

(2002) 01 CAL CK 0005
In the Calcutta High Court

Case No : Appeal from Original Order (Tender) No. 1246 of 1996

Union of India and Others

APPELLANT

Vs

Madhusudan Das and Others

RESPONDENT

Date of Decision : 21-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : 106 CWN 386

Hon'ble Judges : Ashok Kumar Mathur, C.J.;Subhro Kamal Mukherjee, J

Bench : Division Bench

Advocate : J.C. Saha and Md. Nizamuddin, for the Appellant; Ranjit Murarka and Malay Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

Subhro Kamal Mukherjee, J.—The appeal is directed against the judgment and order dated March 27, 1996 passed by a learned single judge of this court whereby the learned single judge disposed of an application under Article 226 of the Constitution of India (writ petition in short). The brief facts leading to the filing of the present writ petition may be summarized as under :

(a) Madhusudan Das, the owner of the property-in-dispute, that is 18, Dent Mission Road, Calcutta-23, executed a registered deed of trust on June 4, 1985 appointing the writ petitioners as the trustees with power to transfer the property. The entire premises is under the occupation of the premises tenants.

(b) On December 8, 1994 the said trustees entered into an agreement for sale with M/s. Webstar Industries Private Limited, the respondent no. 4 in this appeal, at the consideration of Rs. 33,50,000/- (Rupees thirty three lakh fifty thousand) only on the terms and conditions mentioned in the agreement and accepted earnest money of Rs. 50,000/- (Rupees fifty thousand) only from the Vendees.

(c) The vendors and the vendees jointly furnished statements to Form No. 37-1

to the Appropriate Authority u/s 269 UC of the Income Tax Act, 1961.

(d) On March 9, 1995 the Appropriate Authority issued a show cause notice to the writ petitioners asking them to show cause as to why the subject property should not be purchased by the Central Government under the pre-emptive right u/s 269UD(1) of the said Act at an effective apparent consideration of Rs. 31,06,000/- (Rupees thirty one lakh six thousand) only. The writ petitioners and the purchaser submitted their replies to the show cause notices.

(e) However, the Appropriate Authority passed an order u/s 269 UD (1). It was ordered that "the said property described in the schedule appearing below is hereby purchased by the Central Government at an amount of Rs. 31,06,000/- (Rupees thirty one lakh six thousand) only being an amount equal to the amount of effective apparent consideration. The transferor with hand over the possession of the free property in terms of the agreement dated 8.12.94."

(f) The Appropriate Authority on April 25, 1995 issued a notice to the owners asking them to give vacant possession. It was stated "We require you to give vacant possession of the property in question to the Appropriate Authority, Calcutta immediately or receipt of the letter.

The paragraph 2 of the said notice runs as under :

2. In this contest your attention is invited to the provisions of Section 269-UE(1) of the I. T. Act, as amended by the Finance Act, 1993 in terms of which the property in questions has vested in the Central Government on the date when the order was passed u/s 269-UD(1) of the I.T. Act, namely, 31st March, 1995. The said vesting of the property must be in terms of the agreement for transfer, that is in terms of Clauses 1 and 4 of the agreement dated 8th December, 1994 and the property has vested in the Central Government free from all encumbrances on 31st March. 1995.

(g) The Central Government deposited the apparent consideration with the Appropriate Authority on April 28, 1995.

(h) On or about May 12, 1995 the present writ petition was moved challenging the actions of the Appropriate Authority u/s 269 UD(1). In a supplementary affidavit dated May 15, 1995 it was specifically stated that the Appropriate Authority did not tender the amount of apparent consideration to the owners in terms of the provisions of Sections 269 UF and UG.

2. A learned single judge of this court by the judgment and order dated March 27, 1996 disposed of the writ petition holding that the Central Government has failed to carry out the obligations imposed upon it by the Income Tax Act, 1961 and the deposit made by it was not in compliance with the said Act and therefore, the said deposit was an invalid deposit. It was, further, held that the order of vesting stood abrogated in view of the specific provisions contained in Section 269UH(1) and the subject property stood reinvested to the original owners. Appropriate Authority was directed to issue necessary declaration and to

take all steps u/s 269UH(2) of the said Act. It was held that the right of the Government to get possession of the property, which has vested in it, was not dependent upon performance of any agreement by the seller.

3. Being aggrieved the present appeal has been filed by the respondents in the writ petition. It is submitted that as in spite of demand possession was not delivered by the owners, the amount was not tendered to the owners, but was deposited with the Appropriate Authority within the time and as such the learned judge ought not to have held that such deposit of amount with the Appropriate Authority was invalid and therefore, the subject property stood re-vested in the original owners.

4. The relevant provisions of the Income Tax Act, 1961 are as under:

269UG(1) The amount of consideration payable in accordance with the provisions of Sections 269UF shall be tendered to the person or persons entitled thereto, within a period of one month from the end of the month in which the immoveable property concerned becomes vested in the Central Government under sub-section (1). or as the case may be, sub-section (6), of Section 269UE:

Provided that if any liability for any tax or any other sum remaining payable under this Act, the Wealth Tax Act, 1957 (27 of 1957), the Gift-tax Act, 1958 (18 of 1958), the Estate Duty Act, 1953 (34 of 1953), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), by any person entitled to the consideration payable u/s 269UF, the appropriate authority may, in lieu of the payment of the amount of consideration. set off the amount of consideration or any part thereof against such liability or sum, after giving an intimation in this behalf to the person entitled to the consideration.

(2) Notwithstanding anything contained in sub-section (1), if any dispute arises as to the apportionment of the amount of the consideration amongst persons claiming to be entitled thereto, the Central Government shall deposit with the appropriate authority the amount of consideration required to be tendered under sub-section (1) within the period specified therein.

(3) Notwithstanding anything contained in sub-section (1), if the person entitled to the amount of consideration does not consent to receive it, or if there is any dispute as to the title to receive the amount of consideration, the Central Government shall deposit with the appropriate authority the amount of consideration required to be tendered under sub-section (1) within the period specified therein:

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of the amount of consideration for any immoveable property vested in the Central Government under this Chapter to pay the same to the person lawfully entitled thereto.

(4) Where any amount of consideration has been deposited with the appropriate authority under this Section, the appropriate authority may, either of its own

motion or on an application made by or on behalf of any person interested or claiming to be interested in such amount, order the same to be invested in such Government or other securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefits there from as they might have had from the immovable property in respect whereof such amount has been deposited or as near thereto as may be.

269 UH(1) If the Central Government fails to tender under-section (1) of Section 269 UG or deposit under sub-section (2) or sub-section (3) of the said section, the whole or any part of the amount of consideration required to be tendered or deposited there under within the period specified therein in respect of any immovable property which has vested in the Central Government under sub-section (1) or, as the case may be, sub-section (6) of Section 269 UE, the order to purchase the immovable property by the Central Government made under sub-section (1) of Section 269 UD shall stand abrogated and the immovable property shall stand re-vested in the transferor after the expiry of the aforesaid period :

Provided that where any dispute referred to in sub-section (2) or sub-section (3) of Section 269 UG is pending in any court for decision, the time taken by the court to pass a final order under the said sub-sections shall be excluded in computing the said period.

(2) Where an order made under sub-section (1) of Section 269 UD is abrogated and the immovable property re-vested in the transferor under sub-section (1), the appropriate authority shall make, as soon as may be, a declaration in writing to this effect and shall-

(a) deliver a copy of the declaration to the persons mentioned in sub-section (2) of Section 269 UD; and

(b) deliver or cause to be delivered possession of the immoveable property back to the transfer or, as the case may be, to such other persons as was in possession of the property at the time of its vesting in the Central Government u/s 169 UE.

5. The said relevant provisions of the Income Tax Act, 1961 have been considered by various High Courts and our attention has been drawn to the following decisions. The Gujarat High Court in Hotel Mardias Pvt. Ltd. Vs. Union of India and Others, held :

The recovery of possession of the property has not been made a ground under the statute itself for withholding payment. On the contrary u/s 269 UE, the appropriate authority or any person duly authorised by the appropriate authority are empowered to take vacant possession of the property either on surrender by the occupants or by use of such force as may be necessary. For that purpose u/s 269 UE(4) the appropriate authority is empowered to requisition the services of a police officer for taking possession and on such requisition the police officer is

duty bound to comply with such requisition. If in this process any person in possession has recourse to legal proceedings to protect his rights claimed by him and the authority is restrained from taking possession of it, it cannot affect the obligation of the Central Government to tender the amount of consideration to the person entitled and does not permit the Central Government u/s 269 UD to deposit the amount with the appropriate authority. In this connection it is further to be noticed that under the scheme of the Act, the vesting of the property does not wait until taking of possession by the appropriate authority. After vesting of property takes place the taking over of possession is left to an act of voluntary surrender of the occupant or on use of such force as is necessary by the appropriate authority to secure vacant possession.

Once we have come to the conclusion that the amount of consideration was not tendered within the time prescribed u/s 269UG and there was no ground for making deposit to the appropriate authority the consequence which has been provided u/s 269UH would necessarily follow, namely the order of purchase shall stand abrogated and the immovable property shall stand reverted to the transferor on the expiry of the period in which amount was to be tendered but has not been so tendered.

6. A division bench of the Patna High Court in the case of Ashis Mukherji vs. Union of India & Ors. reported in 220 ITR 168 held that in case of pre-emptive purchase of Immoveable property Section 269 UF of the Income Tax Act, 1961 laid down that the Central Government should pay, by way of consideration for such purchase, an amount equal to the amount of apparent considerations. u/s 269 UG the amount of consideration so payable was to be tendered to the person entitled thereto within a period of one month from the end of the month in which the immovable property concerned became vested in the Central Government. However, if the person entitled to the amount of consideration did not consent to receive it, or if there was any dispute as to the title to receive the amount of consideration, the Central Government should deposit with the Appropriate Authority the amount of consideration required to be tendered under the provisions of Section 269 UG of the Act. A challenge to the order of pre-emption would not be a ground not to comply with the provisions of sub-section (1) of Section 269 UG and "to resort to sub-section (3) of Section 269 UG of the said Act.

7. In our view, by virtue of provisions of Section 269 UE(1) of the said Act the vesting of the property in the Central Government is by operation of law and therefore, automatic on passing of an order by the Appropriate Authority u/s 269 UD (1) of the said Act. The vendors had no choice either to accept or reject the offer. The Central Government in view of the order of vesting was entitled to take possession of the subject property by operation of law and the taking over of possession was not dependent on any contractual performance by the owners. It is incumbent duty on the transferors to surrender and deliver possession of the subject property to the Appropriate Authority and in the event of their refusal or

failure to surrender or deliver possession of the subject property, the Appropriate Authority or any other person duly authorised by it may take possession of the immovable property and may, for that purpose, use such force as may be necessary. This is possible because of the clear language of the provisions of Section 269 UE (3) of the said Act. It is open to the Appropriate Authority to resort to police help. In view of the language of Section 269 UG of the said Act regarding payment within the time stipulated therein or deposit of money in cases of contingencies as envisaged in Sections 269 UG (2) and (3), the provisions are clearly mandatory in character. Moreover, the consequence of failure to pay or tender in time or deposit in the circumstances mentioned in Section 269 UG is clearly stated in Section 269 UH of the said Act, that is the property stands re-vested in the owner on the expiry of the said period.

8. In this case, admittedly, there was no dispute as to title of the joint trustees. The joint trustees never refused, neither individually nor jointly, to accept the apparent consideration amount. In fact, the consideration amount was never tendered to the joint trustees. The alleged deposit was made by the Central Government with the Appropriate Authority on a plea that possession was not delivered by the owners. The Central Government had no justification in not tendering the amount to the trustees "and the plea taken by them is wholly unjustified.

9. Section 269 UG contemplates the contingencies when the amount of consideration could be deposited by the Central Government with the Appropriate Authority :

(a) In case of any dispute as to the apportionment of the amount of consideration amongst persons claiming to be entitled thereto.

(b) in case the persons entitled to the amount of consideration do not consent to receive it or if there is any dispute as to the title to receive the amount of consideration.

10. Only in cases of the aforesaid two situations, the Central Government is entitled to deposit the amount of apparent consideration with the Appropriate Authority. When no such contingencies existed, the Central Government could not have deposited the amount with the Appropriate Authority and any deposit in the absence of such contingencies is invalid and the subject property automatically stood- re-vested in the original owners. In the case in hand the aforesaid two situations do not exist at all. Therefore, deposit by the Central Government was rightly held to be invalid.

11. In view of our discussions made herein above, we do not find any error in the decision of the learned single judge.

12. The appeal is thus, dismissed.

13. There will be no order as to costs. Let Xerox certified copy of this order, if applied for be supplied to the parties on urgent basis.

Ashok Kumar Mathur, C.J.

I agree.