit property and has right to sell, transfer develop etc. Learned senior counsel submits that the declaration is sought by the plaintiff under the provisions of specific Relief Act, in view of the appropriate authority not complying with their statutory obligation u/s 269UF, 269UG and consequently u/s 269UH of the Income Tax Act, 1961. Mr. Jethmalani, learned senior counsel submits that in so far as prayer for possession is concerned, the same is consequential. It is submitted that the declaration sought by the plaintiffs is not a declaration u/s 269UH(2) which only the appropriate authority can make. The declaration is sought from this court and not from the appropriate authority. No declaration is sought under the provisions of Chapter XX-C of the Income Tax Act, 1961 including section 269UF.

31. Learned senior counsel submits that the suit does not call in question any order made u/s 269UD(1) or u/s 269UF. The words "call in question" in section 269UF would mean "the orders passed u/s 239UD(1) or 269UF(2) are challenged on the ground of illegality for one reason or the other". The instant suit does not question the legality or validity of any order u/s 269UD or 269UN. It is submitted that on the contrary the plaintiff assumes that the order passed on 12th Sept. 2002 u/s 269UD(1) was a valid and legal order and the grounds on which the said order was based were sound in law and on facts. It is submitted that the cause of action in the suit is based on the fact that by operation of law, the order dated 12th September, 2002 stood abrogated as on 31st October, 2002 and the suit property in respect of which the said order was passed, stood re-vested in defendant no. 3 to 19. Learned senior counsel submits that since the Central Government failed to tender the consideration amount not only within the time i.e. 31st October, 2002 by virtue of section 269UG(1) but even till today and as a result thereof the valid and legal order passed u/s 269UD(1) stood abrogated by virtue of section 269UH(I) and the suit property accordingly stood re-vested in defendant nos. 3 to 19.

32. It is submitted by the learned senior counsel that u/s 269UH(2)(a) of the Act, once abrogation takes place the appropriate authority is obliged to make a declaration in writing to the effect that the order passed u/s 269UD(1) is abrogated and the property in question re-vests in the transferor. The appropriate authority is obliged to deliver the immovable property to the persons mentioned in the order pursuant to declaration made u/s 269UH(2)(a).

33. Mr. Jethmalani, learned senior counsel submits that the plaintiff is neither directly nor indirectly seeking to set aside the order dated 12th September, 2002 passed by the appropriate authority u/s 269UD(1) and judgment of Madras High Court in case of Rangammal (supra) or the judgment of Supreme Court in case of Commissioner of Income Tax Versus Parmeshwaridevi Sultania (supra) are clearly distinguishable or not applicable to the facts of this case.

34. Learned senior counsel submits that section 269UN is a special provision dealing with subject matter under Chapter XX-C of the income Act 1961 and therefore, general provision contained in section 293 will not apply when the special provision u/s 269UN will always override a general provision. Learned senior counsel submits that Section 293 of the Income Tax Act which bars a civil suit to set aside or modify an order made under the Income Tax Act, 1961 is not attracted to this suit. It is submitted that order passed u/s 269UD(1) is unimpeachable.

35. In rejoinder the learned ASG submits that in this proceedings the plaintiff has disputed the fact that the appropriate authority had validly deposited the consideration amount or not pursuant to the orders passed by the appropriate authority u/s 269UD(1) which according to appropriate authority had been deposited as per provisions of the chapter XX-C. It is submitted that thus plaintiff indirectly or directly questions the order passed by the appropriate authority u/s 269UD or in any event is questioning the proceedings taken by the appropriate authority u/s XX-C of the Income Tax Act, 1961 which is clearly barred. Learned ASG submitted that by virtue of prayer for declaration for abrogation of order, plaintiff seeks setting aside of such order u/s 269UD(1). It is submitted that if the prayers as claimed by the plaintiff is granted, it will amount to setting aside or will have an effect on the order passed u/s 269UN(1). It is thus submitted that unless order section 269UN(1) is set aside, plaintiff cannot get declaration u/s 269UH(1) or (2)(a) and (d). It is submitted that the court has to see the substance of the plaint and not the form of suit. It is submitted that the effect of declaration would be setting aside of the order u/s 269UD and setting aside of the proceedings u/s XX-C which is barred u/s 269UM and 293 of the Income Tax Act, 1961.

36. The relevant provisions of Income Tax Act, 1961 are reproduced below:

269UD(1): 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, and for reasons to be recorded in writing, 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:

269UE(1): 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 free from all encumbrances.

(2) The transferor or any other person who may be in possession of the immovable property in respect of which an order under Sub-section (1) of Section 269UD is made, shall surrender or deliver possession thereof to the appropriate authority or any other person duly authorized by the appropriate authority in this behalf within fifteen days of the service of such order on him."

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) For the removal of doubts, it is hereby declared that nothing in this section shall operate to discharge the transferor or any other person (not being the Central Government) from liability in respect of any encumbrances on the property and, notwithstanding anything contained in any other law for the time being in force, such liability may be enforced against the transferor or such other person.

(6) Where an order under Sub-section (1) of Section 269UD is made in respect of an immovable property, being rights of the nature referred to in Sub-clause (ii) of Clause (d) of Section 269UA, such order shall have the effect of-

(a) vesting such right in the Central Government; and

(b) placing the Central Government in the same position in relation to such rights as the person in whom such a right would have continued to vest if such order had not been made.

269UF. (1) 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.

269UH. (1) 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 and the immovable property shall stand re-vested in the transferor after the expiry of the aforesaid period.

269UM. Notwithstanding anything contained in any other law or in any instrument or any agreement for the time being in force, when an order for the purchase of any immovable property by the Central Government is made under this Chapter, no claim by the transferee shall lie against the transferor by reason of such transfer being not in accordance with the agreement for the transfer of the immovable property entered into between the transferor and transferee:

Provided that nothing contained in this section shall apply if the order for the purchase of the immovable property by the Central Government is abrogated under Sub-section (1) of Section 269UH."

Order of appropriate authority to be final and conclusive.

269UN:

Save as otherwise provided in the Chapter, any order made under sub-section (1) of section 269UD or any order made under sub-section (2) of section 269UF shall be final and conclusive and shall not be called in question in any proceeding under this Act or under any other law for the time being in force.

293. Bar of suits in civil courts. No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act, and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act.

Reasons and Conclusion:

37. Section 9 of the CPC 1908 provides that the Court shall have jurisdiction to try all suits of the civil nature except suits of which their cognizance is either expressly or impliedly barred. This Court has to thus consider whether in the facts of this case, the present suit is whether either expressly or impliedly barred under any provisions of law and more particularly under the provisions of Section 269UN and/or 293 of the Income Tax Act 1961.

38. Supreme Court in case of C.B. Gautam Vs. Union of India and Others, has recognized that an order passed by the appropriate authority u/s 269UD(1) is not appealable or revisable. Madras High Court in case of Government of India Vs. Maxim Lobo (supra) has held that an order passed u/s 269UD(1) is not appealable or revisable and its validity cannot be tested under Articles 226 and 227 of the Constitution of India and by the Supreme Court under Art. 136. It is not in dispute that the earlier two orders passed by the appropriate authority u/s 269UD(1) were impugned by the vendors by filing writ petitions invoking Art.

226 of the Constitution of India. I am in agreement with the views expressed by the Madras High Court.

39. To ascertain as to what the cause of action is in this suit, Court has to ascertain the materials for cause of action. In catena of decisions Supreme Court has held that the cause of action is a bundle of facts which is taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is held that if clever drafting has created the illusion of a cause of action it should be nipped in the bud at the first hearing by examining the parties under Order 10 of the CPC. Madras High Court in case of Rangamall & Ors. Vs. Union of India (supra) has held that merely by casting the prayer in the form of a declaration the substance of the prayer could not be hidden. I am in agreement with the views expressed by the Madras High Court in case of Rangamall (Supra).

40. Supreme Court in case of Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, has laid down seven principles for the Courts to see if the suit is barred u/s 9 of the CPC or not. One of such principle laid down by the Supreme Court in case of Dhulabhai (supra) is adverted to by the Supreme Court in case of Commissioner of Income Tax Bhubaneshwar And Anr. Vs. Parmeshwari Devi Sultania & Ors. (supra).

41. A perusal of the plaint in this suit indicates that it is one of the submission of the plaintiff that the action of the appropriate authority in not confirming that the order of compulsory purchase dated 12th September 2002 stands abrogated is illegal and unlawful. It is contended that if defendant No. 2 fails to tender the whole or any part of the amount of consideration required to be tendered between the period specified, then the order to compulsory purchase the said property shall stand abrogated and the property with all rights shall stand re-vested with the transferors. It is also submitted that as a consequence of the order of compulsory purchase standing abrogated and the suit property stood re-vested in the transferors and consequently in the plaintiff by reason of the provisions contained in Section 269UH(2)(ii) of the Income Tax Act 1961.

42. It is case of the plaintiff in the plaint that it was incumbent upon the appropriate authority to issue declaration and deliver the copies thereof to the Mulanis and/or Omprakash Navani, stating that by reason of nonpayment of consideration the suit property was re-vested in Mulanis, as envisaged u/s 269UH(2) of the Income Tax Act. It is contended that it was incumbent upon the appropriate authority to issue certificate of no objection in favour of Mulanis and Omprakash Navani, as envisaged u/s 269UL(3) of the said Act. It is contended by the plaintiff that in view of and in accordance with Section 269UE of the Act the suit property shall vest with defendant No. 2 on the date of the order for compulsory purchase and the limitation prescribed by Section 269UG commences from that date. Obligation of defendant No. 2 to tender the consideration u/s 269UG of the Act is not conditional upon clear possession of the property being

handed over by the Mulanis to the appropriate authority.

43. The plaintiff has prayed for a declaration that order dated 12th September 2002 of compulsory purchase of the suit property stands abrogated on and from 31st October 2002 and all right, title and interest in the suit property including all rights stood re-vested in Mulanis and Omprakash Navani respectively. Plaintiffs have also sought a declaration that on and from 16th May 2006, the plaintiff is the absolute owner of the suit property and is entitled to deal with the same. In the alternative to prayer for perpetual injunction, plaintiff has prayed for a mandatory injunction directing the defendants to deliver possession of the suit property to the plaintiff.

44. On perusal of the plaint, it is clear that there is a dispute between the parties as to whether the appropriate authority upon vesting of the property in Central Government on the appropriate authority passing an order u/s 269UD(1), whether amount of consideration payable in accordance with Section 269UF has been tendered by the appropriate authority to the person or persons entitled thereto within the time prescribed under 269UG(1) or not. It is case of the plaintiff that the appropriate authority has not tendered the amount for consideration within the time prescribed u/s 269UG(1), whereas it is the contention of the appropriate authority that the consideration amount had been tendered in accordance with the said provision within the time prescribed. In my view, the consequence of the appropriate authority not tendering or depositing a consideration amount would lead to a question whether order to purchase the immovable property by the Central Government shall stand abrogated and movable properties shall stand re-vested in the transferors after the expiry of the period provided u/s 269. The further steps to be taken by the appropriate authority u/s 269UH(2)(a) and (b) would arise only if the appropriate authority not tendering and/or depositing the consideration amount within the time prescribed u/s 269UH(1) and in view of such default, order passed by the appropriate authority u/s 269UD(1) shall stand abrogated.

45. In my view, for considering the prayer of the plaintiff for a declaration that the order dated 12th September 2002 of the compulsory purchase passed under 269UD(1) stood abrogated or not and if this Court comes to the conclusion that the said order stood abrogated, this Court will have to further declare that the said order dated 12th September 2002 stood annulled, cancelled or set aside. If such prayer is granted, this Court will have to declare the proceedings initiated under Chapter XX-C of the Income Tax Act 1961 illegal which in my view, is clearly barred u/s 269UN and 293 of the Income Tax Act 1961. Section 269UN of the Income Tax Act 1961 clearly provides that any order made under subsection (1) of Section 269UD or under sub-section (2) of Section 269UF shall be final and conclusive and shall not be called in question in any proceeding under the Income Tax Act or under any other law for the time being in force.

46. Supreme Court in case of Commissioner of Income Tax Vs. Parmeshwari Devi (supra) has considered the amendment to Section 293 of the Income Tax Act

1961 by which the word "assessment" was omitted and the words "proceeding taken" were inserted in its place. Supreme Court has held that the said amendment made to the section is more comprehensive in nature. It is held that the scope of Section 293 of the Act has been widened and improved and it is not merely confined to set aside or modify the order. It is held that the form of suit is not relevant. It is the substance which has to be seen. Supreme Court has held that when the statute prescribed certain proceedings thereunder are held and order passed, it is difficult to accept a contention that the proceeding and/or order can be modified or set aside in a civil suit filed by a third party. It is held that Section 293 is specific and does not admit filing of a suit which has the effect of even indirectly setting aside or modifying any proceeding taken under the Act or order made thereunder.

47. I am not inclined to accept the submission of Mr. Jethmalani learned senior counsel appearing for the plaintiff that in view of Section 269UN, Section 293 of the Income Tax 1961 cannot be attracted to the matter in hand. In my view, what relief cannot be claimed directly, cannot be claimed indirectly. If the relief of declaration as sought by the plaintiff in terms of prayer a(i) is granted, it would amount to permitting the plaintiff to question the proceedings initiated by the appropriate authority, which is clearly barred u/s 293 of the Income Tax Act 1961. In my view Judgment of Supreme Court in case of Commissioner of Income Tax, Bhubaneshwar Vs. Parmeshwari Devi (supra) squarely applies to the facts of this case. I am respectfully bound by the Judgment of the Supreme Court. In my view both the provisions are applicable and attracted to the facts of this case.

48. On perusal of the "Notes of Clauses" to the finance Act, 1986 which provided that any order made by the appropriate authority u/s 269UD or any order made by the appropriate authority u/s 269UF shall be final and conclusive and shall not be called into question in any proceeding under the Income Tax Act or any other law for the time being in force, it clearly indicates the intention of legislature that such orders are final and cannot be called into question in any proceedings under Income Tax Act or any other law for the time in force. In my view, civil suit is clearly barred for claiming such declaration as prayed by the plaintiff. I am not inclined to accept the submission of Mr. Jethmalani learned senior counsel that reliefs claimed for declaration are under the provisions of the Specific Relief Act and not under the provisions of Income Tax Act 1961.

49. Even earlier two orders passed by the appropriate authority u/s 269UD(1) were impugned by the vendors by filing writ petitions under Art. 226 of the Constitution of India which was proper and appropriate remedy exercised by the vendors. By order dated 11th June 2002 while disposing of the writ petition No. 1782/1993, the writ court remanded the matter back to the appropriate authority with a direction that in case the said authority decides again to compulsorily purchase the suit property, Trikaya Investments Ltd., the petitioner therein would be free to approach that Court if necessary against such decision

of the authority. It is thus clear from the said order that the remedy of the party was to approach the writ Court again for impugning the order dated 12th September 2002 passed by the appropriate authority and not by filing the civil suit.

50. This Court in case of Bales Sardara Paracha Vs. Municipal Corporation of Greater Bombay & Anr. (supra) has construed Section 149 of Maharashtra Regional Town planning Act which in my view, is in para-materia to Section 293 of the Income Tax Act and has held that language of the said Section is unambiguous and the bar is clear and admits of no confusion. It is held by this Court that where the bar in the Special Act is express and clear, the jurisdiction of the civil Court stands excluded. I am in respectful agreement with the view taken by this Court and I do not propose to take any different view.

51. In my view the learned ASG is right in his submission that seeking a declaration in prayer a(i) of the plaint, is a direct attempt or in any view of the matter an indirect attempt of the plaintiff to set aside the order dated 12th September 2002 which is clearly barred.

52. In so far as prayers a(ii) and a(iii) and b(i) are concerned, the same are consequential to prayer a(i). If prayer a(i) cannot be granted by this Court in a civil suit prayers a(ii), a(iii) and b(i) which are consequential to prayer a(i) also cannot be granted in a civil suit. Prayer a(iii) and b(i) are even otherwise dependent upon the outcome of prayer a(i) which is clearly barred.

53. In my view, declaration sought in prayer a(i), a(ii), prayer for possession under prayer b(i) are sought under the provisions of Chapter XX-C of Income Tax Act 1961, whereas prayer a(iii) and b(i) are consequential to prayer a(i) and a(ii) which are also barred.

54. A perusal of the averments made in the plaint and reading of the plaint along with the prayers in the plaint meaningfully makes it clear that the plaintiff is challenging the proceedings initiated by the appropriate authority under Chapter XX-C and also makes an attempt to challenge the order passed by appropriate authority u/s 269UD(i) which in my view is clearly barred u/s 269UN and 293 of Income Tax Act 1961. In my view, the learned senior counsel is not correct in his submission that cause of action in the suit is based on the fact that by oppression of law, the order dated 12th September 2002 stood abrogated and the suit property is re-vested in defendant Nos. 3 to 19. I am therefore of the view that in view of Section 9 of the Code of Civil Procedure, 1908 this Court has no jurisdiction to try this suit in view of such suit being barred u/s 269UN and 293 of the Income Tax Act, 1961, not maintainable and deserves to be dismissed on that ground alone.

55. The learned senior counsel appearing for both the parties made submissions on the other two issues framed under Order 14 Rule 2 of the Code of Civil Procedure. This Court, however having found that this suit itself is not maintainable being barred, this Court need not deal with the other two issues

framed by this Court and are thus not required to be answered. Issue No. 1 is accordingly answered in affirmative. Suit is accordingly dismissed. Consequently, interlocutory proceedings pending if any are also dismissed. No order as to costs. Mr. Jethmalani, learned senior counsel appearing for the plaintiffs applies for continuation of status quo order passed by this court on 30th June, 2006 continued by the order dated 9th and 10th October, 2007 for a period of four weeks. Status quo order to continue for a period of four weeks from today.