
(1993) 10 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 10752 of 1993

Tata Consulting Engineers and another	APPELLANT
Vs	
Union of India and others	RESPONDENT

Date of Decision : 22-10-1993

Acts Referred:

Income Tax Act, 1961 — Section 269 UC, 269 UE (2)

Citation : (1994) 118 CTR 449 : (1994) ILR (Kar) 913 : (1994) 206 ITR 237 : (1994) 38 KarLJ 28 : (1994) 77 TAXMAN 156

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Advocate : K.G. Raghavan, for the Appellant; H.L. Dattu, for the Respondent

Judgement

This Judgment has been overruled by : Adair Dutt and Co. India Pvt. Ltd. Vs. Appropriate Authority, Income Tax Department, (1996) 7 AD 466 : (1996) 136 CTR 417 : (1996) 222 ITR 438 : (1996) 8 JT 579 : (1996) 7 SCALE 307 : (1996) 6 SCC 622 : (1996) 6 SCR 775 Supp : (1996) 88 TAXMAN 355

R.V. Raveendran, J.—The third respondent is the owner of premises bearing Nos. 23-24, S.B.I. Senior Officers' Colony, Koramangala, III Block, Bangalore. The first petitioner is the tenant in respect of the first floor of the said premises having taken it on lease from the third respondent. For convenience the third respondent and first petitioner will (hereinafter be referred to as the "owner" and the "tenant"). The second petitioner is an employee of the first petitioner who is in occupation of the said first floor portion (hereinafter referred to as the "tenanted portion"). According to the tenant, the lease was originally for a period of four years from May 10, 1985, and by mutual consent, it has been extended up to May 10, 1994.

2. The owner entered into an agreement dated January 21, 1993, with one Mr. Krishna Kapila agreeing to sell the entire property for a consideration of Rs. 26,50,000 and received Rs. 6,50,000 as advance. The agreement provided that the owner shall the property free from all encumbrances, lines, attachments,

charges of claims and shall deliver vacant possession of the entire property to the purchaser, at the time of registration of the sale deed, against payment of the balance sale price.

3. The owner and the intending purchaser filed a statement u/s 269UC of the Income Tax, 1961 (hereinafter referred to as "the Act") in Form No. 37-I on January 28, 1993, in regard to the proposed transfer with the appropriate (second respondent). In column 3 of the annexure to the said statement, the transferor is required to mention the details of the persons in occupation of the property sought to be transferred. In the said column, the owner showed that only he was in occupation of the property. The fact that the tenant was in occupation of the first floor portion was not disclosed. However, in the statement of additional information furnished on February 12, 1993, the owner disclosed that the first floor was leased to the tenant, but reiterated that he will give vacant possession of the entire property at the time of registration of the sale deed.

4. The appropriate authority by letter dated March 8, 1993, informed the tenant that the statement in Form No. 37-I filed by the owner did not disclose that any portion of the property was tenanted and that the agreement of sale provided for delivery of vacant possession of the entire property at the time of registration of the sale deed; that when the members of the appropriate authority inspected the property, the owner informed them that the tenant will vacate the property at the time of the sale; and that if an order of purchase was passed u/s 269UD(1) of the Act, the property would vest in the Central Government and all the persons in occupation will have to surrender and deliver vacant possession of the property within 15 days of service of such order of purchase. In view of the above, the tenant was called upon to file its objections on or before March 22, 1993. It appears that the tenant sent a reply dated March 18, 1993, stating that it was in a position to vacate the premises.

5. The appropriate authority passed an order of purchase in favour of the Central Government (first respondent) on March 29, 1993, u/s 269UD(1) of the Act (annexure "A"). The said order recites that notices were issued to the transferee and to the tenant; that a reply dated March 18, 1993, was received from the tenant on March 19, 1993; that under clause 5 of the agreement, the owner had undertaken to deliver vacant possession of the property at the time of registration of sale which was to take place on or before April 30, 1993; and that, consequently, in accordance with the provisions of section 269UE(2), the transferor or any other person who is in possession of the property should surrender and deliver possession of the property to the appropriate authority. A copy of the said order and the notice dated March 29, 1993, u/s 269UE(2) of the Act, calling upon the tenant to surrender and deliver vacant possession of the tenanted portion to the appropriate authority within 15 days from the date of the order, were served on the tenant. Feeling aggrieved by the said order of compulsory purchase u/s 269UD(1) in so far as it directs them to deliver vacant

possession of the tenanted portion and the notice u/s 269UE(2) calling upon them to vacate and deliver vacant possession thereof, the tenant has filed this writ petition.

6. This court issued rule nisi and an interim stay of dispossession on April 15, 1993. Another interim order was made on April 29, 1993, staying all further proceedings pursuant to the impugned order of purchase, until further orders. By interim order dated June 28, 1993, the Central Government was directed to deposit the sale price with the appropriate authority who in turn was directed to deposit the same on or before June 30, 1993, with the State Bank of India, St. Mark's Road, Bangalore, under the Capital Gains Account Scheme, 1988, to the account of the owner, without prejudice to the rights and contentions of the Central Government and subject on the final decision in the writ petition.

7. Sri K. G. Raghavan, learned counsel for the tenant, contended that the tenant was in lawful possession of the first floor portion of the property; that the tenant had a valid lease up to May 10, 1994, as per mutual agreement between the tenant and the owner and that was disclosed to the appropriate authority by the owner in the statement of additional information; that even if it was to be held that there was no term lease in favour of the tenant, having regard to the fact that there was no registered lease in its favour, as a bona fide tenant, the tenancy was protected against eviction; that, therefore, the tenant can be dispossessed or evicted only by initiating eviction proceedings in accordance with law; that if respondents Nos. 1 and 2 wanted to evict the tenant, they could do so only by taking action under the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 (hereinafter referred to as "the Public Premises Act") or any other law governing tenancies; and that the tenant could not be summarily evicted or dispossessed u/s 269UE(2) of the Act in pursuance of the order of purchase and notice dated March 29, 1993.

8. Sri H. L. Dattu, learned standing counsel for the Income Tax Department, contended that Chapter XX-C of the Income Tax Act is a self-contained code in regard to purchase by the Central Government of immovable properties in cases of transfer dealt with in the said Chapter, and that when an order of purchase is made u/s 269UD(1) of the Act, possession can be taken from the person in possession, including a tenant, u/s 269UE of the Act and it was not, therefore, necessary to have recourse to the Public Premises Act or any other law for taking possession. He also contended that until vacant possession of the entire property was delivered to the appropriate authority, the owner was not entitled to payment of the price.

9. Sri K. S. Ramabhadran, learned counsel for the owner, on the other hand, contended that once the order of purchase was passed u/s 269UD(1) of the Act on March 29, 1993, the property vested in the Central Government on the date of such order, in terms of the agreement of sale, u/s 269UE(1) of the Act. Consequently, having regard to section 269UF and section 269UG, the Central Government became liable to pay the sale consideration of Rs. 26,50,000 within

one month from the end of the month in which the property vested in the Central Government, that is, on or before April 30, 1993; that the owner was ready and willing to deliver vacant possession of the entire property except the portion in the occupation of the tenant; and that the owner will deliver symbolic possession of the tenanted portion; that if the tenant did not vacate, the appropriate authority was entitled to take possession section 269UE; and any delay in obtaining vacant possession from the tenant cannot be a ground for delaying payment of the sale price due to the owner; and therefore, the interim order of stay should be vacated so that the owner can receive payment; and if the payment was not made, there could be re-vesting in the owner, as contemplated u/s 269UH.

10. On the aforesaid facts and contentions, the following points arise for consideration :

(a) Whether the appropriate authority can require a tenant in lawful possession of the property in regard to which an order of purchase is made u/s 269UD(1), to vacate the property, where the tenant has not agreed to vacate it and when he is not a party to the statement filed u/s 269UC of the Act in Form No. 37-I ?

(b) Whether such a tenant is liable to surrender possession of the tenanted premises u/s 269UE(2) of the Act and on his failure to do so, whether the appropriate authority can forcibly evict the tenant from the premises u/s 269UE(3) of the Act ?

(c) Whether payment of the price to the owner of the property can be withheld, till vacant possession of the entire property is obtained by the Central Government, when delivery of vacant possession is a term of the agreement of sale ?

Re : Points (a) and (b) :

11. At the outset, the contention of the tenant that it is a term lessee entitled to be in possession till May 10, 1994, has to be dealt with. According to the tenant, the first floor portion was taken on lease with effect from May 15, 1985, that the lease expired on May 10, 1992, and by mutual consent the lease was extended by two years, that is up to May 10, 1994, as per its letter dated March 25, 1992 (copy produced as annexure "C"). The tenant does not claim any term lease under any registered lease deed. A lease for a term exceeding one year can be made only by a registered lease deed, having regard to section 107 of the Transfer of Property Act. In the absence of such lease deed, it has to be held that the tenant is only a monthly tenant.

12. It is useful to refer to the relevant statutory provisions at this stage :

Sub-section (1) of section 269UE provides that where an order for purchase u/s 269UD(1) is made by the appropriate authority in respect of an immovable property, such property shall, on the date of such order, vest in the Central Government in terms of the agreement for transfer referred to in section

269UC(1). The proviso to the said sub-section (1) of section 269UE provides that if the appropriate authority is of the opinion that any encumbrance on the property or leasehold interest specified in the agreement for transfer is so specified with a view to defeat the provisions of Chapter XX-C, the said authority may, after giving an opportunity of being heard, to the affected parties, by order, declare such encumbrance or leasehold interest to be void and thereupon the said property shall vest in the Central Government free from such encumbrance or leasehold interest.

Sub-sections (2) and (3) of section 269UE which are relevant for determining whether the first petitioner is liable to deliver vacant possession read as under :

"(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 authorised by the appropriate authority in this behalf within fifteen days of the service of such order on him.

Provided that the provisions of this sub-section and sub-sections (3) and (4) shall not apply where the person in possession of the immovable property, in respect of which an order under sub-section (1) of section 269UD is made, is a bona fide holder of any encumbrance on such property or a bona fide lessee of such property, if the said encumbrance or lease has not been declared void under the proviso to sub-section (1) and such person is eligible to continue in possession of such property even after the transfer in terms of the aforesaid agreement for transfer.

(3) If any person refused or fails to comply with the provisions of sub-section (2), the appropriate authority or other person duly authorised by it under that sub-section may take possession of the immovable property and may, for that purpose, use such force as may be necessary."

13. Section 269UE(1) as originally enacted provided that on an order of purchase being made u/s 269UD(1), such property will vest in the Central Government free from all encumbrances. There were also no proviso to sub-sections (1) and (2) of section 269UE. The words "in terms of the agreement for transfer referred to in sub-section (1) of section 269UC" were substituted for the words "free from all encumbrances" in sub-section (1) and proviso to sub-sections (1) and (2) were added by the Finance Act, 1993, with retrospective effect from November 17, 1992. These amendments were necessitated by the decision of the Supreme Court in C.B. Gautam Vs. Union of India and Others, rendered on November 17, 1992. In that decision, the constitutional validity of Chapter XX-C the Act was upheld, by reading down the provisions of section 269UD and section 269UE. One of the grounds of attack on the constitutional validity of Chapter XX-C was that the said Chapter affected the rights of third parties without safeguarding their rights. It is useful to extract the relevant portion of the Supreme Court's decision dealing with this aspect (at page 555) :

"We now take up the submissions of learned counsel for the petitioner that the provisions of the said Chapter are arbitrary and violate the provisions of the Fundamental Rights Chapter in so far as an order for compulsory purchase u/s 269UD of the said Chapter has the effect of vesting the property in the Central Government free from all encumbrances or leasehold rights the value of which might not be reflected in the apparent consideration mentioned in the agreement of sale. It was submitted by him that these encumbrances holders and holders of leasehold rights might not have anything to do with the attempt at tax evasion in the intended sale,.... and yet they would be deprived of their valuable rights practically without any compensation in the event of an order for compulsory purchase being made. In our view, the submissions of learned counsel are not without merit. Under the provisions of sub-section (1) of section 269UD on an order for purchase by the Central Government of an immovable property, the Government would be liable to pay as compensation to the owner of the property, an amount equal to the amount of apparent consideration. Under the express provisions of sub-section (1) of section 269UE which we have set out above, in case an order for compulsory purchase is made under sub-section (1) of the section 269UD, the property in respect of which the order is made shall vest in the Central Government free from all encumbrances. Sub-section (2) of section 269UE provides that the transfer 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 is required to surrender or deliver possession of the property to the appropriate or any other person duly authorised by the appropriate authority within 15 days of the service of the order on him. If there is a lease in occupation of the property concerned, his leasehold rights would be destroyed and he would have to hand over possession of the property to the appropriate authority or any other person nominated by the appropriate authority. Similarly, if an encumbrance holder like a usufructuary mortgagee were in occupation, he would lose his valuable right to remain in possession and enjoy the usufruct. This clearly shows that an order for compulsory purchase results in the rights of holders of encumbrances and leasehold rights being destroyed or significantly diminished. In a given case, it might happen that property is intended to be sold under an agreement to sell subject to encumbrances and leasehold rights, and very often agreements to sell immovable property do not provide that the property sold would be free from encumbrances or leasehold rights. In such a case, the apparent consideration, even if it is equivalent to the fair market value, would be indicative of the market value of the property subject to such encumbrances. If, in such a case, an order for compulsory purchase is made, the result would be that the property would be compulsorily purchased and the amount to be paid for the purchase would be only equal to the apparent consideration and this apparent consideration would not take into account the value of the encumbrances on the property like mortgages and so on or the leasehold rights. It is well-known that a property may be heavily encumbered and its value can be considerably depressed if it were sold subject to encumbrances. It is equally well-known that a property in

respect of which there is a subsisting lease for a substantial period of time would fetch a comparatively low price because the purchase thereof would not carry with it the right to possession or occupation during the subsistence of the leasehold interests. In such cases, the amount of apparent consideration could be even less than the value of the encumbrances or the leasehold interests. An order for compulsory purchase in such cases would necessarily result in gross injustice to the encumbrance-holders or the lessees and to their being deprived of their rights without their being in any way involved in the attempt at tax evasion. It, therefore, appears to us difficult to the last part of sub-section (1) of section 269UE in so far as it provides that the property in respect of which an order under sub-section (1) of section 269UE is made shall vest in the Central Government free of all encumbrances. In our opinion, the expression "free of all encumbrances" is liable to be struck down as arbitrary, without any rational nexus with the object of the legislation in question and violative of article 14 of the Constitution. Similarly, the provisions of sub-section (2) of section 269UE set out by us earlier must be read down so as to make them inapplicable to bona fide lessees in possession or bona fide encumbrances holders in possession."

14. The Supreme Court next dealt with the rights of encumbrance-holders and term lessees, that is lessees in possession in pursuance of a registered lease deed for a term, and held as follows (at page 558) :

"It was submitted by the learned Attorney-General that the provisions of sub-section (1) of section 269UD might be read down so as to mean that the property compulsorily purchased under an order made u/s 269UD(1) would vest in the Central Government subject to bona fide encumbrances or leasehold interests subsisting thereon other than monthly tenancies. It was urged by him that, in a pre-emptive purchase, normally, what would be purchased is only that which was put up for or sold, and if the same principle was applied to the compulsory purchases by the Central Government u/s 269UD, the rights of the encumbrance holders or the holders of leasehold interest subject to which the property was agreed to be sold could be protected. We agree that in order to save a statue or a part thereof from being struck down it can be suitably read down. But such reading down is not permissible where it is negated by the express language of the statute. Reading down is not permissible in such a manner as would fly in the face of the express terms of the statutory provisions. In view of the express provision in section 269UE that the property purchased would vest in the Central Government "free from all encumbrances", it is not possible to read down the section as submitted by the learned Attorney-General. In the result, the expression "free from all encumbrances" in sub-section (1) of section 269UE is struck down and sub-section (1) of section 269UE must be read without the expression "free from all encumbrances" with the result that the property in question would vest in the Central Government subject to such encumbrances and leasehold interests as are subsisting thereon except for such of them as are agreed to be discharged by the vendor before the sale is completed. If under the relevant agreement to sell, the property is agreed to be

sold free of all encumbrances or certain encumbrances, it would vest in the Central Government free of such encumbrances. Similarly, sub-section (2) of Section 269UE will be read down so that if the holder of an encumbrance or a lessee is in possession of the property and under the agreement to sell the property, it is not provided that the sale would be free of such encumbrances or leasehold interests, the encumbrance holder or the lessee who is in possession will not be obligated to deliver possession of the property to the appropriate authority or any person authorised by it and the provisions of sub-section (3) also would not apply to such persons. If the provisions of section 269UE are read down in the manner indicated above, then, in our opinion, the provisions of sub-section (6) of that section do not present any difficulty because the vesting in the Central Government would be subject to such encumbrances and leasehold rights as stated earlier."

15. The effect of bogus encumbrances or leases created just to defeat the provisions of Chapter XX-C was next considered by the Supreme Court (at page 560) :

"It was urged by learned counsel for the Revenue that, in case a view is taken that the expression "free from all encumbrances" should be struck down, it would be left open to an intending seller of immovable property to undervalue the property by creating a bogus lease or a bogus encumbrance thereon and this would defeat the purpose for which Chapter XX-C was introduced. We are unable to agree. If a lease or an encumbrance is found to be bogus, it can be treated as of no legal effect and in that event, it would not affect any of the rights of the Central Government on the vesting of the property in the event of an order for purchase being made u/s 269UD(1). If it is so considered necessary, the provisions of the Chapter might be so amended so as to clarify that if any lease or encumbrance is created with a view to defeat the provisions of Chapter XX-C, such lease or encumbrance will be regarded as void or ignored for the purposes of the said Chapter. That, however, is for Parliament to consider."

16. Dealing with the position of monthly tenants who did not hold term leases, the Supreme Court held (at page 559) :

"The next controversy posed was regarding the monthly tenancies. As far as monthly tenancies are concerned, they do not pose any difficulty because monthly tenants are also lessees in law although their right is a very limited one. If the agreement to sell does not provide for vacant possession or the determination of monthly tenancies, such tenancies would continue even on an order for purchase by the Central Government being made by the appropriate authority concerned u/s 269UD(1); but such tenants would lose the protection given to tenants under the rent protection laws because such laws are not made applicable to properties owned by the Central Government with the result that their tenancies could be terminated by the Central Government. The loss of the protection of the Rent Control Acts cannot be regarded as an interest for which any compensation is liable to be paid."

17. It will be seen from the portions extensively extracted above that the Supreme Court considered the effect of term leases and monthly tenancies, where the agreements of sale referred to the subsisting term leases or monthly tenancies, as the case may be, and provided that the orders of purchases passed by the appropriate authority will be subject to such leases/tenancies, where an intending transferor had not agreed to deliver vacant possession of the premises subject to such leases/tenancies, at the time of sale. The Supreme Court did not specifically consider a case where ignoring or suppressing the fact that the premises were in the occupation of a monthly tenant who had not agreed to vacate, the agreement of sale, without referring to such tenancy, provided for delivery of vacant possession at the time of sale. Chapter XX-C also does not provide for a case where the agreement of sale contained an incorrect information regarding possession, that is agreeing to deliver vacant possession even though vacant possession could not be delivered having regard to the fact that the premises were in the occupation of a bona fide tenant. What should happen in such a case ? Whether the monthly tenancy should be recognised so that the consequences as laid down by the Supreme Court (see pages 249 and 250 supra) will follow as; contended by the tenant ? or whether the tenancy should be ignored and the appropriate authority permitted to proceed with the dispossession of the tenant in exercise of its power u/s 269UE(2) as contended by the appropriate authority and the owner ?

18. In this case, the appropriate authority was aware of the fact that the tenant was in possession of the first floor. There was no consent or undertaking from the tenant that it will vacate and deliver vacant possession or abide by the terms of the agreement of sale executed by the owner. Though neither the sale agreement nor Form No. 37-I statement referred to the first floor tenancy, the statement of additional information filed by the owner as required by the appropriate authority specifically stated that the first floor was leased to the tenant but, however, the owner will give vacant possession at the time of registration of the sale deed. It is probable that the owner thought that he could negotiate with the tenant and get vacant possession of the premises before the sale. However, the owner did not obtain vacant possession from the said tenant. There was no material to show that the tenant in possession is not a bona fide tenant, and that he had been inducted to defeat the provisions of Chapter XX-C. Though the appropriate authority was aware of the lease (monthly tenancy) in favour of the tenant regarding the first floor portion, no order was made under the proviso to section 269UE(1) declaring that the leasehold interest held by the tenant was void. It is also seen that the appropriate authority did not call upon the owner nor make any effort to find out how he proposed to deliver vacant possession by April 30, 1993, when the first floor portion of the premises was in the occupation of the tenant and the tenant had not agreed to vacate the said portion of the premises. In fact, being aware of the fact that the tenant was in possession, the appropriate authority sent a show-cause notice dated March 8, 1993, to the tenant. Thus, the appropriate authority was aware that they will not

get vacant possession of the first floor at the time of sale, as stated in the agreement of sale. Consequently, on the facts and circumstances set out above, in so far as the tenant is concerned, the term of the sale agreement providing for delivery of vacant possession should be read down as only providing for delivery of vacant possession of the remaining portions of the premises and not the first floor subject to the tenancy and further read as specifying the first floor tenancy in the agreement of sale. Any other interpretation will have the effect of visiting the consequences of an erroneous statement made by the owner (either deliberately or unintentionally), upon the innocent tenant. Courts should endeavour to ensure that on account of the acts of one party, injustice is not caused to another party. Such reading of the contract is only for determining the rights of the tenant, and not for determining the rights and obligations of the owner who is a party to the contract.

19. It is in this background that the order of compulsory purchase and the notice u/s 269UE(2) issued by the appropriate authority calling upon the transferor or any other person who may be in possession of the property to surrender and deliver possession of the property to the appropriate authority within 15 days from the date of service of the order, requires to be examined. If the appropriate authority has assumed, without any concurrence from the tenant, that the owner will be able to deliver vacant possession, then the appropriate authority can take appropriate steps against the owner for failure to do so. But the appropriate authority cannot, on the basis of a term agreed to by the owner, forcibly dispossess the tenant, by having recourse to sub-sections (2) and (3) of section 269UE.

20. It is no doubt true that when a statement is filed u/s 269UC in Form No. 37-I, the appropriate authority has only two alternatives : either to pass an order of purchase u/s 269UD(1) or to issue a "No objection certificate" for the sale u/s 269UL(3). The appropriate authority has no power to reject the statutory statement in Form No. 37-I or order it to be filed (see the decision of the Delhi High Court in Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, affirmed by the Supreme Court in Appropriate Authority and Another Vs. Tanvi Trading and Credits P. Ltd. and Others, But this does not mean that the appropriate authority has no power to call upon the transferor to clarify the position regarding delivery of vacant possession. In fact before making an order of purchase u/s 269UD(1), the appropriate authority is required by section 269UD(1A) to give a hearing to the transferor and the persons in occupation of the property. Nothing prevents the appropriate authority from making such enquiry or investigation as is necessary to satisfy itself whether it will be able to get vacant possession or not. If there is a tenant and such tenant has not agreed to vacate and the agreement of sale provides for vacant possession, the appropriate authority should, before passing an order of purchase, specifically call upon the owner to refer to the existence of the tenancy, in a supplement to the agreement and Form No. 37-I statement and to explain how he proposes to deliver vacant possession of the tenanted premises

and confirm whether Form No. 37-I statement should be treated as one relating to sale of a property with vacant possession or not. The owner cannot take exception to such a demand and will be bound to give the required clarifications. The decision in Tanvi Trading's case does not come in the way of the appropriate authority from seeking and obtaining relevant information or rectification of mistakes or requiring the transferor/owner to fulfil his obligations specifically undertaken by him in the contract. It only lays down that the appropriate authority cannot, on grounds of alleged infringement of law or defect in title, reject Form No. 37-I statement or order the statement to be filed; nor can it require the transferor to comply with any requirement to get his title rectified or obtain any clearances. But, if there is a difference between the factual position and the position represented in Form No. 37-I statement, it is open to the authority to require the parties to the statement to rectify the statement. To illustrate : If the measurement of a property is 60" x 100" and the said measurements are specifically so given in the agreement, but the aggregate area is wrongly mentioned as 8,000 sq. ft. instead of 6,000 sq. ft. either in the agreement or Form No. 37-I statement. Having regard to the scheme of Chapter XX-C, the appropriate authority can certainly call upon the parties to Form No. 37-I statement, to correct or clarify such mistakes or any incorrect statement or information in the agreement of Form No. 37-I statement; and act on the basis of the additional information furnished by the parties in any supplemental agreement or additional statement. The following observations of the Delhi Court in Tanvi Trading and Credits P. Ltd. and Others Vs. Appropriate Authority and Others, support the said view (at page 628) :

"An authority constituted under the Act can exercise only those powers which are, expressly or by necessary implication, conferred on it. The only power which is conferred on the appropriate authority u/s 269UD is the power to decide whether to purchase the property or not. Of course, in exercise of this power, the authority will have other implied powers which will make such a power effective. The authority would be entitled to see material and documents like documents of title, agreements, etc., in order to satisfy itself whether the apparent consideration is proper or not in order to come to the conclusion whether to purchase the property or not. The investigation which will be undertaken by the appropriate authority is only with a view to determine whether the pre-emptive right of purchase should be exercised or not."

21. If the appropriate authority however does not choose to get the required clarification from the owner in regard to vacant possession, being aware of the tenancy, it has to be inferred, so far as the tenant is concerned, that the appropriate authority is proceeding on the basis that the premises are subject to the tenancy and it will not get vacant possession of the portion subject to the tenancy, or passing of an order of purchase. As far as the transferor/owner is concerned, the appropriate authority has the choice of issuing a "No objection certificate" or passing an order of purchase and requiring performance, namely, delivery of possession and withholding the price till such performance.

22. Having regard to the scheme of Chapter XX-C, the provisions of section 269UE(2) and (3) will operate only where the agreement provides that vacant possession of the premises will be delivered at the time of sale and where in spite of such a term, the transferee or any other person who has been put in possession by the transferor (other than a lawful tenant or encumbrance holder or person in possession in his own right) fails to deliver vacant possession. The provisions of section 269UE(2) and (3) provides for a mode of summary eviction of the transferor or an intending transferee who might have been put in possession in pursuance of the agreement of sale or any bogus tenant/occupant put up by the owner, to defeat the provisions of Chapter XX-C, referred to in the proviso to section 269UE(1). The said provisions cannot be applied or used against a lawful lessee, whether a term lessee or a statutory tenant whose tenancy is protected under the rent control laws, or a lawful encumbrance holder like an usufructuary mortgagee. Sub-sections (2) and (3) of section 269UE are not intended to provide a mode of eviction of all tenants by the Central Government in regard to properties purchased under Chapter XX-C. This is evident from the decision in C.B. Gautam Vs. Union of India and Others, , which makes it clear that on a purchase by the Central Government, a monthly tenant in possession will merely lose the protection of rent control laws and the Central Government can terminate their tenancies. It follows that such tenants can be evicted only under the Public Premises Act or other appropriate law.

23. Sri H. L. Dattu, learned counsel for the Department, contended that section 269UE(2) to (4) will not be attracted only if the three conditions specified in the proviso to sub-section (2) of section 269UE are satisfied, that is, (a) the person in possession should be a bona fide encumbrance holder or bona fide lessee; (b) that such encumbrance or lease should not have been declared as void u/s 269UE(1); and (c) such person should be eligible to continue in possession of the property even after the transfer, in terms of the agreement of transfer. He pointed out that in the case of the tenant, even though the first and second conditions were satisfied, the third condition was not satisfied as the agreement did not provide that the tenant was eligible to continue in possession even after the transfer, but, on the other hand, provided that vacant possession was to be delivered. Therefore, he contended that sub-sections (2) to (4) of section 269UE were applicable and the tenant will not be entitled to resist any action for forcible dispossession, as the appropriate authority had issued a notice u/s 269UE(2) to the tenant in pursuance of the order of purchase u/s 269UD(1).

24. When a tenant is in possession of a property, his right to continue in possession is governed by the terms of the lease or the provisions of the statute which extends the possession, subject to eviction in accordance with law, does not depend upon the whims of his landlord (owner) or the terms of any agreement which the landlord-owner may enter into with third parties for sale or transfer of the property. Where the appropriate authority is aware that a bona fide tenant is in occupation (either on account of a statement to that effect being incorporated in the agreement or in statement in Form No. 37-I or in the

additional information furnished or on account of spot inspection), unless the tenant had also agreed to deliver up vacant possession, it should be deemed, so far as the tenant is concerned, that the agreement of sale contains a term that the tenant is entitled to continue in possession, even after the transfer in terms of the agreement of sale. It is a fundamental rule of contract that no person can be bound by the terms of a contract, to which he is not a party. An absolute term in a contract by landlord that he will deliver vacant possession, cannot in any way bind or affect the tenant, unless the tenant is a consenting party to such a contract. The right of the tenant to continue in possession should not be allowed to be defeated by his landlord, by entering into a mischievous agreement providing for vacant possession without the consent of such tenant. To hold otherwise would be to encourage illegal eviction of tenants. Owners of properties are conscious of the fact that evicting their tenants is not possible, unless they are able to make out any one of the grounds enumerated under the relevant Rent Control Act. Even, then eviction proceedings take considerable time. As a consequence, in cities like Bangalore, Bombay or Delhi, when compared to the market price of a property with vacant possession, a property subject to a lease/tenancy, will fetch only a considerably lower price, the price difference varying as much as 20 per cent. to 50 per cent. or more.

25. Let me demonstrate the serious consequences if the interpretation sought to be put up by the appropriate authority and the owner on section 269UE is to be accepted, by means of an illustration. Let us say that the market value of a property with vacant possession, is Rs. 20 lakhs. Sale thereof without vacant possession, will fetch only Rs. 10 lakhs to Rs. 12 lakhs. If Form No. 37-I statement is filed in regard to the sale of such property with vacant possession, showing the apparent consideration as say Rs. 16 lakhs, the appropriate authority will find it attractive to exercise the option to purchase the property. Thus an unscrupulous owner, who is unable to evict a bona fide and lawful tenant and who will not be able to obtain a price of more than Rs. 10 to Rs. 12 lakhs, can by entering into an agreement for sale of the property for Rs. 16 lakhs, agreeing to deliver vacant possession without the consent of the tenant, obtain a price of Rs. 16 lakhs. And if the appropriate authority has no difficulty in summarily evicting the tenant u/s 269UE, an order of purchase will be passed purchasing the property as the price is cheap and as obtaining vacant possession will not be problem having regard to section 269UE(2). Thus an unscrupulous owner will get Rs. 16 lakhs and make a profit of Rs. 4 lakhs. The Central Government stands to gain as it would have purchased the property at Rs. 16,00,000 and by evicting the tenant u/s 269UE, can immediately increase the value of the property to Rs. 20 lakhs. In the bargain, the innocent and bona fide tenant will lose the tenancy and protection against eviction. This is not to say that the owner in the case on hand is guilty of any such unscrupulous act. The illustration is merely to indicate the consequences of accepting the interpretation placed by the respondents on section 269UE(2) and (3).

26. Let us look at the matter from another angle. Each transferor is bound to

disclose the true facts in the statement to be filed in Form No. 37-I. In this case, the transferor has admittedly not mentioned the true position regarding tenancy and vacant possession, either in the agreement of sale or in Form No. 37-I statement. It has been noticed earlier that the owner has made a wrong statement, in Form No. 37-I statement, that he is in possession of the entire property. It is no doubt true that in the statement of additional information, he refers to the tenancy. But there also, he reiterated that he will deliver vacant possession on the date of sale. There by the owner represented and held out to the appropriate authority that vacant possession of the entire property will be delivered. The consequences of such wrong statements and misrepresentations are sought to be visited upon the tenant. If the owner had mentioned in the agreement of sale the true fact that a tenant is in possession of the first floor and that he will not be delivering vacant possession at the time of sale, then the tenant will not be liable to be summarily evicted, but will be entitled to continue in possession. If truth on the part of the landlord will lead to no adverse consequences, should the tenant be made to suffer as a result of a false or wrong statement by the owner ? Obviously, the answer is no. If it has to be held that the tenant can be summarily evicted u/s 269UE(2) because of a wrong statement filed by the owner, then it will lead to an injustice to the tenant, which is not the intendment of the Act. It is well-settled that the court will opt for an interpretation which is just, reasonable and sensible and avoid an interpretation that will lead to hardship, inconvenience, injustice, absurdity and anomaly.

27. The result of the above discussion is that the tenant is entitled to continue in occupation of the first floor portion. The tenant is not liable to vacant and deliver up vacant possession u/s 269UE(2). Consequently, the tenant cannot be dispossessed or forcibly evicted u/s 269UE(3), irrespective of the order purchase u/s 269UD(1). The tenancy will continue after the order of purchase in favour of the Central Government, by the order of the appropriate authority. But the tenant has lost the protection against eviction, to which it was entitled under the Karnataka Rent Control Act, as the said Act is inapplicable to properties owned by the Central Government. The Central Government is, therefore, entitled to evict the tenant either under the Public Premises Act or under any other law providing for eviction of tenants.

Re : Point "C" :

28. The agreement provides that the balance of sale price, namely, Rs. 20 lakhs, is payable only at the time of registration and that vacant possession shall be delivered at the time of registration. Hence the purchaser of the property is liable to pay the balance price of Rs. 20 lakhs only at the time of delivery of vacant possession. In view of the order of purchase, having regard to the terms of the sale agreement, the appropriate authority will be well within its right to release only Rs. 6,50,000 now and pay the balance of Rs. 20 lakhs at the time of getting vacant possession.

29. Sri K. S. Ramabhadran vehemently contended that the owner will be put to

irreparable loss and hardship if the amount is withheld. He pointed out that on the date of the order of compulsory purchase (March 29, 1993), the property vested in the Central Government and if the payment of the price is delayed, the owner would have lost the property without getting the price. He also pointed out that there was no deliberate false statement by the owner; that failure to refer to the tenant in the agreement and Form No. 37-I statement was due to oversight and the owner has disclosed the existence of the tenant in the statement of additional information; and that the owner bona fide believed that he could get vacant possession from the tenant. He next contended that if the tenant is not summarily evicted u/s 269UE(2) and (3) of the Act, eviction under the Public Premises Act or any other law may be a long-drawn process and receiving the balance price will be postponed indefinitely.

30. No doubt the owner will be put to hardship if there is delay in getting the payment. It is a consequence of his own doing. If he had not chosen to contract in absolute terms, that is agreeing to deliver vacant possession by April 30, 1993 (date agreed for sale) or if he had honoured his terms by negotiating and arranging for vacant possession from the tenant, he will not be in this predicament. It should be remembered that even if the property had not been purchased by the order u/s 269UD(1), he would be in no better position. Under the terms of the statement, he would have got the balance price only on performing the contract by delivering vacant possession. If the Central Government is directed to pay the sale price, without getting vacant possession, they will be put to hardship as they cannot be expected to pay the price agreed for the premises with vacant possession, without getting vacant possession. The tenant will be put to hardship if it is required to vacate now, as they had not agreed to vacate now. The owner will certainly be put to hardship if he is required to wait for the balance of price. Having already parted with property. Then the question is who should be made to bear the hardship. Naturally the person responsible for this predicament should bear the burden of the consequences of this action. The present situation is solely of the making of the owner by making incorrect statement of wrong assurance in the agreement of sale and Form No. 37-I statement. Hence the owner will not be entitled to the entire price at this stage, even though the errors on the part of the owner may be unintentional.

31. For these reasons, this writ petition is allowed on the following terms :

(a) The compulsory order of purchase dated March 29, 1993, passed by the appropriate authority (annexure-A) is upheld subject to the condition that paragraph 14 directing delivery of possession is quashed in so far as the tenant is concerned.

(b) The order u/s 269UE(2) dated March 29, 1993 (annexure-A1), is hereby quashed.

(c) The tenant shall be entitled to continue in occupation of the first floor portion

of the property as tenant under the Central Government; and the Central Government shall be entitled to evict the tenant from the first floor portion in accordance with law either under the provisions of the Public Premises Act or in accordance with any other law relating to eviction that may be applicable.

(d) The owner will be entitled to Rs. 6,50,000 from out of the sale price (apparent consideration) now. The balance of Rs. 20 lakhs will be payable only when the Central Government has already deposited the entire price in the State Bank of India, to the capital gains account of the owner (through the appropriate authority), the owner will not be entitled to withdraw Rs. 20 lakhs until vacant possession of the entire premises is obtained by the Central Government. The Central Government will be entitled to the interest on the sum of Rs. 20 lakhs from the date of deposit to the date of obtaining vacant possession of the entire premises.

32. Rule made absolute on the above terms. The petitioner will be entitled to costs of Rs. 1,000 from the respondents.