(1999) 08 DEL CK 0100

In the Delhi High Court

Case No : C.M. No. 10561 of 1998 in C.M. No. 2111 of 1995 11 August 1999

SMT. JASPAL KAUR and Others APPELLANT

Vs

UNION OF INDIA RESPONDENT

Date of Decision : 11-08-1999

Acts Referred:

Citation : (1999) 157 CTR 146

Hon'ble Judges : D.K. Jain, J;D. K. Jain, J;Arun Kumar, J

Bench : Full Bench

Advocate : A.S. Chaudhary, R.D. Jolly with Alay Jha, Nos. 1 and H.S. Phoolka, No, for the appearing parties;

Judgement

ARUN KMAR, J.:

This order will dispose of an application filed by respondent No. 2 the Appropriate Authority under the Income Tax Act, 1961 (for short "the Act), seeking certain directions. It is necessary to give a brief background before the application can be disposed of.

2. An agreement to sell with respect to property being a plot of land bearing No. 115, Sector 36-A, Chandigarh, was entered into between the petitioners in the writ petition and respondent No. 3 on 25-10-1989. The consideration agreed upon was Rs. 15 lacs out of which a sum of Rs. 1,50,000 was paid by the petitioners (purchasers) to respondent No. 3 (vendor) at the time of the agreement. On 5-11-1989, the vendor and the vendee filed a statement in Form No. 37-1 along with an agreement to sell with respondent No. 2, the Appropriate Authority, for obtaining the "No Objection Certificate" in respect of the said sale transaction in terms of Chapter XX-C of the Act. On 8-6-1990, respondent No. 2 passed an order for preemptory purchase of the property. Possession of the property was delivered to respondent No. 2 on 20-6-1990, in pursuance of the said order. The petitioners, vendees challenged the said order by filing a writ petition in this Court in July, 1990. In pursuance of an order passed in the said

writ petition the balance amount of sale consideration, i.e., Rs. 13,50,000 was paid by respondent No. 2 to the vendor, respondent No. 3 on 28-2-1992. On 23-1-1995, the said writ petition filed by the petitioners was allowed and the order of the Appropriate Authority was set aside. The case was, however, remanded back to the Appropriate Authority for fresh consideration in view of the decision of the Supreme Court in C.B. Gautam Vs. Union of India and Others, . In view of the remand order the petitioners were served with a show cause notice dated 5-4-1995, requiring the petitioners to show cause why the property to be not acquired. The petitioners filed a reply to the show cause notice on 18-4-1995. 01) 27-4-1995, a fresh order for purchase of the property was passed by the Appropriate Authority, This order was again challenged by the petitioners by way of the present writ petition filed on 23-5-1995.

On 25-5-1995, this Court passed an order regarding maintenance of status quo with respect to the property which continued to be in possession of the Appropriate Authority all through. The writ petition was finally disposed of on 13th Feb- 1998, when this Court quashed the order dated 27--1995, and directed the Appropriate Authority to issue the "No Objection Certificate" in terms of s. 269UL(3),

3. The present application was filed in October, 1998 by the Appropriate Authority praying that the petitioners and/or respondent No. 3 be directed to repay the amount of Rs. 13,50,000 along with interest @ 18 per cent per annum with effect from, 28-2-1992, till the date of payment to the Appropriate Authority to enable the Appropriate Authority to issue the "No Objection Certificate" as per directions of this Court contained in the judgment dated 13-2-1998. The application is resisted by the petitioners as well as respondent No. 3 inasmuch as both the parties have denied their liability to pay any interest as demanded by respondent No. 2 on the sum of Rs. 13,50,000. When this application came up for hearing before this Court on 16-4-1999, the petitioners, i.e., vendees showed their readiness and willingness to deposit the entire amount of Rs. 13,50,000. Accordingly, this Court directed the petitioners to deposit the amount with the Chief CIT, Chandigarh, within two weeks from the said date. We are informed that the amount of Rs. 13,50,000 was deposited by the petitioners with the said Authority on 23-4-1999.

4. The only question which remains for consideration now is the claim of respondent No. 2 regarding interest on the said amount of Rs. 13,50,000 with effect from 28-2-1992, when the said amount was paid by respondent No. 2 to respondent No. 3 is view of the order of preemptory purchase of the property passed by respondent No. 2. Accordingly to learned counsel for the applicant, i.e., the Appropriate Authority, the Authority was deprived of this amount for a long period and it should be entitled to interest thereon. It is further submitted that the Authority was acting in bona fide discharge of its statutory functions and the payment of amount of Rs. 13.5 lacs was in pursuance of the same. The petitioners challenged the actions of the Authority and also obtained an order of

status quo with respect to the property as a result whereof the applicant could not enjoy the property or put it to any use. Thus, according to the learned counsel, neither the property was available with the applicant for any use or enjoyment while at the same time it was deprived of the amount of Rs. 13.5 lacs paid as consideration. On this basis the learned counsel has tried to justify the claim for interest. He has relied on a decision of the Karnataka High Court in Appropriate Authority and others Vs. Mass Traders Pvt. Ltd. and others, . Our attention has been drawn particularly to the following observations contained in the said judgment,.

"By directing respondent No. 1 to pay interest, we are not penalising respondent No. 1 for filing the writ petition. Respondent No. 1 is required to compensate the Central Government for the type of interim order which it has obtained thereby disabling the Central Government from auctioning the property and recovering the amount and depriving the Central Government of the use of the large sum of Rs. 1,84,06,325. This large sum is lying with the owner of the property and the Central Government is deprived of the same. Therefore, it is necessary for the first respondent to deposit the entire consideration amount with moderated interest to compensate the Central Government. "

5. Both the parties to the transaction, i.e., the vendor as well as the vendee have denied any liability regarding payment of interest to respondent No. 2/applicant. On behalf of the vendor it has been submitted that in terms of the agreement to sell the vendor was entitled to receive the balance sale consideration. The vendor parted with the possession of the property on 20-6-1990. She received the balance sale consideration on 28-2-1992, even though the order regarding preemptory purchase of the property was passed on 8-6-1990. After the possession of the property was handed over to the Appropriate Authority on 20-6-1990, the vendor lost her property while it did not receive the balance sale consideration, the payment whereof was delayed up to 28-2-1992. The learned counsel submits that the vendor was to receive the balance sale consideration in any case and, Therefore, there was no question for the vendor being calling upon to pay any interest on the balance amount of sale consideration received by the vendor. For all practical purposes so far as the vendor is concerned, the transaction was over for her when possession of the property was delivered to the Appropriate Authority and the balance sale consideration was received by her from the said Authority. The vendor neither challenged the order of the Appropriate Authority in any manner nor obtained any interim orders. The learned counsel for the vendor further submitted that even as per the scheme of the Act the vendor is to receive the balance sale consideration in a time bound manner which shows that it was always intended that the vendor should not be deprived of the money. Another aspect which has been highlighted by the counsel for the vendor is that if the vendor is called upon to pay any interest the entire sale consideration will be practically wiped out.

6. Coming to the contentions raised on behalf of the purchasers, denying liability

to pay any interest, it has been urged that the purchasers have been deprived of possession of the property for such a long time. They paid the earnest money in pursuance of the agreement right at the stage of the agreement. This amount was never reimbursed to the purchasers. So far as the petitioners'' role in challenging the orders of the Appropriate Authority is concerned, the petitioners submit that on both the occasions they succeeded in their challenge and the orders of the Appropriate Authority were set aside which shows that the petitioners had taken up a right cause and the orders of the Appropriate Authority were not in accordance with the law on both the occasions. The petitioners were exercising their legal rights and they cannot be blamed for that. On equitable aspect the petitioners have submitted that they have already been deprived of the possession of the property for such a long time. They are old people and because of the delay they have not been able to plan their affairs properly. They intended to construct a house on the plot subject-matter of the controversy for their residence. The whole scheme has been delayed by nearly ten years.

7. We have considered the rival contentions of learned counsel for the parties. In the facts and circumstances of the case it appears that neither of the three parties can be faulted. So far as the Appropriate Authority is concerned it was acting in bona fide discharge of its statutory duties and it cannot be blamed for having passed the orders regarding peremptory purchase of the property. Law has taken its course and the orders were ultimately set aside by the Court. That should not be taken to mean that the action of the Authority was not bona fide. The vendor, i.e., respondent No. 3 cannot be held liable in any manner for payment of any interest of the Appropriate Authority. The vendor had to receive the sale consideration of the property. She handed over the possession of the property to the Appropriate Authority and it was just and fair that she should have received the balance sale consideration. Moreover asking her to pay any interest on the said amount at this stage will only mean that she will be deprived of both, the property as well as the sale consideration because the entire amount will-be wiped off by way of payment of interest.

8. Coming to the case of the purchasers we are of the view that no fault can be found with their actions in dealing with the property which they intended to purchase all through. The petitioners were within their legal rights to challenge the order of acquisition and their stand is vindicated by the fact that the orders of peremptory purchase passed by the Appropriate Authority were quashed by the Court on both the occasions. The petitioners were always ready and willing to pay the balance sale consideration. To protect their interests in the property, the petitioners cannot be faulted for seeking the orders for maintenance of status quo with respect to the property. Unless such an order was passed by the Court, the property would have gone beyond the reach of the petitioners. The department would have put the property to auction and third party interest would have intervened.

9. With due respect we are unable to agree with the reasoning contained in the judgment in Appropriate Authority v. Mass Traders (P) Ltd. (supra) we are unable to persuade ourselves to the idea of purchasers being called upon to compensate the Appropriate Authority for having obtained the order of maintenance of status quo with respect to the property. Seeking such an order was fully justified. Unless such an order was passed the property would have gone out of the hands of the petitioners. The amount of balance consideration paid by the Appropriate Authority to the vendor was in accordance with their statutory liability on account of having passed an order of peremptory purchase of the property. At best it can be said that the purchasers did not have to part with the amount of Rs. 13.5 lacs which was the balance sale consideration and this money remained with them. In our view deprivation of the use and fruits of the property to the purchasers, i.e., the petitioners herein was at greater loss to them as compared to the meagre amount of interest which assembly they could have earned on that amount. The purchasers had to keep the amount always ready and available and they could not have utilised the amount for other investments. We feel it would be inequitable to ask the purchasers to pay any interest whatsoever on this amount. As already noted the amount of Rs. 13.5 lacs has already been deposited by the petitioners with respondent No. 2 on 23-4-1999. The prayer of respondent No. 2 for award of interest on the amount of Rs. 13.50,000 is accordingly rejected. Respondent No. 2 is directed to issue the "No Objection Certificate" in terms of s. 269UL(3) of the Income Tax Act forthwith, not later than four weeks from the date of this order and simultaneously deliver the possession of the property to the vendee. There will be no order as to costs.

