
(1997) 01 CAL CK 0019
In the Calcutta High Court
Case No : C.O. No. 5779 (W) of 1994

Webster Industries Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 269UD(3), 269UD(1)

Citation : (1997) 1 CALLT 471 : (1997) 225 ITR 924 : (1998) 96 TAXMAN 311

Hon'ble Judges : V.K. Gupta, J

Bench : Single Bench

Advocate : Pradip Ghosh and Gurudas Mitra, Pranab Pal and Manisha, for the Appellant; R. Murarka, S. Panda and Jaydeb Saha, for the Respondent

Judgement

This Judgment has been overruled by : Appropriate Authority and Commissioner Income Tax Vs. Smt. Varshaben Bharatbhai Shah and Others, AIR 2001 SC 1339 : (2001) 166 CTR 373 : (2001) 248 ITR 342 : (2001) 3 JT 468 : (2001) 2 SCALE 411 : (2001) 4 SCC 1 : (2001) 2 SCR 349 : (2001) AIRSCW 3174 : (2001) AIRSCW 1069 : (2001) 2 Supreme 305 : (2001) 6 Supreme 327

V.K. Gupta, J.—In this petition filed under Article 226 of the Constitution of India, the writ petitioners, Webster Industries Pvt. Ltd., which is a company incorporated under the Companies Act and petitioner No. 2 who is the managing director of this company have challenged an order dated May 31, 1994, passed by the appropriate authority, i.e., respondent No. 2 in this petition, in terms of Section 269UD(1) of the Income Tax Act, 1961, whereby, after observing that the fair market value of the property in question exceeds by more than 15 per cent. the declared total apparent consideration, an order has been passed for pre-emptive purchase of the said property by the Central Government u/s 269UD(1) of the Income Tax Act. While thus exercising such power, the appropriate authority ordered the purchase of the said immovable property located at 24, Netaji Subhas Chandra Bose Road, Calcutta, by the Central Government at an

amount of declared apparent consideration of Rs. 19.405 lakhs only. The facts leading to the filing of the petition are that respondents Nos. 4 to 16, being the successors-in-interest of one Munshi Abdul Kader (since deceased), son of the late Chand Mistry, claimed to be the co-owners and joint sharers of the property in question. According to them, the said Munshi Abdul Kader claimed the rayet 100 Zaminder Pravash Chandra Mondal and others in respect of the property in question and after the abolition of the Zamindari Pratha, the said Abdul Kader became the absolute owner lawfully of the said property and came into its possession by constructing a two-storied building which he used for his residence. The name of Munshi Abdul Kader was also mutated as the owner in possession of the property in question and he also started paying tax to the Tollygunge Municipality. The said property was duly assessed with Tollygunge Municipality in the name of the deceased Abdul Kader as Municipal Premises No. 166/2, Russa Road South, Calcutta-700 033. It is also claimed that the said Abdul Kader who was absolutely seized and possessed of the property died intestate on March 26, 1951, leaving behind him his widow and seven sons. Among other things, it has also been claimed that respondents Nos. 4 to 16 being the sole surviving legal heirs and representatives as also successors-in-interest of the said Abdul Kader became the absolute co-owners and joint sharers of the property in question which was also in their possession, except a portion thereof which was in the possession of some tenants of the property. At present the property is claimed to be measuring 19 kathas of land with a two-storied building constructed thereupon and situate at 24, Netaji Subhas Chandra Bose Road, Calcutta. It is claimed by the petitioners that they entered into an agreement with respondents Nos. 4 to 16 on December 21, 1993, whereby the respondents agreed to sell and the petitioners agreed to purchase the said property for a consideration of Rs. 20 lakhs.

2. Pursuant to the execution of the aforesaid agreement, the petitioners filed before the appropriate authority under the Income Tax Act, 1961, a statement of transfer of immovable property required to be furnished to such appropriate authority in terms of Section 269UC(3) of the Income Tax Act in Form No. 37-I. This statement in Form No. 37-I was filed on February 18, 1994, but on May 20, 1994, petitioner No. 1 was served with a show-cause notice calling upon it to explain as to why the property sought to be transferred should not be purchased by the Central Government under its pre-emptive purchase rights contained in Section 269UD(1) of the Income Tax Act. In the said notice, the petitioner was also informed that the fair market value of the property in question as on the date of agreement for transfer had been fixed by the appropriate authority at Rs. 60.72 lakhs as unencumbered value of the property as against the apparent declared consideration of Rs. 20 lakhs as it was recorded in the agreement for sale. The petitioners submitted their reply on May 26, 1994, to the aforesaid show-cause notice and pleaded that the agreement for sale between them and respondents Nos. 4 to 16 in effect and substance amounted to as many transfers as there were co-owners of the property, that is, 13 in all with respective specific

shares of all the co-owners who succeeded the deceased Abdul Kader in terms of the Mohammedan law of inheritance and, therefore, the transfer in the said case did not and could not attract the provisions relating to pre-emptive purchase as contained in Chapter XX-C of the Income Tax Act, 1961, and that the exercise of the pre-emptive power of purchase conferred by the said Chapter of the Act was neither appropriate nor proper. The case of the petitioners is that under the law of inheritance governing the Muslims, each co-owner is a co-transferor in the agreement for sale and he having a specific share in the undivided joint ownership property can sell his own share and thus, even if one composite agreement is executed by 13 co-owners and co-sharers, each of them could be deemed to have executed an agreement for sale and therefore even if the total apparent unencumbered consideration of the property may be considered to be above Rs. 60 lakhs, yet the property could not attract the provisions of pre-emptive purchase by the Central Government because the share of each of the 13 co-owners would in any case come to be less than Rs. 10 lakhs as per sale transaction. The petitioners claimed that even though there was a composite agreement for sale, this should be construed as 13 sale agreements because all the 13 co-owners have sold their respective specified shares in the property and since the value of each respective specified share is less than Rs. 10 lakhs, the exercise of the power under Chapter XX-C of the Income Tax Act was neither warranted nor called for.

3. The respondents have denied the contentions of the petitioners and have stated that the property in question was one and that even though there were 13 co-owners, still the provisions contained in Chapter XX-C of the Income Tax Act were attracted in such cases because the shares of the co-owners were neither specified nor identified, nor defined. Various other submissions were also made in support of the action of the respondents for resorting to pre-emptive purchase and it was alleged that the order impugned in the petition passed on May 31, 1994, by the appropriate authority was both legal and justified.

4. The main thrust of the arguments of respondents Nos. 1 to 3 is that respondents Nos. 4 to 16 have entered into an agreement among themselves to form an association of persons to transact a joint venture to sell the property in question and share the receipts and profits arising therefrom amongst themselves. According to respondents Nos. 1 to 3, respondents Nos. 4 to 16 entered into the agreement dated September 21, 1993, with the petitioners only with the purpose of forming an association of persons and to transact a joint venture for selling the property. They have disputed that the said property devolved upon them because of the inheritance of the property under the Muslim law of succession.

5. Respondents Nos. 4 to 16 undoubtedly are the inheritors of the property in question from their predecessor-in-interest, namely, Munshi Abdul Kader. It cannot be said that they formed themselves into an association of persons for a joint venture of selling the property. In fact at the time that Munshi Abdul Kader

died, the property devolved upon these respondents by virtue of their being his successors-in-interest under the Muslim law of inheritance. The property inherited by these respondents was undoubtedly received by them in their capacity as the legal representatives and heirs of the deceased Munshi Abdul Kader and, therefore, they became its co-owners. Each one of them had his/her share in the property. The question whether they partitioned or divided the property or not is not a material question because in law each one of them had his/her respective share in the property which they were holding as co-owners. Each of respondents Nos. 4 to 16 could have the property partitioned by metes and bounds and thus could have executed separate sale agreements, if they so chose. Instead of executing separate sale agreements, however, they decided to enter into one composite agreement. It did not take away their right of selling the property individually. Respondents Nos. 1 to 3, therefore, could not have in law treated the transaction as a composite transaction attracting the imposition of the provisions contained in Chapter XX-C of the Income Tax Act. In my opinion, even though there is one agreement to sell, it must be deemed that there are as many as 13 transactions of sale of immovable property entered into by the 13 co-owners in favour of the petitioners.

6. In the case of Surinder Gupta Vs. Chief Commissioner of Income Tax and Others, , a Division Bench of the Delhi High Court took a similar view in an identical matter. Their Lordships observed as under (page 384) :

COMMISSIONER OF Income Tax Vs. T. V. SURESH CHANDRAN AND OTHERS., was a case u/s 269C of the Income Tax Act. The transferors were co-owners having inherited the property from ancestors. They transferred the property to four persons with one deed. The competent authority initiated proceedings for acquisition of the property by treating the entire property as one. It was held that each one of the four transferees had absolute right to the property so transferred to him and in the property transferred to one, the other transferees had no right. The right of each of the transferees to the property was absolute. The fact that the transferees may make common use of the property purchased by them is a factor which would have no bearing on the purchase itself. Had the sale been effected by four instruments the case urged by the Revenue may not have arisen. It would make no difference merely because the four sales were covered by one instrument. Section 269C was held to be inapplicable."

7. To the same effect are the following observations in the case of K.V. Kishore and another Vs. Appropriate Authority and others OVERRULED, :

" After giving deep consideration to these rival submissions, the following facts would clinchingly establish the case in favour of the petitioners. It is not denied or it is not disputed that the original allottee, A. Srinivasan, died in the year, 1962. He being a Hindu, governed by the Hindu Succession Act, on his death, his wife and children acquired a vested right to the definite quantified shares in the property left behind by him, As owners of their respective shares, they were competent to enter into a family arrangement which they did on April 8, 1987,

under the terms of which, each one of respondents Nos. 4 to 8 were allotted a definite share in the property. After April 8, 1987, they were individual owners of definite shares in the property. Each one could deal with only his respective share and he cannot deal with the share of another. The property which so fell to the share of each individual will come definitely within the definition of the words "immovable property". Such a sharer was entitled to transfer his immovable property to a third person. Merely because a plurality of such individual owners joined together to enter into one single agreement to transfer their respective shares in favour of one or more persons, that would not make any difference to the main issue that what each transferred is his definite share in the property. Viewed from that perspective, the agreement entered into between the petitioners and respondents Nos. 4 to 8 is to be understood only as an agreement to convey the respective undivided shares of respondents Nos. 4 to 8. It is not in dispute that the value of each such share is less than Rs. 10,00,000. The recitals in the agreement in more than one place refer to the fact that what is sold is the individual undivided share in the property. Consequently, the impugned order made under Chapter XX-C of the Act taking the total consideration, the collective shares, cannot be sustained (sic). Both the writ petitions are, accordingly, allowed. No costs."

8. In the case of *Appropriate Authority and others Vs. J.S.A. Raghava Reddy and others*, , a Division Bench of the Karnataka High Court took the following view (at page 511) :

" Under the general law, a single property can be owned by more than one person and, in that event, each will be a co-owner along with others. Each one will be entitled to sell his share according to his own will and wish. The other co-owners will not be entitled to place any embargo nor is their consent required for such a sale. For all purposes, a co-owner will be the owner of his definite share in the property and he is entitled to alienate his share on his own account without the consent of the other co-owners. The fact that all the co-owners together agree to sell the property to one or more persons and agree to convey it under one sale deed does not in any way make them joint owners of the property. The property may be one item, in other words, it may be a building or a piece of land but, in law, it will have to be considered as consisting of as many different bits of property as there are co-owners. The general law which is not overridden by Section 269UC of the Act permits and recognises plurality of ownership. Therefore, for the purpose of Section 269UC of the Act, the value of the share of each co-owner has to be taken into account and not the total value of the shares of the co-owners even when all of them together sell the property and convey the title under one deed. "

9. On a detailed consideration of all relevant facts and circumstances I have no doubt in my mind that the provisions of Chapter XX-C are not attracted in the present case and in this transaction, because admittedly the share of each of the sellers was less than Rs. 10 lakhs, even if the fair market value of the property

could be considered to be more than Rs. 60 lakhs. That being the case, therefore, respondents Nos. 1 to 3 were not justified in taking recourse to their power of pre-emptive purchase of the said property in terms of Section 269UD(1) of the Income Tax Act. While, therefore, allowing this petition, I quash and set aside the impugned order dated May 31, 1994, passed by respondent No. 2 and the consequent communication dated June 22, 1996, issued by respondent No. 3 with all consequences. A writ of mandamus is accordingly also issued directing respondent No. 2 to issue a "no objection certificate" in favour of the petitioners.

10. Oral prayer for stay of this order is rejected.

11. Writ application allowed.