

(1998) 02 AP CK 0072
In the Andhra Pradesh High Court
Case No : Writ Petition No. 77 of 1997

Smt. K. Durga Rani and Another

APPELLANT

Vs

Appropriate Authority and Another

RESPONDENT

Date of Decision : 02-02-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Income Tax Act, 1961 — Section 269UC, 269UD, 269UD(1), 269UE(1)

Citation : (1998) 231 ITR 472 : (1998) 100 TAXMAN 492

Hon'ble Judges : T.N.C. Rangarajan, J; S.V. Maruthi, J

Bench : Division Bench

Advocate : V. Kishore, for the Appellant; S.R. Ashok, for the Respondent

Final Decision : Allowed

Judgement

1. This is a writ of certiorari calling for the records relating to the order No. AA/Hyd/6 (08) 9 of 1996-97 dated 31-12-1996 u/s 269UD(1) of the income tax Act, 1961 ("the Act") passed by the appropriate authority (income tax Department, Bangalore) and to quash the same. The facts in brief are that the first petitioner is Smt. K. Durga Rani and another and the second petitioner is Kattegummala Sarala Reddy. The second petitioner is the owner of House No. 8-2-294/82/A/1143, Plot No. 1143, Road No. 58, Jubilee Hills. An agreement of sale of the said property for Rs. 36 lakhs was entered into by the second petitioner with the first petitioner. Pursuant to the said agreement, the first petitioner paid

(i) Rs. 5 lakhs through Bankers cheque dated 20-4-1996,

(ii) Rs. 4 lakhs through cheque dated 14-5-1996,

(iii) Rs. 5 lakhs through Bankers cheque dated 25-5-1996.

All the cheques were drawn on Allahabad Bank. The said amounts were paid as advance. The property consisting of a building with ground floor and first floor admeasuring 4819 square ft. plinth area is constructed in an area of 1156 sq.

yards or 967 square meters and is bounded by North: Nala and 59/width Road No. 58; South: Plot No. 1153, East: Plot No. 1144 and West: Plot No. 1141. The agreement of sale was dated 27-5-1996 and it was registered in the office of the Sub-Registrar, Banjara Hills, Hyderabad. The second petitioner is a non-resident Indian and settled with her son in USA. She got the property as legatee under a will dated 1-10-1973 executed by her husband late Shri Pulla Reddy.

2. The first and second petitioners filed a joint-statement in Form No. 37-I u/s 269UC of the Act to the appropriate authority on 6-6-1996. The defects pointed out by the first respondent were rectified on 12-9-1996. On 4/22-11-1996, the appropriate authority, first respondent, issued a notice directing the second petitioner and first petitioner to show cause as to why an order u/s 269UD(1) should not be passed for pre-emptive purchase of property for Rs. 35,42,800 being the discounted value of apparent consideration, as the apparent consideration was well below 15 per cent of the market value of the property. In the show-cause notice, various reasons are mentioned why an order of pre-emptive purchase should not be passed. The first and second petitioners filed their explanations. On consideration of the explanations and after giving an opportunity of personal hearing, the impugned order stating that:

... Under the provisions of section 269UE(1) of the income tax Act, 1961, and as per the decision of the Hon'ble Supreme Court in C. B. Gautam's case, the property situated at No. 8-2-293/82/A/1143, Plot No. 1143, Road No. 58, Jubilee Hills, Hyderabad, shall vest in the Central Government free from all encumbrances, attachments, liens, lis pendens, charges, acquisitions or other claims whatsoever as per the terms and conditions as per the agreement of sale dated 27-5-1996 from this day onwards. The transferor/transferee or any other person who may be in possession of the said property shall surrender and deliver vacant possession of the scheduled property to this appropriate authority or any other person duly authorised by it within 15 days from the date of receipt of this order.

has been passed. Aggrieved by the same, the present writ petition is filed.

3. At this stage, it is necessary to refer to the reasons mentioned in the show-cause notice issued by the appropriate authority before passing the impugned order.

(i) During the inspection, it was noticed that the property is situated in a well-developed residential area and the construction of the property and the layout are of very high quality. The property consists of evenly shaped land area especially with well designed house consisting of ground and first floors, there is a huge lawn in front with a water fountain and the locality is clearly HIG. There is liberal use of marbles within the house and the house has an excellent view and sit-out facility. There is also an independent building consisting of a garage, servant quarters. A separate borewell is available for water supply. The whole area is enclosed by a well designed compound wall. In spite of all these, the land

rate as per the Engineering Report comes to only Rs. 1430 sq. yd.

(ii) Examination of the comparable cases, namely, Property No. 8-2-293/82/A, 1250-A Jubilee Hills, Hyderabad in respect of which Form No. 37-I was filed by one Shri Prannath Talwar proposing to sell the land to one R.S. Raju and the rate comes to Rs. 4,927 per square yard and the agreement was executed on 25-4-1996 whereas the agreement in the present case is dated 27-5-1996.

(iii) Similarly, one G. K. Raju proposed to sell a residential property with building at Plot No. 1363, Road No. 45, Jubilee Hills, Hyderabad to one Mrs. Anuradha Jayant Sridhaya. This agreement was dated 7-6-1994 but the rate per sq. yard came to Rs. 2,428.

(iv) HUDA made auction sales of several sites in Jubilee Hills area and the auction's minimum value per square yard came to Rs. 2,510 and the rate went up to Rs. 4,510 per square yard.

(v) The market value guidelines fixed by the State Government show that the rate in Road No. 58, Jubilee Hills area, is Rs. 2,500 per square yard.

To the above show-cause notice, the first and second petitioners filed their reply which is as follows:

1. that Smt. K. Sarala Reddy is a non-resident Indian residing in USA.
2. that the agreement of sale dated 27-5-1996 for the sale of the property bearing Plot No. 1143, D. No. 8-2-293/82/A/1143 on Road No. 58 is for Rs. 36 lakhs.
3. sale of Plot No. 1250/A on Road No. 62 by one Mr. Prannath Talwar to Mr. R.S. Raju, a non-resident Indian, for Rs. 59,80,000 for a Plot admeasuring 1196 square yards worked out to Rs. 4,927 per square yard. The said Prannath Talwar is a non-resident Indian and the plot is situated at Road No. 62 which is categorised as a VIP area as the Chief Minister is residing nearby and the Plot is an open plot and has the advantage of construction to the needs, will and pleasure of the purchaser. The construction of Apartments on this road is permitted. Shri R.S. Raju who is a non-resident Indian is not aware of the market conditions in the area and it is only a chance sale for Prannath Talwar and, therefore, the sale of plot No. 1250-A in Road No. 62 by Prannath Talwar to R.S. Raju cannot be treated as comparable sale.
4. Plot No. 1363 on Road No. 45, Jubilee Hills where the agreement of sale dated 2-6-1994 by G.S. Raju indicates Rs. 2,428 per square yard. This instance of sale cannot also be treated as comparable sale as Road No. 45 is the main road leading from Road No. 2 while Road No. 58 is a sub-lane and is away from Road No. 45.
5. Auctions held by HUDA wherein the sale rate per square meter quoted is from Rs. 2,510 to Rs. 5,000, i.e., Rs. 2,259 per square yard to Rs. 4,500 are not comparable sales as they are not in the immediate vicinity and are nearer to

Road No. 2 which is the main Road and they are all vacant plots with a facility to construct the property at will and pleasure and they are purchased mainly by non-resident Indians and they are far away from Road No. 58, nearer to Road No. 2 and MLA's Colony. Road No. 2 is a main Road in the area. The market value fixed by the Government at Road No. 58 is Rs. 1,230 per square yard on the date of the agreement of sale and not Rs. 2,500 per square yard.

In other words, the main contention of the petitioners is that the sale of plot of land in Road No. 62 and the property in Road No. 45 and the price fetched at the auction sales of several plots in Jubilee Hills and the guidelines fixed by the State Government in Road No. 58 at Rs. 2,500 cannot be treated as comparable sales. The petitioners have also stated number of instances where the sale price is lower than the price at which the property under dispute is sold and also pointed out two instances of sale in Road No. 58 where the sale price of the property is lower than the price at which the disputed property is sold to which we would refer at a later stage. The instances given by the petitioners are as follows:

(a) Road No. 63, Plot No. 1254-A admeasuring 700 square yards was sold in April 1996 by D. Madhavi vide registered document No. 909/96 for a total consideration of Rs. 9,10,000, thus, working out to Rs. 1,300 per square yard. This plot is very close by and behind to Plot No. 1250-A on Road No. 62.

(b) Plot No. 1305 admeasuring 750 square yards in Road No. 65 sold in April 1996 by Mrs. Saroja Rao for a consideration of Rs. 17 lakhs, thus, working out to Rs. 2,266 per square yard. Road No. 62 is a sub-road to Road No. 62.

(c) Plot No. 1252 admeasuring 747.5 square yards on Road No. 65 sold by Mrs. Snehalata vide document No. 1420/96 in May 1996 for a total consideration of Rs. 10,67,000, thus, working out to Rs. 1,428 per square yard.

(d) Plot No. 1187 admeasuring 1104 square yards on Road No. 45 was sold in January 1996 by one Mr. Syed Asif for a total consideration of Rs. 18,50,000, thus, working out to Rs. 1,676 per square yard under a registered document No. 175/96.

(e) Plot No. 1127 on Road No. 58 is facing on two roads, namely, Road No. 54 and Road No. 58, was sold by one Mr. G.S. Reddy for a total consideration of Rs. 30 lakhs in 1995. The plot is admeasuring 985 square yards with a plinth area of 5,558 square ft. The appropriate rate per square yard would be Rs. 900 per square yard.

(f) Plot No. 1145-A on Road No. 58 sold by one Mrs. Nandita P. Sen admeasuring 1379 square yards with a plinth area of 3675 square ft. and the total consideration is Rs. 27 lakhs and the rate works out at Rs 1,000 per square yard.

The Engineering Department has arrived at two rates, one is Rs. 1,592 per sq. yd. and the second rate at Rs. 1,430 per sq. yard. Rs. 1,430 per sq. yd. was arrived at, basing upon the actual area of 1286 square yards instead of 1156 square yards as per sale deed of the transferor.

The appropriate authority considered the arguments advanced by the petitioners and rejected them and the reasons given by the appropriate authority for rejecting the reasons are as follows:

4. The instances of proposed sale by Prannath Talwar in Road No. 62 is a comparable sale with the sale of the disputed property on the ground that both the localities are classified as HIG and that Plot No. 1205-A in Road No. 62 is not a VIP area. Further, in Road No. 62 as well as Road No. 58, the guidelines rate fixed by the Government for the purpose of stamp duty is Rs. 2,500 and that the price paid by Mr. R.S. Raju, a non-resident Indian, for purchase of Plot No. 1250-A is not a fancy price. If the transaction in respect of Road No. 62 is taken into account, the land rate worked out at Rs. 4,927.

5. As regards Plot No. 1363 on Road No. 45 the land rate has been worked out at Rs. 2,428 and this is a comparable sale as Plot No. 1143 is very much nearer to Road No. 36 which runs from the stretch of Road No. 2 from Banjara Hills. Road No. 36 in Jubilee Hills is an important arterial road and this fact can be clearly seen that the guidelines rate suggested for Road No. 36 ranges from Rs. 3,000 to Rs. 4,000 per square yard whereas the guidelines rates for Road Nos. 45 and 48 are kept at Rs. 2,500 per square yard. It is not necessary to refer to other reasons given with reference to the other sale transactions relied on by the petitioners except one instance of sale dealt with by the appropriate authority which is relevant to the facts of the present case. It is necessary to extract the relevant paragraph as it is in toto:

The transferor/transferee have claimed that there is another instance of sale of Plot No. 1127 which is on Road No. 58, it is seen that the said property have a plinth area of 984 square yards which was sold by Mrs. Sucharitha Reddy and Mr. G.V. Mohan Reddy to Sri G. Girish V. Reddy [File No. AA/HYD/11 (26) 02/94-95] for a consideration of Rs. 30 lakhs. The date of agreement was 29-11-1994. As per the Engineering report, the land rate comes to Rs. 849 per square yard.

The contention of the transferor/transferee cannot be accepted because the date of agreement of this sale was 29-11-1994 whereas the date of agreement in the present transaction is 27-5-1996. Thus, there is a wide time gap between these transactions by more than one year and six months. During this period, there has been a sharp price rise in the market value of the properties in Jubilee Hills.

The rate prevailed as on 29-11-1994 cannot be compared with the rate prevailing as on 27-5-1996. Moreover, the transferor in this case is an NRI. Therefore, this case cannot be compared with the case which is under consideration. "

(Emphasis supplied)

From the narration of facts and the grounds in the show-cause notice the explanation offered by the petitioners and the reasons given by the appropriate authority for the rejection of the explanation offered by the petitioners, it

emerges that in Road No. 62 the land value in respect of Plot No. 1250-A as on 25-4-1996 worked out at Rs. 4,927 per sq. yd. and the land value in Plot No. 1363 in Road No. 45 on 7-6-1994 worked out at Rs. 2,427 per sq. yd. and these two values are comparable sales with the disputed transaction in Road No. 58 and that the land value in respect of Plot No. 1127 in Road No. 58 which worked out at Rs. 849 per sq. yd. on 29-11-1994, cannot be taken into account as the transferor is an NRI. Before considering whether the finding of the appropriate authority that the proposed sale in Road No. 62 in respect of Plot No. 1250-A and Plot No. 1363 in Road No. 45 is a comparable sale or not it is necessary to refer to section 269UD(1):

Order by appropriate authority for purchase by Central Government of immovable property.- (1) Subject to the provisions of sub-sections (1A) and (1B), 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, make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration.

At this stage it is necessary to refer to the principles laid down by the Supreme Court and various other Courts interpreting section 269UD(1). In *C.B. Gautam v. Union of India* [1992] 65 Taxman 440, the Supreme Court having realised that section 269UD of this Act has not laid down any guidelines for pre-emptive purchase of the property relying on the historic legislative background for enacting Chapter XX-C, and the instruction No. IA88 issued by the CBDT of the Government of India, Ministry of Finance, Department of Revenue and the counter-affidavit filed by the Under-Secretary, Central Board of Direct Taxes, Department of Revenue and it was observed that:

... the powers of compulsory purchase conferred under the provisions of Chapter XX-C [of the income tax Act] are being used and intended to be used only in cases where in an agreement to sell an immovable property in an urban area to which the provisions of the said Chapter apply, there is significant undervaluation of the property concerned, namely, of 15 per cent or more. If the appropriate authority concerned is satisfied that in an agreement to sell immovable property in such areas as set out earlier, the apparent consideration shown in the agreement for sale is less than the fair market value by 15 per cent or more, it may draw a presumption that this undervaluation has been done with a view to evade tax. Of course, such a presumption is rebuttable and the intended seller or purchaser can lead evidence to rebut such a presumption. Moreover, an order for compulsory purchase of immovable property under the provisions of section 269UD requires to be supported by reasons in writing and such reasons must be germane to the object for which Chapter XX-C was introduced in the income tax Act, namely, to counter attempts to evade tax.

21. The conclusion that the provisions of Chapter XX-C are to be resorted to only

where there is significant undervaluation of the immovable property to be sold in the agreement of sale with a view to evade tax finds support from the decision of this Court in the case of K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another,

After referring to the observations of the Supreme Court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, and Commissioner of Income Tax, Gujarat II Vs. Vimlaben Bhagwandas Patel and Kamlaben Kanjibhai Patel, , the Supreme Court held that:

... it cannot be said that the provisions of the said Chapter confer an unfettered discretion on the appropriate authorities to order the purchase by the Central Government of immovable properties agreed to be sold and, hence, they cannot be regarded as conferring arbitrary or unfettered discretion on the appropriate authorities..." (p. 461)

Holding as above the learned Judges held that Chapter XX-C is not violative of article 14 of the Constitution. It was also held that:

... the requirement of a reasonable opportunity being given to the concerned parties, particularly, the intending purchaser and the intending seller must be read into the provisions of Chapter XX-C. In our opinion, before an order for compulsory purchase is made u/s 269UD, the intending purchaser and the intending seller must be given a reasonable opportunity of showing cause against an order for compulsory purchase being made by the appropriate authority concerned. As we have already pointed out, the provisions of Chapter XX-C can be resorted to only where there is a significant undervaluation of property to the extent of 15 per cent or more in the agreement of sale, as evidenced by the apparent consideration being lower than the fair market value by 15 per cent or more. We have further pointed out that, although a presumption of an attempt to evade tax may be raised by the appropriate authority concerned in case of the aforesaid circumstances being established, but such a presumption is rebuttable and this would necessarily imply that the concerned parties must have an opportunity to show cause as to why such a presumption should not be drawn...." (p. 463)

It was further held:

... Moreover, if such a requirement were not read into the provisions of the said Chapter, they would be seriously open to challenge on the ground of violation of the provisions of article 14 on the ground of non-compliance with the principles of natural justice. The provision that when an order for purchase is made u/s 269UD reasons must be recorded in writing is no substitute for a provision requiring a reasonable opportunity of being heard before such an order is made." (p. 465)

The learned Judges also pointed out the necessity for giving reasons before an order of pre-emption purchase is made.

6. In other words, from the above it is clear that before pre-emptive purchase is made under Chapter XX-C, it is necessary that principles of natural justice should be complied with. In the present case, it has been complied with. Therefore, there cannot be any complaint on that ground.

7. According to the Supreme Court, Chapter XX-C only refers to whether there is significant undervaluation of the property to the extent of 15 per cent or more in the agreement of sale as evidenced by the apparent consideration being lower than the fair market value by 15 per cent or more. If there is undervaluation of the property to the extent of 15 per cent or more as evidenced by the apparent consideration being lower than the fair market value by 15 per cent or more, the revenue is entitled to draw a presumption of an attempt to evade tax which is a rebuttable presumption. In order to rebut the presumption, it is necessary that the petitioners should be given a reasonable opportunity of hearing.

8. Therefore, we have to see whether in mentioning Rs. 36 lakhs as consideration in the agreement of sale, there is significant undervaluation of the property to the extent of 15 per cent or more or the apparent consideration is lower than the fair market value by 15 per cent or more. If the apparent consideration mentioned in the agreement of sale is lower than the fair market value by 15 per cent, then the appropriate authority is entitled to draw a presumption that there is an attempt to evade tax by the petitioners. Otherwise, the appropriate authority is not entitled to draw any presumption as mentioned by the Supreme Court. Therefore, it is to be seen whether the value mentioned in the agreement of sale is lower than the fair market value by 15 per cent or more. As pointed out in the earlier paragraph, the appropriate authority took into account the sale of vacant land in Road No. 62 the extent of which is 1196 square yards. The agreement of sale was dated April 1996. According to the appropriate authority, the value of the land per square yard comes to Rs. 4,927 and, therefore, it is a comparable sale.

It is an undisputed fact that the property under dispute is a house property, whereas the plot in Road No. 62 over an extent of 1196 square yards is a vacant plot. Further, the purchaser is a non-resident Indian. There is no evidence as to the distance between the disputed plot and the plot in Road No. 62 though as regards time angle there is only one month difference as Form No. 37-I was filed in April insofar as land in Road No. 62 is concerned while Form No. 37-I was filed in May insofar as disputed land is concerned. Further, Road No. 62 although categorised as HIG, the comment made by the revenue authorities is that it is in posh area. Secondly, it is not disputed that the purchaser is a non-resident Indian. The appropriate authority himself rejected the sale of plot No. 1127 in Road No. 58 dated 29-11-1994 on the ground that the transferor in this case is a non-resident Indian. In other words, the appropriate authority rejected the transaction between a NRI transferor and a local transferee. The appropriate authority cannot apply inconsistent standards in treating a particular transaction as a comparable transaction. Having rejected the transaction in respect of Plot

No. 1127 in Road No. 58 on the ground that the transferor is a non-resident Indian, he cannot consider the transaction in Road No. 62 wherein the transferor is also a non-resident Indian treating it as comparable sale for the purpose of ascertaining fair market value and determine the apparent consideration as lower than 15 per cent of the fair market value and, thus, the appropriate authority is adopting inconsistent stands. He is adopting double standards for the purpose of determining the fair market value and apparent consideration. Therefore, the transaction in Road No. 62 is not relevant and cannot be taken as the basis for the purpose of ascertaining the fair market value and for the purpose of determining the apparent consideration being lower than the fair market value by 15 per cent of the disputed property. If the transaction in Road No. 62 is excluded, the other transaction relied upon by the appropriate authority is the sale of property in Road No. 45. There is no evidence as to the distance between the property in Road No. 45 and the property in Road No. 58, namely, the disputed property. According to the map furnished along with the material papers, it appears that the distance would be 2 kms., if not more than 2 kms. Apart from that, Plot No. 1369 in Road No. 45 is on the main road, whereas the disputed land in Road No. 58 is in the bye-lane. Road No. 45 appears to be an arterial road. Further, the land area is 1245 square yards. The year of construction is also 1986. Further, the locality is categorised as a good residential locality. The entire flooring is marble flooring whereas in the disputed construction the flooring is Kota stone and the lime 60 per cent/Terrazzo tiles, 10 per cent CC flooring and 30 per cent marble flooring. The total constructed building area is 4,600 sq. ft. Further, Road No. 45 is the main road while, Road No. 58 is far away from the main road and it is in the interior of Jubilee Hills. Therefore, the property in Road No. 45 cannot be taken into account for the purpose of assessing the fair market value in order to determine the apparent consideration of the disputed property as less than 15 per cent or more. The appropriate authority except for stating that the engineering report has classified the neighbouring land in this case also as HIG and that the guidelines rate kept at Road No. 45 was fixed by the A.P. Government at Rs. 2,500 per square yard, no other reasons are given for taking into account the property in Plot No. 1363 on Road No. 45 for the purpose of assessing fair market value. It is now well-settled that for the purpose of taking into account comparable instances out of genuine instances, one of the consideration is proximity from situation angle and proximity from time angle - *Chimanlal Hargovinddas v. Spl.* LAO AIR 1988 SC 1952; apart from the fact that Road No. 45 is the main Road and the distance between Road No. 45 and 58 is nearly 2 kms, there is no proximity between the two from the situation angle. Therefore, the property, namely, Plot No. 1363 on Road No. 45 cannot be taken as the basis for the purpose of ascertaining the fair market value.

9. The appropriate authority was also of the view that for the purpose of stamp duty the guidelines rate was fixed at Rs. 2,500 in Road No. 58 and, therefore, the value of the land should have been assessed at Rs. 2,500. Evidently, the

appropriate authority has committed a mistake of fact in taking Rs. 2,500 as the rate fixed by the Government for the purpose of stamp duty as the said rate was fixed on 1-8-1996 while the agreement of sale was executed on 27-5-1996, i.e., nearly two months prior to the date of the guidelines rates issued by the Government. As on the date when the agreement of sale was executed, namely, on 27-5-1996, the Government itself fixed the guidelines rate at Rs. 1,230 per square yard and, therefore, the petitioners have taken into account the market value fixed by the Government as on the date of the agreement of sale, as they could not have imagined that it would be increased at a later date and adopted such increased value. In addition, the Government Engineer himself assessed the value of the property at Rs. 1,592 per sq. yd.

10. We have already pointed out that the Supreme Court in C. B.Gautam's case (supra) held that if the appropriate authority is satisfied that in an agreement to sell immovable property in such areas as set out earlier, the apparent consideration shown in the agreement for sale is less than the fair market value by 15 per cent or more, it may draw a presumption that this undervaluation has been done with a view to evade the tax. For drawing such a presumption, the appropriate authority should be satisfied on the basis of the material before it that the apparent consideration shown in the agreement of sale is less than the fair market value by 15 per cent or more.

In the above paragraphs, we have discussed the material that is available on record for the purpose of ascertaining the fair market value. We are of the view that the property in Road No. 62 being a vacant land apart from other considerations, cannot be taken into account for the purpose of determining the fair market value. Similarly, having regard to the situations and other considerations, the property in Road No. 45 cannot be taken into account for the purpose of determining the fair market value. The value determined by the Government for the purpose of stamp duty is subsequent to the date of agreement of sale. Further, the Government Engineer himself determined the value at Rs. 1,596 per sq. yd.

From the above, it is clear that there is no material to draw a presumption that the apparent consideration mentioned in the agreement of sale is less than the fair market value at 15 per cent or more. The appropriate authority while holding that the property in Road No. 62 and the property in Road No. 45 is relevant for the purpose of determining the fair market value, was influenced not only by an irrelevant consideration but also adopted unreasonable attitude. We are conscious of the fact that we are not sitting in appeal over the judgment of the appropriate authority and it is also now well-settled that in view of the function of the Court in judging the correctness of administrative or executive action taken in exercise of statutory powers, we can only go into the matter as a secondary reviewing; the Court has to find out if the Executive or the Administrator in their primary roles have arrived at a reasonable decision on the material before them. There cannot also be two opinions that the choice of the

options available is for the authority and the Court/Tribunal cannot substitute its view as to what is reasonable - Union of India and another Vs. G. Ganayutham (Dead) by LRs., . Had the appropriate authority arrived at a reasonable decision, we would not have interfered with the decision of the appropriate authority. In our view, the decision arrived at by the appropriate authority is unreasonable as he has allowed irrelevant considerations to go into his decision and, therefore, this Court in exercise of its power under article 226 of the Constitution, can interfere with the decision of the appropriate authority and the set right the unreasonable decision. In view of the above, it follows that the petitioners are entitled to succeed and the writ petition is, accordingly, allowed with costs. The impugned order is quashed. Advocate's fee Rs. 5,000.