(1986) 05 DEL CK 0016

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 1174 of 1973

Satya Narain APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 05-05-1986

Acts Referred:

Citation : (1986) 54 CTR 365 : (1986) ILR Delhi 336 : (1986) 160 ITR 693

Hon'ble Judges : Mahinder Narain, J

Bench : Single Bench

Advocate : W. Singh, R.C. Pandey, Y.K. Sabharwal and M.M. Sudan, for the Appellant;

Judgement

Mahindbr Narain, J.

(1) By this writ petition the petitioner Satya Narain Prakash Punj seeks quashing of notice No. IAC;ACQ-2/C-6/73-74/3199, dated 10-8-1973, Annexure D to the writ petition.

(2) The facts giving rise to this writ petition are that the petitioner and respondents 4 to 20 had purchased property bearing No. 10, Prithvi Raj Road, New Delhi from Dr. Kami Singhji. The property comprises of land admeasuring 2.60 acres or 12,584 Sq. yards (or thereabout). The sale deed dated 5-2-1973 with respect to the transaction was registered as No. 798 in Additional Book No. I, Vol. No. 3068 on passes 1 to 97 on 6-2-1973.

(3) The writ petition came for admission on 6-9-1973 on which date the following order was passed by this Court :-

"6.9.73.Mr. T. N. Sethi with Mr. S. K. Dholakia and Mr. Y. K. Sabharwal. Show cause notice to respondents No. 1 and 2. Notice of stay application for 8-10-73. Proceeding before the competent authority to be stayed in the meanwhile. Notice of stay application dated 6-9-73 also for the same date. No fresh publication to be made in the meanwhile. Notices dusty. sd/- P. N. Khanna J. sd/- M. R. A.

Ansari J."

(4) The impugned notice was dated 10-8-1973. It is stated in the petition that it was posted on 28-8-1973. Main contention is that the impugned notice, not being in accordance with the provisions of Section 269-D of the Income Tax Act. 1961, as amended by the Taxation Laws Amendment Act. 1972- (Act No. 45 of 1972), the same cannot be the basis of initiation of the proceedings u/s 269-D for acquisition of No. 10, Prithvi Raj Road. It is also stated in the writ petition that the notice was received by the petitioner on 4-9-1973.

THE writ petition No. 1174/73 was also filed on 4-9-1973.

(5) Section 269-D of the Income Tax Act, as amended reads as under :-

"269-D.(1) The competent authority shall initiate proceedings for the acquisition, under this Chapter, of any immovable property referred to in Section 269-C by notice to that effect published in the Official Gazette :- Provided that no such proceedings shall be initiated in respect of any immovable property after the expiration of a period of (nine) months from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act, 1908 (16 of 1908), (or, as the case may be. Section 269AB) : Provided further that :- (a) in a case where it is determined under sub-section (4) of section 269-B by the competent authority who has initiated proceedings turn the acquisition of any immovable property under this Chapter or by the Board that such competent authority has no jurisdiction to initiate such proceedings, the competent authority having jurisdiction may initiate such proceedings within :- (i) the period of nine months specified in the foregoing proviso, or (ii) a period of thirty days from the date of such determination, whichever period expires later; (b) in a case where proceedings for the acquisition of any immovable property under this chapter could not be initiated during any period of time by reason of any injunction or order of, any court prohibiting the initiation of such proceedings or preventing the examination of documents or other materials required to be examined for the purpose of determining whether such 339 proceedings should be initiated ,the time of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn shall be excluded in computing the period during which such proceedings may be initiated under this sub-section. (2) The competent authority shall :- (a) cause a notice under sub-section (1) in respect of any immovable property to be served on the transferor, the transferee, the person in. occupation of the property, if the transferee is not in occupation thereof, and on every person whom the competent authority knows to be interested in the property; (b) cause such a notice to be published :- (i) in his office by affixing a copy thereof to a conspicuous place; (ii) in the locality in which the immovable property to which it relates is situate, by affixing a copy thereof to a conspicuous part of the property and also by making known in such manner as may be prescribed the substance of such notice at convenient places in the said locality. Explanation : The provisions of the Explanation to sub-section

(2) of section 269-B shall shall apply for the purposes of this sub-section as they apply for the purposes of that subsection.

(6) It is clear from the second proviso of section 269-D that a copy of the notice which is to be served on the transferor/ transferee is a notice under sub-section (1), of section 269-D. It is thus dear that the proceedings for acquisition can be initiated only by notice that is published in official gazette. The proceedings cannot be initiated by a notice which has not been published in the official gazette .

(7) It is not disputed by the respondents that notice u/s 269-D, in any case, the nonce dated 12-8-1973. aforesaid, has not been published in the official gazette. The pro- provisions of section 269-D require that initiation of the proceedings shall be by publication in the official gazette.

(8) It is well settled principle of law that when a statute requires a thing to be done in a particular manner, it must be done in that manner or not at all. The Privy Council in the judgment said that "where power is given to do a certain thing in a certain way, the thing must be done in that way or not at all".

(9) Section 269-D gives the power to competent authority to initiate proceedings for acquisition of any immovable property by notice to that effect published in the official gazette. It is the notice published in the official gazette which enables initiation of proceedings u/s 269-D.

(10) The notice dated 10-8-1973, impugned in this writ petition is inter alias in these terms.

"NOW, Therefore, in pursuance of section 269-D, I hereby initiate proceedings for the acquisition of the aforesaid property by issue of this notice under sub-section (1) of section 269-D of the Income Tax Act, 1961 (43 of 1961) to the following persons, namely, . . ."

(11) It is not disputed that this notice has not been published in the official gazette at any point of time prior to the communication of it to the petitioner or respondents 4 to 20.

(12) Mr. Wazir Singh has referred to Girnar Builders P. Ltd. Vs. I.A.C. 156 (1985) ITR 403(2). In that case a notice of acquisition was in fact published in the Gazette on 6-3-1982 and the competent authority had intimated the petitioner about it on 5-4-1982. The initiation of proceeding., in that case was by publication in the official gazette. In this view of the matter this judgment does not help Mr. Wazir Singh, as in instant case the requirements of .the statutes have not been complied with.

(13) In this view of the matter, as the impugned notice does not comply with the requirements of Section 269-D of the Income Tax Act, no proceedings can be initiated on that basis as the notice had not been published in the official gazette prior to the intimation of alleged initiation of proceedings sent to the petitioner.

The same is, Therefore, liable to be quashed and is hereby quashed.

(14) THERE shall be no order as to costs.

