**Appropriate Authority Vs. Mass Traders Private Ltd.**

**Appropriate Authority Vs. Mass Traders Private Ltd.**

**SooperKanoon Citation** : sooperkanoon.com/378183

**Court** : Karnataka

**Decided On :** Mar-01-1993

**Reported in** : (1993)111CTR(Kar)294; ILR1993KAR1018

**Judge** : K.A. Swami, Ag. C.J. and ;N.D.V. Bhat, J.

**Acts** : Income Tax Act, 1961 - Sections 269UD(1)

**Appeal No.** : W.A. Nos. 2164 and 2165 of 1992

**Appellant** : Appropriate Authority

**Respondent** : Mass Traders Private Ltd.

**Advocate for Def.** : G. Sarangan and ;Ramabhadran, Advs. for R-1 and ;S.G. Bhagwan, Adv. for R-2 and R-3

**Advocate for Pet/Ap.** : H.L. Dattu, Stdg. Counsel for Income-tax Dept. for ;Raghavendra Rao, ;S.V. Seshachala and ;M.R. Naik, Advs.

**Judgement** :

K.A. Swami, Ag.C.J

1. These Appeals are preferred against the order dated 23.10.1992 passed by the learned single Judge in Writ Petition Nos. 14319 and 14320 of 1989 respectively, The learned Single Judge has allowed the Writ Petitions and quashed the order dated 25.7.1989 passed by the Appropriate Authority under Section 269-UD(1) of

Chapter XX-C of the Income Tax Act (hereinafter referred to as the Act). The Appropriate Authority has directed that the properly in question bearing Municipal Nos. 4 and 5 (New Nos.9 and 11) situated at Infantry Road, Bangalore be purchased under Section 269-UD(1) of the Act. The learned Single Judge has quashed the order on the following grounds:

That on an earlier occasion, the Appropriate Authority has considered the consideration of Rs. 1,25,02,500/- for the 2nd respondent's share and Rs. 41,67,500/- for the 3rd respondent's share as adequate and granted 'No Objection Certificate' for registration of the sale transaction under Section 269-UD(1) of the Act on 27.6.1988; that during the gap of one year escalation if any, in the price has been taken care of because the difference in the consideration amount between the earlier Agreement of Sale dated 28.4.1988 and the percent Agreement of Sale dated 22.5.1989 is Rs. 17,36,325/-; that the Reserve Bank of India has accepted the price quoted in respect of the share of the 3rd respondent; that the order dated 25.7.1989 does not disclose any such circumstances leading to suspicion in the mind of the Authority, that there is hardly any application of the mind by the Appropriate Authority to the relevant facts arising in the case. On the aforesaid grounds, the learned single Judge has come to the conclusion that there is no justification for passing an order of pre-emptive purchase only because there is a different purchaser by a different agreement a little later. Therefore, respondents 1, 4, 5 and 6 in the Writ Petitions have come up in these Appeals.

2. Before we examine the correctness of the reasons given by the learned single Judge, it is necessary to state the relevant facts which are not in dispute:

The property in question bearing Municipal Nos.4 and 5 (new Nos. 9 and 11) is situated in the corner of Queen's Road and Infantry Road. The width of the Queen's Road is 20.15 metres and that of the Infantry Road is 18.75 metres. The properly measures 43,309 Sft. It consists of a main building and a out-house covering an area of 960 Sq.mts.

3. Originally, the property in question was owned by one O.C.M. Maneckji. He purchased it in a Court auction on 20.3.1952. The auction sale was confirmed on 10.2.1953. The aforesaid O.C.M. Maneckji sold the property in question to Sri

Nariman K. Irani and his wife Smt. Aimai N. Irani who is the 2nd respondent in this Appeal on 14.5.1957 for a sum of Rs. 61,000/-. Thus, Smt. Aimai N. Irani was the joint owner along with her husband Nariman K. Irani, who died on 4.1.1972. Consequent on the death of Nariman K. Irani, his son -respondent No. 3, Darius N. Irani became entitled to half-share in the half share of Nariman K. Irani, and his wife R-2 to the remaining share of Nariman K. Irani as per the personal law governing the Parsis. Thus, Smt. Aimai N. Irani became the owner of 3/4th share of the property in question and the 3rd respondent-her son became entitled to 1/4th share.

4. The 3rd respondent is a non-resident Indian whereas, the 2nd respondent is an Indian resident. The property in question, in the first instance, was agreed to be sold to M/s Neat Holding and Trading Company Pvt. Ltd., Bombay on 28.4.1988. The 3/4th undivided share of the 2nd respondent was agreed to be sold for a sum of Rs. 1,25,02,500/- and the 1/4th undivided share of the 3rd respondent was agreed to be sold for a sum of Rs. 41,67,500/-. Thus, the total consideration amount agreed upon as per the. Agreement dated 28.4.1988 in favour of M/s Neat Holdings and Trading Company Private Limited, was Rs. 1,66,70,000/-.

Pursuant to the aforesaid Agreement, an application in Form No. 37-1 was filed before the Appropriate Authority seeking permission for effecting the registration of sale. The Appropriate Authority by the order dated 27.6.1988 granted 'No Objection Certificate'. It is relevant to mention the reasons given in that order because, the learned single Judge has taken a view that there is no application of mind by the Appropriate Authority while refusing to grant 'No Objection Certificate' with reference to the second agreement dated 22.5.1989. The relevant portion of the proceedings dated 27.6.1988 of the Appropriate Authority containing the reasons for the issue of purchase order are as under:

'We find that the property in question is a large plot extending to about 43,300 Sq.ft with old buildings thereon. It faces the Infantry Road. The land rate as per agreement works out to Rs. 382/- per sq.ft. after adjusting the salvage value of old buildings and structures. On the basis of development method, assuming a flat selling rate of Rs. 475/- per Sq.ft. and FAR of 2, the land rate obtaining in this case

would be Rs. 451/- per sq.ft. It is understood that the transferors have obtained clearance from the Urban Land Ceiling and Regulation Authorities for the proposed transfer. There are three tenants in the property at the moment. They are M/s. Phoenix Ice Factory, M/s. Mahalaxmi Agencies and Mahalaxmi Transports. While both Smt. Aimai N. Irani and Sri Darius N. Irani are partners in M/s. Phoenix Ice Factory, the former is a partner in M/s. Mahalaxmi Agencies as well. As per the agreement, the transferors have undertaken to deliver vacant possession of the property free for tenants and other encumbrances. The factual circumstances would indicate that the consideration is undervalued to some extent. However, we do not consider it feasible to make an order of pre-emptive purchase in this case for the following reasons;

Past sale instances do not strongly justify pre-emptive purchase, as no higher price has been offered so far in the locality. On enquiry, it is revealed that no clear understanding has been reached between the transferors on the one hand and the tenant-firms on the other hand regarding eviction of the latter. The multiplicity of tenants is certainly an inhibiting factor as chances of litigation in the event of Government's taking over the property are greater. The sale is contemplated to take place only after vacating the tenants. We, therefore, deem it expedient not to consider this case for purchase Under Section 269-UD(1). Accordingly we decide to issue 'No Objection Certificate' in this case.'

5. For reasons best known to the parties, the Agreement dated 28.4.1988 executed in favour of M/s. Neat Holding and Trading Company Private Limited, did not go through. Consequently, respondents-2 and 3 after a lapse of one year and one month entered into a fresh Agreement with the present respondent-1 on 22.5.1989. The undivided share of the 2nd respondent was agreed to be sold for a sum of Rs. 1,38,04,850V- and the 1/4th undivided share of the 3rd respondent was agreed to be sold for a sum of Rs. 46,01,475/-. Thus the total consideration agreed upon was Rs. 1,84,06,325/-. As already pointed out the difference in the consideration amount between the two transactions is in a sum of Rs. 17,36,325/-. After the agreement was entered into on 22.5.1989 an application in Form No. 37-l R/W Rule 48-L of the Income-tax Rules, 1962 was filed before the Appropriate Authority for permission to register the sale deed. The Appropriate Authority by the

order dated 25.7.1989 has refused to grant the permission and has held that it is a fit case to issue the purchase order under Section 269-UD(1) of the Act and it has accordingly directed that the property in question be purchased preemptively.

6. The reasons given by the Appropriate Authority for taking a view different from the one it took on 27.6.1988 are reflected in the proceedings dated 25.7.1989 containing the reasons recorded for holding that it is a fit case for the issue of purchase order. In paras 1 to 5 of the proceeding the Appropriate Authority has dealt with the previous history relating to the property, its location and the previous transaction of Agreement of Sale dated 28.4.1988 and its previous order dated 27.6.1988. It has also been noticed that the 3rd respondent is a non-resident Indian and he is presently residing in the United States of America. In para-6 of the order, the FAR has been worked out at 2 and the average flat rate is referred to at Rs. 650/- per Sft. It has also been further stated that the Executive Engineer worked out the land value as per development method at Rs. 695/- per Sft. In para-7 of the order, the value of the properties situated at M.G.Road, Bangalore have been referred to. In addition to this, a sale agreement in respect of the property relating to Nos. 11 and 11-A on the Queen's Road has also been referred to. This property measured 6360 Sft. Out of this, a portion was agreed to be sold for a sum of Rs. 33,68,000/- on 19.4.1989. The land rate was worked out at Rs. 609/- per Sft. after discounting for the delay and also giving due allowance to the salvage value of the existing old structure. It is also stated that the said land is located 10ft. below the Queen's Road in a depressed area whereas the land at Nos.4 and 5 (New Nos. 9 and 11), Infantry Road is a corner site with an excellent geometrical shape and fairly levelled. In para-8 of the proceeding the previous Agreement of Sale with M/s. Neat Holdings & Trading Co. (P) Ltd., is referred to. The reasons which prevailed upon the authority to give 'No Objection Certificate' are stated thus;

'(a) the land rate as per agreement worked out to Rs. 382/- per 'Sft. after adjusting the salvage value of the old structures. On the basis of development method assuming a flat selling rate of Rs. 475 per sft. and FAR of 2, the land rate was determined at Rs. 451/- per sft.

(b) Past sale instances did not strongly justify pre-emptive purchase as no higher price was offered in the locality; and

(c) that on enquiries, it was clear that there was no clear understanding between the transferor(s) and transferee(s) on the one hand and the tenant-firms on the other hand regarding their eviction. The multiplicity of tenants was an inhibiting factor.'

Then in para-9 the notice issued by M/s. Neat Holdings & Trading Co. (P) Ltd., regarding the Agreement entered into by respondents-2 and 3 in its favour is referred to. Ultimately, in para-10 it is stated thus:

'It may also be mentioned here that the property at No. 6 (Old No. 4-A) Infantry Road was purchased under Section 269-UD(1) on 28.6.1989. The property at No. 6, Infantry Road is adjacent to the property which is under consideration. The property at No. 6, Infantry Road was offered for sale by an agreement of 14.4.1989 at a gross consideration of Rs. 66,30,000/-. The land area was 14,200 sft. with an old building having plinth area of 4598 sft. After taking into account the salvage value the land rate was worked out to Rs. 457/- per sft. The said property was purchased having regard to the sale instances of flats in and around Infantry Road. It is also noticed that Sri D.N. Irani obtained the permission of Reserve Bank of India for sale of his undivided interest in the property to Mass Traders Pvt. Ltd. as required under Foreign Exchange Regulation Act, 1973. It is also observed from the proceedings of the Special Deputy Commissioner, Urban Land Ceiling, that there is no excess vacant land in the premises at No.4& 5 (New Nos.9 and 11), Infantry Road, Bangalore.'

On the basis of the aforesaid reasons the Appropriate Authority has held that it is a fit case for issuing purchase order under Section 269-UD(1) of the Act

7. Before formulating the points for determination it is necessary to refer to the various Interim Orders passed in the Writ Petitions. The Writ Petitions were filed On 16th August 1989 and came up for Preliminary Hearing before the Court on 17th August 1989. The learned Standing Counsel for the Central Government was directed to take notice for the respondents on that day and the petitions were

directed to be called on 21st August 1989. On 21st August 1989, the Rule was issued. The learned Standing Counsel for the Central Government informed the Court that on 17th August, 1989 itself, the owners had handed over vacant possession of the premises in question to the Income-tax Officer (Public Relations). The owners insisted for payment of the consideration amount by the Central Government. It was also submitted on behalf. of the Central Government that it was ready to tender the amount to the vendors subject to their furnishing the Bank Guarantee for the consideration amount. Recording these submissions, the Court further directed as follows:-

'Since the validity of Chapter XX-C is binding decision before the Supreme Court, the further proceedings pursuant to the order made by the Competent Authority such as sale by the Central Government are stayed and the Central Government is also restrained from altering the nature of the properties during the pendency of the Writ Petitions.'

On 31st August 1989, it was brought to the notice of the Court that the amount has to be paid as per Section 269-UD of the Act, within a period of one month from the end of the month in which the property in question came to be vested in the Central Government under Section 269-UE(1) of the Act. Therefore, the Court passed an order granting time to make payment by the Central Government upto the date of furnishing Bank Guarantee. On 12.9.1989, the order dated 21.8.1989 was modified. The owners were directed to furnish Bank Guarantee in the sum of Rs. 37.5 Lakhs in favour of the Chief Commissioner (Income-Tax), Karnataka and thereupon the Central Government was directed to pay the entire consideration agreed under the two documents to respondents 2 and 3 subject to the result of the Writ Petitions. In the Final Order dated 23.10.1992, as pointed out earlier, the learned Single Judge apart from quashing the order of the Appropriate Authority, has also further directed thus:

'Pursuant to the interim order made by this Court the Department has paid a sum of Rs. 1,84,06,325/- to respondents 2 and 3 and a little more than Rs. 30 Lakhs has been deposited to the credit of the petitioner in Bank. That money shall be adjusted towards the monies that have been paid by the department to

respondents Nos. 2 & 3 and the balance amount shall be paid by the petitioner to the appropriate authority and on that the respondents shall consider issue of no objection certificate. It is certainly open to the petitioner to work out modalities to get the sale deed executed from respondents 2 and 3 as also other documents after no objection certificate is issued by the concerned authority. The amounts to be paid and adjusted shall be made within a period of 30 days from today.

The department wants to recover interest from the petitioner. Such a question does not arise at all. Whatever amounts have been paid is in lieu of consideration of the sale of property. Property was in possession of the Department until now just as the amount paid is in possession of sellers. If on that amount department seeks to claim interest seller/petitioner can claim damages for deprivation of possession. Neither of the reliefs can be granted to either of them. Further certain amount is deposited to the credit of petitioner under interim order of this Court and department cannot have any claim over the interest thereof.'

8. In the light of the contentions urged on both the sides and also by Sri M.R. Naik, learned Counsel appearing for the intervener, the following Points arise for our Consideration:

(1) Whether the intervener Sri R.K. Kapur share-holder of 1st respondent-Company, has locus standi to challenge the order of the Appropriate Authority and to intervene as such in the proceedings?

(2) Whether the purchaser viz., the first respondent had the right of hearing before the Appropriate Authority and to show cause as to why the pre-emptive purchase order should not be passed?

(3) Whether the purchaser has the right to challenge the order of the appropriate authority in the facts and circumstances of the case?

(4) Whether the order of the learned Single Judge is sustainable?

(5) What order?

POINT NO.1

9. According to the case of the intervener Sri R.K. Kapur, he is a shareholder of the first respondent-Company. The contention of Sri M.R. Naik, learned Counsel appearing for Sri Kapur is that by reason of the pre-emptive order of purchase made by the Appropriate Authority, his interest as a shareholder of the first-respondent-Company is affected; therefore, he has a right to challenge the order of the Appropriate Authority. It is relevant to notice that the agreement of sale has been entered into by the 1st respondent-Company with respondents Nos. 2 and 3. The 1st respondent-Company is a corporate body and it is a separate legal entity and it can neither be equated to Sri Kapur nor his interest be equated to the interest and assets of the Company though he may be one of the shareholders of the Company. More or less a similar question arose in Mrs. BACHA F. GUZDAR v. COMMISSIONER OF INCOME TAX, BOMBAY, : [1955]27ITR1(SC) . In that case, it has been held that a shareholder acquiring right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. A shareholder has not got a right in the property of the company. There is nothing in the Indian Law to warrant the assumption that a share-holder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the share-holders. The true position of a shareholder is that on buying shares, he becomes an investor entitled to participate in the profits of the company in which he holds the shares if and when the company declares, subject to the Articles of Association, that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in the profits of the company which would be left over after winding up but not in the assets as a whole.

9.1 Similarly, in DAMAN SINGH AND ORS. v. STATE OF PUNJAB AND ORS, : [1985]3SCR580 a question arose as to whether the interest of a member of a co-operative society would be equated to the interest of the cooperative society. It was held thus:

'11. The next submission of the learned Counsel was that Section 13(8), (9) and (10) did not make express provision for the issue of notice to the members of the concerned Co-operative Societies and were, therefore, violative of the principles of

natural justice. He argued that in the absence of any provision, the rules of natural justice may be read into the provisions and notice to the members of the affected societies was imperative. Otherwise, he argued, members of one society would be forced against their will and without being heard to associate themselves with members of another society. We have no hesitation in rejecting this submission also. Once a person becomes a member of a co-operative society, he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the by-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body. So, if the statute which authorises compulsory amalgamation of co-operative societies provides for notice to the societies concerned, the requirement of natural justice is fully satisfied. The notice to the society will be deemed as notice to all its members. That is why Section 13(9) (a) provides for the issue of notice to the societies and not to individual members. Section 13(9)(b), however, provides the members also with an opportunity to be heard if they desire to be heard. Notice to individual members of a co-operative society, in our opinion, is opposed to the very status of a co-operative society as a body corporate and is, therefore, unnecessary. We do not consider it necessary to further elaborate the matter except to point out that a member who objects to the proposed amalgamation within the prescribed time is given, by Section 31 (11), the option to walkout, as it were by withdrawing his share, deposits or loans as the case may be.'

Following the aforesaid Decision, in M.P. ANANTHADEVARAJA URS v. STATE OF KARNATAKA, : ILR 1988 KAR3023 a single Judge of this Court, has held that a member of the Bangalore Turf Club has no independent right except those given to him by the statutes and bye-laws of the Club and he must speak through the Club only. However, Sri M.R. Naik, learned Counsel for Sri Kapur, has placed reliance on the following Decisions:

(i) Calcutta Gas Co. (Proprietory) Ltd. v. State of West Bengal & Ors., : AIR 1962 SC1044 ; (ii) Rustom Cavasjee Cooper v. Union of India, : [1970]3SCR530 (iii) Bennet Coleman & Co. Ltd v. Union of India, : [1973]2SCR757 ; (iv) The Neptune Assurance Co. Ltd. v. Union of India, : [1973]2SCR940 (v) People's Union for

Democratic Rights v. Union of India, : (1982)IILLJ454SC ;

9.2. : AIR 1962 SC1044 - Calcutta Gas Co. Case, dealt with the scope of Article 226 of the Constitution and the persons who can invoke the jurisdiction under Article 226. It was held that the legal right that can be enforced under Article 226 like Article 32 must ordinarily be the right of a person who complains of infraction of such right and approaches the Court for relief. It was also held that the right that can be enforced under Article 226 shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the Writs like Habeas Corpus or Quo-warrantor this Rule may have to be relaxed or modified. Further in that case the petitioner therein had an agreement under which he had the right to manage the Oriental Gas Company for a period of 20 years and to receive remuneration for the same. Under Section 4 of the West Bengal Oriental Gas Company Act, 1960, the petitioner therein was deprived of that right for a period of five years. Therefore, it was held that he could maintain a Petition under Article 226 of the Constitution as his right to manage the company and to receive remuneration therefor had been infringed by the provisions of the impugned Act. Therefore, it is not possible to hold that the aforesaid Decision would be of any assistance to Sri Kapur. No personal right of Sri Kapur is infringed by the impugned order. As already pointed out Sri Kapur cannot at all be equated to the company which has entered into an agreement of sale; as such, Sri Kapur being a share-holder, cannot stand in the position of a company and he can at the most participate in the profits of the company in the event the company decides to distribute its profits and not in the assets of the company as a whole.

9.3. In R.C. Cooper's Case, the question related to taking over of Banking Company and infringement of fundamental rights of its shareholder. It may be pointed out that in the case of taking over as a company, the very interest of the shareholder will be jeopardised; therefore the case of taking over of a company would stand on a different footing from the one in question. In the instant case, no interest whatsoever of Sri Kapur is affected and he continues to be the shareholder and his share is not in any way affected by the transaction in question or by the order of pre-emptive purchase passed by the Appropriate Authority. Therefore, we do not consider it necessary to refer to the said Case in greater

detail though reliance is placed on paras-15 to 18 of the Judgment, by Sri M.R. Naik learned Counsel for Sri Kapur.

9.4. In Bennett Coleman & Co. Case Rustom Cavasjee Cooper's Case was referred to at para-22 of the Judgment, and it was held that a shareholder is entitled to protection of Article 19 and that individual right is not lost by reason of the fact that he is a shareholder of the company and that the Bank Nationalisation Case has established the view that the fundamental rights of shareholders are not lost when they associate to form a company. It is further held that when their fundamental rights as shareholders are impaired by State action, their rights as such are protected as the rights of shareholders are equally and necessarily affected if the rights of the company are affected and the rights of the shareholders with regard to Article 19(1)(a) are projected and manifested by the newspapers owned and controlled by the shareholders through the medium of the corporation. It was also further held that the individual rights of freedom of speech and expression of Editors, Directors and the shareholders are all exercised through their newspapers through which they speak. The press reaches the public through the newspapers. The shareholders speak through their editors. However in the instant case, no question of any infraction or infringement of rights of shareholder of the company is involved. Hence, it is not possible to apply the proposition laid down in Bennett Coleman & Co. Case to the Case on hand and hold that Sri Kapur has a right to challenge the order of pre-emptive purchase and to intervene in the proceedings in question.

9.5. In Neptune Assurance Co. Ltd. Case again the Bank Nationalisation Case was referred and it was held that the Court would not concentrate merely upon the technical operation of the action and deny its jurisdiction to grant relief to the shareholders. If the state action impairs the rights of the shareholders as well as of the company, the locus standi of the petitioner cannot be challenged. It has already been pointed out that in the instant Case, by reason of the pre-emptive purchase no right of the shareholder of a company can be held to have been impaired; therefore, the ratio of the Decision in Neptune Assurance Company Ltd. Case also cannot be made applicable to the Case on hand.

9.6. In People's Union for Democratic Rights Case, the scope of Article 226 with reference to Article 32 was examined and also the scope of public interest litigation was considered. Therefore, it is clear that the very compass of the Case in in 'People's Union for Democratic Rights', is quite different from the one involved in the present case. No doubt, certain general observations are found in para-10 of the Judgment, but it is not possible to hold that the ratio of the said Decision is applicable to the Case on hand, inasmuch as the public interest litigation stands on a quite different footing and the considerations for deciding the question of locus standi in such case will be, not the personal right in the matter of the party invoking the jurisdiction, but on taking into consideration the public interest as the basis. In this case, no public interest which Sri Kapur can claim to share along with others is involved. Therefore, we are of the view that the ratio of the Decision in the aforesaid Case - People's Union for Democratic Rights, cannot be made applicable to the Case on hand.

9.7. Sri M.R. Naik, learned Counsel for Sri Kapur, has placed reliance on para-14 of the Judgment in S.P. GUPTA v. PRESIDENT OF INDIA AND ORS., : [1982]2SCR365 wherein it is held thus:

'14. The traditional rule in regard to locus standi is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right of legal protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such . action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress. This is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born.....

This rule in regard to locus standi thus postulates a right-duty pattern which is commonly to be found in private law litigation. But, narrow and rigid though this rule may be, there are a few exceptions to it which have been evolved by the Courts over the years,'

It has already been pointed out that no personal right of Sri Kapur is infringed and his legally protected interest as a share-holder of the company is not affected by reason or the order of the Appropriate Authority directing pre-emptive purchase. His Case also does not fall within any one of the exceptions to the rule of locus stand) as enunciated in the aforesaid S.P. Gupta's Case. At any rate, it has not been demonstrated to us that the value of his share is in any way affected or the Company has been put to a loss, to such an extent that the very value of the share is diminished. Therefore, we do not see any justification in the contention of Sri Kapur that his interest as a shareholder is affected and thereby the Decision in S.P. Gupta's Case (supra) would apply to this Case.

9.8. On the other hand, the Decision of the Supreme Court in Mrs. Bacha F. Guzdar's Case is on the point as it relates to the right of a shareholder in a company or a member of co-operative society. In this Decision, it has been held that the shareholder of a company and a member of a co-operative society cannot be equated to that of the interest of the company and a co-operative society, which are the juristic persons. Hence, we have no hesitation in holding that Sri Kapur has no locus standi to challenge the order of the Appropriate Authority, Accordingly, Point No.(1) is answered in the negative. We may also point out here that irrespective of this, we have heard Sri M.R. Naik on the merits of the Case and his contentions are similar to those which have been urged on behalf of the first, respondent.

POINT NOS. 2&3:

10. It would be convenient to consider Point Nos. 2 and 3 together. Point No. 2 relates to the question as to whether the purchaser viz., respondent-1 had the right of hearing before the Appropriate Authority and to show cause as to why pre-emptive purchase should not be ordered. Point No. 3 relates to the question as to whether the purchaser had the right to challenge the order of the Appropriate Authority in the facts and circumstances of the Case.

10.1. In so far as the question relating to the opportunity of being heard and to show cause as to why the pre-emptive purchase order should not be passed is concerned, before the Decision of the Supreme Court was rendered in C.B.

GAUTAM v. UNION OF INDIA AND ORS, (1993) 199 ITR 503 it was understood by the Department and also the Authorities concerned that no right, of hearing could be claimed by the purchaser or for that matter the owner of the property. We may also point out here that this Court in VIDYAVATI KAPOOR TRUST v. CHIEF COMMISSIONER OF INCOME TAX AND ORS., (1392) 194 ITR 584 had taken a decision that the principles of natural justice have no relevance in the context of the provisions of Section 269-UD(1) of the Act and the reasons recorded by the Appropriate Authority need not also be communicated to the transferor of the property. We may also point out here that Section 269-UD(1) of the Act; does not provide for affording an opportunity to show cause and/or of being heard to the purchaser or the owner. However, the legal position in this behalf is now well-settled in view of the Decision of the Supreme Court in C.B. Gautam's Case. In the said Case, the Supreme Court addressing itself to the question as to whether the provisions of Chapter XX-C are bad in law as there is no provision for giving the concerned parties an opportunity of being heard before an order is passed under the provisions of Section 269-UD(1) of the said Chapter for the purchase by the Central Government of an immoveable property agreed to be sold in an agreement of sale, took the view that such an opportunity to show cause and an opportunity of being heard should be read into the said provision. After referring to some of its earlier Decisions the Supreme Court has held, among other things, as under;

'It must, however, be borne in mind that courts have generally read into the provisions of the relevant sections a requirement of giving a reasonable opportunity of being heard before an order is made which would have adverse civil consequences for the parties affected. This would be particularly so in a case where the validity of the section would be open to a serious challenge for want of such an opportunity.

It is true that the time frame within which the order for compulsory purchase has to be made is a fairly tight one but in our view the urgency is not such as would preclude a reasonable opportunity of being heard or to show cause being given to the parties likely to be adversely affected by an order of purchase under Section 269-UD(1). The enquiry pursuant to the explanation given by the intending

purchaser or the intending seller might be a somewhat limited one or a summary one but we decline to accept the submission that the time limit provided is so short as to preclude an enquiry or show cause altogether.

In the light of what we have observed above, we are clearly of the view 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 under Section 269-UD, 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.'

Further, the Supreme Court in the course of its Judgment, has held as under:

'This brings us to the question of relief. We find that the order for compulsory purchase under Section 269-UD(1) of the Income-Tax Act which was served on the petitioner in the night of 15th December, 1986, has been made without any show cause notice being served on the petitioner and without the petitioner or other affected parties having been given any opportunity to show cause against an order for compulsory purchase nor were the reasons for the said order set out in the order or communicated to the petitioner or other concerned parties with the order. In view of what we have stated earlier the order is clearly bad in law and it is set aside.'

In the light of what is stated hereinabove, it is clear that affording an opportunity to show cause and opportunity of being heard to the purchase and/or owner or affected parties is a must and failure to give such an opportunity would render the order bad in law. It is therefore clear that Respondent-1 as well as Respondents 2 and 3 had the right of being heard and were entitled to show cause as to why a pre-emptive purchase order should not be passed.

10.2. Sri Dattu, learned Standing Counsel for the Income-tax Department, however, submitted that in the facts and circumstances of this Case and in view of the observations made by the Supreme Court in C.B. Gautam's Case in the last

but one paragraph of its Judgment, notwithstanding the fact that opportunity of being heard and opportunity to show cause was not given to respondent-1, he cannot be allowed to re-open the matter and he cannot have the right to challenge the order. It is pointed out by Sri Dattu that in the instant Case, the Central Government had already made the payment to the owners of the property i.e., respondents-2 and 3 and they have received the amount towards the purchase by the Central Government without any protest and that even possession of the property was also given to the Central Government by the owners and that therefore, in the context of the observations of the Supreme Court in the last but one paragraph of its Judgment in C.B. Gautam's Case, Respondent I has no right to challenge the order of the Appropriate Authority.

10.3. In C.B. Gautam's Case, the Supreme Court in the last but one paragraph of its Judgment has observed as under:

'We may clarity that as far as completed transactions are concerned, namely, where after the order for compulsory purchase under Section 269UD of the Income Tax Act was made and possession has been taken over, compensation paid to the owner of the property and accepted without protest, we see no reason to upset those transactions and hence, nothing we have said in the judgment will invalidate such purchases. will be the position where public auctions have been held of the properties concerned and they are purchased by their parties. In those cases also nothing which we have stated in the judgment will invalidate the purchase.'

10.4. Sri Dattu, put his finger on the portion underlinedhereinabove to contend that the said observation would squarelyapply to the facts of this Case in the context of the submissions madeby him and referred to above. It appears to us that it is not possible toaccept this contention of Sri Dattu. It is needless to say that theobservation of the Supreme Court in Gautam's Case will have to beunderstood, by taking an integrated look at the entire Judgment. Theparagraphs preceding the same will have to be borne in mind. In ourview, the said observation would only mean that the ratio laid down bythe Supreme Court in the earlier paras would hold good to thosecases which were concluded once for all. There might be cases

whichwere decided and concluded earlier. However, the aggrieved personain those cases cannot be allowed to re-open those cases on accountof the Decision given by the Supreme Court in Gautam's Case. Thisis the only reasonable construction that will have to be given to theobservation made by the Supreme Court. If really it was the intentionof the Supreme Court in Gautam's Case that the ratio laid down byit would not apply to pending proceedings, the same would have beenstated in the Judgment. This -is also one of the importantcircumstances which would militate against the interpretation soughtto be placed by Sri Dattu with reference to the last but one para in thesaid Judgment. Further it is also necessary to bear in mind that in theinstant Case the possession of the property is said to have beengiven by the owners to the Central Government only after the WritPetition was filed. Further some of the interim orders passed in theWrit Petition and referred to by us earlier would also go to show thatthe matter relating to pre-emptive purchase by the CentralGovernment had not reached 'its terminal point in all respects whenthe Writ Petition was filed by the instant respondent-1. Looked at fromany point of view, therefore, we are of the view that the submissionmade by Sri Dattu, learned Standing Counsel for the Department is not correct.

10.5. Sri Dattu, however, invited our attention to the Decision of this Court in RAJATA TRUST v. CHIEF COMMISSIONER OF INCOME TAX AND ORS, (1992) 193 ITR 220. It is true that this Court in the said Case has taken the view that a person who has entered into an agreement for purchase of the property is not a 'person interested in the property' and that he cannot object to the purchase by the Central Government. It appears to us that the said Decision has proceeded on the basis that the order passed under Chapter XX-C of the Act is not quasi-judicial in nature and that it is administrative in character. However, as pointed out earlier, the legal position in that behalf stands completely changed by reason of the interpretation placed by the Supreme Court with reference to Section 269-UD of the Act in C.B. Gautam's Case, In the context of the said Decision, it is clear that the proceedings under Chapter XX C of the Act is quasi-judicial in nature and both the vendors and the intended purchaser are entitled to show cause and are also entitled to be heard. That being the settled legal position now, the Judgment in Rajata Trust's Case cannot be held to govern the field in the altered situation. Therefore, we are of the view that the Decision in Rajata Trust's Case pressed into

service by Sri Dattu is of no assistance to him to contend that the Writ petitioner has no right of hearing or that he is not entitled to challenge the order of the Appropriate Authority.

10.6. For the reasons stated hereinabove, we answer Point Nos. 2 and 3 by holding that respondents 1 to 3 had the right, to show cause and of being heard, as to why pre emptive order of purchase should not be made and they have also the right to challenge the order passed by the Appropriate Authority.

POINT N0.4:

11. In view of our findings on Point Nos. 2 and 3 it would follow that the order of the Appropriate Authority cannot be sustained in the light of Gautam's Case, Sri Dattu, learned Standing Counsel for the Department, however, contended that the matter is of the year 1989;

that the Central Government has already paid the amount to the owners towards the consideration of pre-emptive purchase; that the vendors have no grievance to make; that they have also accepted the amount and delivered the possession of the property in question without any protest; that in the event on the basis of the Decision of the Supreme Court the matter has to go back to the Appropriate Authority, there is every likelihood that the purchaser may not take interest and may not come forward to pay the amount and in that event the vendors would be put to great loss as well as the Department, because, it has already paid the amount and it would not be entitled to retain the properly since the pre-emptive purchase order would be quashed before the matter is remitted. He therefore submitted that it would be just and proper to decide the questions in controversy on merits in this Appeal itself.

11.1. We have given our anxious consideration to the submissions made by the learned Standing Counsel for the Department. In fact, at one stage, it was felt by us that this Court could perhaps decide the questions in controversy on merits, having regard to the fact that the pre-emptive purchase order was made as long back as in the year 1989 and having regard to the fact that the Central Government had already paid the entire consideration amount payable to the

transferors and that possession of the property was also handed over to the Central Government. The said thinking of ours was reflected in the order dated 13.1.1993 recorded in the order sheet. The same reads as under:

'During the course of hearing, it was contended that in the light of the judgment of the Supreme Court in C.B. Gautam's case, the matter be remitted to the appropriate authority to afford an opportunity to the transferor and the transferee to put forth their say in the matter.

As the matter is of the year 1989, and pursuant to the order, the appropriate authority has already paid the entire consideration amount payable to the transferor and deposited the amount payable to the 1st respondent, which was paid by the 1st respondent as advance to the transferor and the transferor has also accepted the said consideration and put the appellants in possession of the property, we are of the view that this question can be considered during the course of the judgment and if necessary to enable us to decide the matter here itself instead of remitting it to the appropriate authority, we consider it necessary to given an opportunity to both parties to put forth their case on merits and adduce such evidence they intend to adduce. Therefore, it is ordered that it is open to the 1st respondent to produce such documents or evidence in their possession and also file their objections, if any, in this regard. Therefore, as requested by Sri Ramabhadran, learned Counsel appearing for the 1st respondent, we grant time till 21.1.1993 to produce the records and file their objections after serving a copy on the appellants. Necessary records are also made available by the appellants to the learned counsel appearing for the respondents, to enable them to file their objections and produce such evidence as they deem it necessary.'

Call these appeals on 22.1.1993.'

We hasten to add here that we had left the question as to whether the matter should be remitted or decided here only once for all open as can be seen from the portion underlined in the order culled out hereinabove. In fact, consequent to the said order both the parties have produced certain documents and also filed certain statements. However, after hearing the learned Counsel on either side, in detail, with reference to all aspects including the, aspect relating to the question as to

whether the matter should be remitted or not if at all, we are of the view that the modus operandi which we thought we could perhaps adopt is not legally feasible to adopt in the exercise of the jurisdiction under Article 226 of the Constitution having regard to certain Decisions of the Apex Court which are brought to our notice. The Supreme Court in T. PREM SAGAR v. STANDARD VACUUM OIL COMPANY, MADRAS AND ORS., : (1964)ILLJ47SC has, among other things, pointed out that in writ proceedings if an error of law apparent on the face of the record is disclosed and a writ is issued, the usual course to adopt is to correct the error and send the case back to the special Tribunal for its decision in accordance with law and that it would be inappropriate for the High Court exercising its writ jurisdiction to consider the evidence for itself and to reach its own conclusions in matters which have been left by the Legislature to the

Decisions of specially constituted Tribunals. In para-22 of its Judgment, the Supreme Court has observed as under:

'Incidentally, we ought to point out that even if the Division Bench was right in holding that the impugned order should be corrected by the issue of a writ of certiorari, it would have been better if it had not made its own findings on the evidence and passed its own order in that behalf. In writ proceedings if an error of law apparent on the face of the record is disclosed and a writ is issued, the usual course to adopt is to correct the error and send the case back to the special Tribunal for its decision in accordance with law. It would, we think, be inappropriate for the High Court exercising its writ jurisdiction to consider the evidence for itself and reach its own conclusions in matters which have been left by the legislative to the decisions of specially constituted Tribunals.'

Then again in the Decision in CHINGLEPUT BOTTLERS v. MAJESTIC BOTTLING CO. : [1984]3SCR190 the Supreme Court in para-15 has observed as under:

'It is true that sometimes it is prudent to couple a writ of certiorari with a writ of mandamus to control the exercise of discretionary power. The following illuminating passages from De Smith's Judicial Review of Administrative Action 4th Edn. at pp.341 and 544 pithily sum up the function of a writ of mandamus:

'It is now open to a court when granting certiorari to remit the matter to the authority with a direction to reconsider and to decide in accordance with the findings of the Court. Apart from this, the role of the courts is limited to ensuring that discretion has been exercised according to law. If, therefore, a party aggrieved by the exercise of discretionary power seeks an order of mandamus to compel the authority to determine the matter on the basis of legally relevant considerations, the proper form of the mandamus will be one to hear and determine according to law, though by holding inadmissible the considerations on which the original decision was based the court may indirectly indicate the particular manner in which the discretion ought to be exercised. In practice the frontier between control of legality and control of the actual exercise of discretion remains indeterminate for the courts are sometimes observed to cross the boundaries that they have set to their own jurisdiction.' xxx xxx xxx 'The duty to observe these basic principles of legality in exercising a discretion is, unlike the 'duty' to apply the law correctly to findings of fact, prime facie enforceable by mandamus. Hence where an authority has misconceived or misapplied its discretionary powers by exercising them for an improper purpose, or capriciously, or on the basis of irrelevant considerations or without regard to relevant considerations, it will be deemed to have failed to exercise its discretion or jurisdiction at all or to have failed to hear and determine according to law, and mandamus may issue to compel it to act in accordance with the law.'

Professor H.W.R. Wade in his Administrative Law, 5th Edn. at p.638 also defines the purpose of a writ of mandamus in these words:

'Mandamus is often used as an adjust to certiorari. If a tribunal or authority acts in a matter where it has no power to act at all, certiorari will quash the decision and prohibition will prevent further unlawful proceedings. If there is power to act, but the power is abused (as by breach of natural justice or error on the face of the record), certiorari will quash and mandamus may issue simultaneously to require a proper rehearing. An example is Board of Education v. Rice (1911) AC 179 cited elsewhere; the Board's decision was ultra vires since they had addressed their minds to the wrong question; consequently it was quashed by certiorari and the Board were commanded by mandamus to determine the matter according to law,

i.e., within the limits indicated by the House of Lords.'

We may also point out here that a Division Bench of this Court comprising of Justice Venkatachaliah (as he then was) and Justice Puttaswamy (as he then was) have in the Decision in JAGADISH PATIL v. STATE AND ORS., 1981(1) KLJ 537 held as under:

'Whenever a complaint of violation of rules of natural justice is made by an aggrieved person, it is not normally possible to predict what decision would have been taken by the appropriate authority, had it complied with the principles of natural justice. In such a situation this Court which does not exercise an appellate jurisdiction but only a supervisory jurisdiction within the well defined limits cannot embark upon an examination of the merits of an action taken. In our view, an examination of the merits of the impugned action in such a case would not be a proper exercise of jurisdiction under Article 226 of the Constitution. Any such attempt would virtually convert this court into a Court of appeal on facts which is neither permissible nor desirable. In such a situation, the correct approach to be made has been stated pithily by Lord Wright in General Medical Council v. Spackman [1943 Appeal Cases 627], in these words:

'If the principles of natural justice are violated in respect of any decision, it is indeed, immaterial whether the same decision would have been arrived at in the absence of the. departure from the essential principles of justice. The decision must be declared to be no decision.' In Muniyallappa v. Krishnamurthy B.M. and Ors. (1977(1) K.L.J. 389) a Division Bench of this Court consisting of one of us (Venkatachaliah, J.) has followed the dicta of Lord Wright. The Supreme Court is Swadeshi Cotton Mills v. Union of India [1981 (1) SCC 665] has stated the principle in these words:

'(84) Before we conclude the discussion on this point, we may notice one more argument that has been advanced on behalf of the respondents. It is argued that this was a case where a prior hearing to the Company could only be a useless formality because the impugned action has been taken on the basis of evidence, consisting of the balance sheet, account books and others records of the Company itself, the correctness of which could not have been disputed by the

Company. On these premises, it is submitted that non-observance of the rule of audi alterant partem would not prejudice the Company, and this make no difference.

(85) The contention does not appear to be well founded. Firstly, this documentary evidence, at best, shows that the Company was in debt and the assets of some of its 'unity' had been, hypothecated or mortgaged as security for those debts. Given an opportunity the Company might have explained that as a result of this indebtedness there was no likelihood of fall in production which is one of the essential conditions in regard to which the government must be satisfied before taking action under Section 18AA(1)(a). Secondly, what the rule of natural justice required in the circumstances of this case, was not only that the company should have been given an opportunity to explain the evidence against it, but also an opportunity to be informed of the proposed action of take over and to represent why it be not taken.

(94) The further question to be considered is: What is the effect of the non observance of this fundamental principle of fair play? Does the non-observance of the audi alteram partem rule, which is the quest of justice under the rule of law, has been considered universally and most spontaneously acceptable principle, render an administrative decision having civil consequences, void or voidable? In England, the outfall from the water-shed decision, Ridge v. Baldwin (1964 AC 10) brought with it a rash of conflicting opinion on this point. The majority of the House of Lords in Ridge v. Baldwin held that the non-observance of this principle, had rendered the dismissal of the Chief Constable void. The rationale of the majority view is that where there is a duty to act fairly, just like the duty to act reasonably, it has to be enforced as an implied statutory requirement, so that failure to observe it means that the administrative act or decision was outside the statutory power, unjustified by law, and therefore ultra vires and void (see Wade's Administrative Law, ibid, page 448), In India, this Court has consistently taken the view that a quasi-judicial or administrative decision rendered in violation of the audi alteram partem rule, wherever it can be read as an implied requirement of the law, is null and void (e.g. Menaka Gandhi case : [1978]2SCR621 and S.L. Kapoor v. Jagmohan : [1981]1SCR746 . In the facts and circumstances of the instant case,

there has been a non-compliance with such implied, requirement of the audit alteram pattern rule of natural justice at the pre-decisional stage. The impugned order, therefore, could be stuck down as invalid on that score alone. But, we refrain from doing so, because the learned Solicitor General in all fairness, has both orally and in his written submissions dated August 28, 1979, committed himself to the position that under Section 18F the Central Government in exercise of its curial functions, is bound to give the affected owner of the undertaking takenover, a 'full and effective hearing on all aspects touching the validity and/or correctness of the order and/or action/of taken-over, 'within a reasonable time after the take-over. The learned Solicitor General has assured the Court that such a hearing will be afforded to the appellant-Company if it approaches the Central Government for cancellation of the impugned order. It is pointed out that this was the conceded position in the High Court that the aggrieved owner of the undertaking had a right to such a hearing.'

11.2. On a consideration of the Decisions referred to above, we are of the view that it would not be just and appropriate on the part of this Court to decide the matter here itself and the proper course, in our view, would be to remit the matter to the Appropriate Authority with suitable directions.

11.3. At this juncture, Point No.4 placed for consideration can be conveniently considered. We have recorded our findings on Point Nos. 1 to 3. We have also held that it would not be just and appropriate for us to go into the merits of the case. The learned Single Judge has interfered with the order of the Appropriate Authority on the grounds referred to earlier by us in the course of our Judgment. Now that we are required to remit the matter back to the Appropriate Authority, in the light of the Decision of the Supreme Court in Gautam's case and other Decisions alluded to earlier with reference to the effect of violation of principles of natural justice, it is really not necessary for us to examine in detail as regards the correctness or otherwise of the finding given by the learned Single Judge. However, we hasten to observe here that it is difficult to agree with the finding recorded by the learned Single Judge that the Appropriate Authority has not applied its mind to the various aspects while reaching the conclusion which it did. Similarly it is also not possible to agree with the view of the learned Single Judge

that the valuation made by the Reserve Bank of India should prevail. We would like to point out that the Reserve Bank of India, eventhough, it is a statutory authority, and has accepted the value of the property while giving permission to a non-resident Indian to sell the property, nevertheless has taken care to observe that the sale consideration of the property as indicated in the letter of permission shall not be construed as the value of the property for the purposes of the Income-tax Act, 1961, the Gift Tax Act, the Wealth Tax Act or any other Tax Law for the time being in force. Under these circumstances, the fact that the Reserve Bank of India has accepted or approved the agreed amount of consideration towards the intended sale cannot be made much of. Further, it is also noticed that the learned Single Judge has not taken into consideration the changed circumstances brought into being during the interregnum between the first agreement and the second. As pointed out earlier, we have reached a conclusion that this is a case where the matter is required to be remitted back to the Appropriate Authority for the reasons already recorded by us and that therefore, it is not necessary for us to go further into the reasons leading to the order passed by the learned Single Judge. Even the few observations which we have made are only for the limited purpose of seeing as to whether the order passed by the learned Single Judge can be said to be in order. It will suffice if it is observed that the reasons given by the learned Single Judge cannot be held to be valid.

Therefore, Point No.4 will have to be answered in the negative. It is answered accordingly.

12. The next Point for Consideration is as to what is the nature of the order to be passed in the light of the findings recorded on Point Nos. 2, 3 and 4. The inevitable consequence is to remit the matter to the Appropriate Authority. The next question is as to whether it should be simple remand or should be followed by certain conditions, in the light of the submissions made by Sri Dattu, learned Standing Counsel for the Department, that the owners of the property have no grievance to make and have voluntarily handed over the possession of the property to the Central Government pursuant to the pre-emptive purchase order and accepted the amount paid by the Central Government. Therefore, if the matter has to go back there is every possibility that the vendor may not participate in the proceeding with

the result, it would become difficult for the Appropriate Authority to complete the proceeding. It is also submitted that in the event the purchaser does not fulfil his obligations, the Central Government would be placed in a very awkward position as it has already paid the entire consideration. Further it was also submitted that by reason of the interim order obtained by respondent-1, the Central Government was not only deprived of the benefits of large sum of Rs. 1,84,06,325/-, but also was prevented from auctioning the property. It is submitted that the pre-emptive purchase under Chapter XX-C is made not for the purpose of accumulating property but for the purpose of ensuring that there is no evasion of the tax payable by the parties and that such property which is purchased under Chapter XX-C will generally be sold by way of public auction and amount recovered. Therefore, in the normal course in the absence of interim order obtained by the petitioner the property would have been sold and the amount would have been recovered. Therefore, it is submitted that sufficient safeguard should be provided to the Central Government as well as to the owner of the property and that Central Government also should be compensated for the deprivation of the use of large sum of the amount and also for disabling it from auctioning the property in question.

13. It is submitted by Sri Dattu, learned Standing Counsel for the Department that as a result of the quashing of the order of the Appropriate Authority, the Central Government shall have to return the property to the owners and the latter have to refund the amount and that therefore, it is necessary to take care of all these aspects of the matter and direct the purchaser to deposit the amount agreed if at all he is interested in continuing the proceeding on the date the parties are to be directed to appear before the Appropriate Authority and the amount has to be ordered to be deposited along with the interest from 14.9.1989 till the date of deposit of the amount at the rate of 18% per annum with a further direction that the Central Government is permitted to retain the property until the Appropriate Authority decides the matter and the owners are permitted to retain the sum.

14. On the contrary, it is submitted by Sri Sarangan, learned Counsel for respondent No.1 that the 1st respondent is prepared to furnish the Bank Guarantee for the amount of Rs. 1,84,06,325/- which is agreed amount of

consideration within the period stipulated by the Court. However, he cannot be asked to pay the interest on the aforesaid sum from 14.9.1989 till the date of depositing the amount. Sri Sarangan has argued that the Bank guarantee will serve the purpose. It is submitted that directing respondent-1 to pay the interest on the aforesaid sum would amount to penalising him for exercising the right to challenge the order of the Appropriate Authority.

15. On a careful consideration of the submissions made on either side, we find that it is not possible to accept the submission of both sides in toto. By directing respondent-1 to pay interest, we are not penalising respondent-1 for filing the Writ Petition. Respondent-1 is required to compensate the Central Government for the type of interim order which it has obtained thereby disabling the Central Government from auctioning the property and recovering the amount and depriving the Central Government of the use of the large sum of Rs. 1,84,06,325/-. This large sum is lying with the owner of the property and the Central Government is deprived of the same. Therefore, it is necessary for the 1st respondent to deposit the entire consideration amount with moderate interest to compensate the Central Government. Here is a case where when after deposit of the amount by the Central Government for over 3 1/2 years by reason of the interim order obtained by respondent No. 1, it has been disabled from auctioning the property and recovering the amount. As the pre-emptive purchase is made for selling the property and recovering the amount, it could not put the property for any use also, because on 21.8.1989 the 1st respondent has obtained an order restraining the Central Government from altering the nature of the property during the pendency of the Writ Petitions. Further, after a lapse of 3 1/2 years, he will have the benefit of again reconsidering the matter and stands the chance of getting the purchase approved. In the event he succeeds, he will be getting the property only for a sum of Rs. 1,84,06,325/- even after a lapse of 3 1/2 years and whereas, the Appropriate Authority for having exercised its legitimate power under Chapter XX-C of the Act, the Central Government, had been deprived of the very sum for a period of more than 3 1/2 years without any benefit. Therefore, it is necessary to balance the interest of both the parties and also safeguard their interests.

16. Accordingly, we pass the following Order:

i) Writ Appeals are allowed.

ii) The Order dated 23.10.1992 passed by the learned Single Judge in W.P.Nos. 14319 and 14320 of 1989 is set aside. The order dated 25.7.1989 passed by the Appropriate Authority is quashed for the reasons stated by us and not on the reasons of the learned Single Judge.

iii) The matter is remitted to the Appropriate Authority for fresh consideration and decision in accordance with law and in the light of the observations made in this order after affording an opportunity to the purchaser and respondents-1 to 3 (if Respondents 2 and 3 choose to appear) to put forth their case in the matter and also after affording an opportunity of hearing to them on or before 15.6.1993 subject to the conditions:

a) That respondent-1 appears before the Appropriate Authority on 15.4.1993 at 11-00 a.m. and on that day he deposits a sum of Rs. 1,84,06,325/- with the Chief Commissioner of Income Tax, Bangalore and further deposits the interest at the rate of 12% p.a. on the sum of Rs. 1,84,06,325/- from 14.9.1989 till 15.4.1993 or till the date of deposit whichever is earlier.

b) In the event, respondent-1 fails to deposit the amount of Rs. 1,84,06,325/- with interest at 12% from 14.9.1989 on or about 15.4,1993 the pre-emptive purchase order passed and consequences flowing from it, shall stand restored and the Central Government would be free to proceed further in the matter on the basis of the pre-emptive purchase order.

c) In the event, respondent-1, deposits the aforesaid sum within the time as stipulated above, the Appropriate Authority shall decide the matter afresh as indicated above on or before 15.6.1993.

d) Till then, the Central Government is permitted to retain the property in question. Similarly, the owners are also permitted to retain the sum which has been paid to them by the Central Government.

e) We also make it clear that it is open to respondent-1 to withdraw the sum of Rs. 37.5 lakhs deposited by the Central Government in Canara Bank, Branch at Trinity

Circle, Bangalore in the name of respondent-1 along with interest accrued thereon.

f) In the event, respondent-1 deposits the sum of Rs. 1,64,06,325/-with interest as stipulated above on or before 15.4.1993 and if ultimately the Appropriate Authority passes the pre-emptive purchase order directing to purchase the property, the sum of Rs. 1,84,06,325/-deposited by respondent-1 shall be refunded to respondent-1 with interest at 12% p.a. from the date of deposit till the date of refund of the amount which shall be made within one month from the date the amount is deposited by the auction purchaser.

g) It is also further directed that in the event, the purchase order is passed and pursuant to that, property is sold in public auction by the Central Government and in that public auction, if it fetches more than Rs. 3 crores 15 lakhs (this sum we have taken from the notification issued by the Central Government for auctioning this very property which was proposed to be held on 12th and 13th November 1992), the Central Government shall refund the interest paid by respondent-1 as directed above on the sum of Rs. 1,84,06,325/- at the rate of 12% p.a. from 14.9.1989 to 15.4.1993 or till the date of deposit by the 1st respondent whichever is earlier within one month from the date of the amount deposited by the auction purchaser.

h) The auction shall be held within a period of 9 months from the date the purchase order is passed.

iv) These directions regarding auction and refund of the interest by the Central Government will be subject to any order passed by the Court in the event, purchase order is challenged.

v) Respondents-2 and 3 also to appear on 15.4.1993 before the Appropriate Authority. In the event they choose not to appear, the Appropriate Authority shall proceed with the matter in accordance with law.