

**K. Durga Rani and anr. Vs. Appropriate Authority, It Dept., Bangalore and anr.**

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**Court :** Andhra Pradesh

**Decided On :** Feb-02-1998

**Reported in :** 1998(3)ALD133

**Judge :** S.V. Maruthi;and T.N.C. Rangarajan, JJ.

**Acts :** [Income Tax Act, 1961](#) - Sections 269-UD(1), (1A), (1B), (3), UC and UE;  
[Constitution of India](#) - Articles 14 and 226

**Appeal No. :** WP No. 77 of 1997

**Appellant :** K. Durga Rani and anr.

**Respondent :** Appropriate Authority, It Dept., Bangalore and anr.

**Advocate for Def. :** Mr. S.R. Ashok, SC for Income Tax Dept.

**Advocate for Pet/Ap. :** Mr. V. Kishore, Adv.

**Judgement :**

ORDER

1. This is a writ of certiorari calling for the records relating to the order No.AA/Hyd/6 (08) 9/96-97 dated 3 M2-1906 under Section 269UD(1) of the [Income Tax Act, 1961](#) passed by the appropriate authority (Income-tax

Department, Bangalore) and to quash the same.

2. The facts in brief are that the first petitioner is Smt. K. Durga Rani and another and the second petitioner is Kattedummala Sarala Reddy. The second petitioner is the owner of House-No.8-2-294/S2/A/1143, Plot No.1143, Road No.58, Jubilee Hills. An agreement of sale of the said property for Rs.36 lakhs was entered into by the second petitioner with the first petitioner. Pursuant to the said agreement the first petitioner paid

(i) Rs.5,00,000/- through Bankers cheque dated 20-4-1996

(ii) Rs.4,00,000/- through cheque dated 14-5-1996

(iii) Rs.5,00,000/- through Bankers cheque dated 25-5-1996.

All the cheques were drawn on Allahabad Bank. The said amounts were paid as advance. The property consisting of a building with ground floor and first floor admeasuring 4819 Sq. ft plinth area constructed in an area of 1156 Sq. yards or 967 Sq. meters and is bounded by North : Nala and 59 'wide Road No.58; South : Plot No.1153; East : Plot No.1144 and West : Plot No.1141. The agreement of sale was dated 27-5-1996 and it was registered in the office of the Sub-Registrar, Banjara Hills, Hyderabad. The second petitioner is a non-resident Indian and settled with her son in USA. She got the property as legatee under a Will dated 1-10-1973 executed by her husband late Sri Pulla Reddy.

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

explanations. On consideration of the explanations and after giving an opportunity of personal hearing the impugned order stating that:

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

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

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

(i) During the inspection, it was noticed that the property is situated in a well developed residential area and the construction of the property and the layout are of very high quality. The property consists of evenly shaped land area especially with well designed house consisting of ground and first floors, there is a huge lawn in front with a water fountain and the locality is clearly HIG. There is liberal use of marbles within the house and the house has an excellent view and sit-out facility. There is also an independent building consisting of a garage servant quarters, A separate borewell is available for water supply. The whole area is enclosed by a well designed compound wall. In spite of all these, the land rate as per the Engineering Report comes to only Rs.1430/syd.

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

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

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

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

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

1. that Smt. K. Sarala Reddy is a nonresident Indian residing in USA.
2. that the agreement of sale dated 27-5-1996 for the sale of the property bearing Plot No.1143, D.No.8-2-293/ 82/A/1143 on Road No.58 is for Rs.36,00,000/-.
3. sale of Plot No.1250/A on Road No.62 by one Mr. Prannath Talwar to Mr. R.S. Raju a non-resident Indian for Rs. 59,80,000/- for a Plot admeasuring 1196 Sq. yds worked out to Rs.4,927/-perSq. yd. The said Prannath Talwar is a non-resident Indian and the plot is situated at Road No.62 which is categorised as a VIP area as the Chief Minister is residing nearby and the plot is an open plot and has the advantage of constructing to the needs, will and pleasure of the purchaser. The construction of Apartments on this road is permitted. Sri R.S. Raju who is a non-resident Indian is not aware of the market conditions in the area and it is only a chance sale for Prannath Talwar and therefore, the sale of plot No. 1250-A in Road No.62 by Prannath Talwar to R.S. Raju cannot be treated as comparable sale.
4. Plot No.1363 on Road No.45; Jubilee Hills where the agreement of sale dated 2-6-1994 by G.S. Raju indicate Rs.2,428/- per sq. yd. This instance of sale can not also be treated as comparable sale as Road No.45 is the main road leading from Road No.2 while Road No.58 is a sub-lane and is away from Road No.45.

5. auction held by HUDA wherein the sale rate per sq. meter quoted is from Rs.2,510/- to Rs.5,000/- i.e., to say Rs.2,259/- per sq. yd to Rs.4,500/- are not comparable sales as they are not in the immediate vicinity and are nearer to Road No.2 which is main Road and they are all vacant plots with a facility to construct the property at Will and Pleasure, and they are purchased mainly by non-resident Indians and they are far away from Road No.58 nearer to Road No.2 and MLA's Colony. Road No.2 is a main Road in the area. The market value fixed by the Government at Road No.58 is Rs.1,230/-persq. yd on the date of the agreement of sale and not Rs.2,500/- per sq. yard.

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

(a) Road No.63, Plot No.1254-A admeasuring 700 Sq. yards was sold in April, 1996 by D. Madhavi vide registered document No.909796 for a total consideration of Rs.9,10,000/-, thus working out to Rs.1,300/- per Sq. yd. This plot is very close by and behind to Plot No. 1250-A on Road No.62.

(b) Plot No. 1305 admeasuring 750 Sq. yards in Road No.65 sold in April, 1996 by Mrs. Saroja Rao for a consideration of Rs.1,7,00,000/-, thus working out to Rs.2,266/- per Sq. yard. Road No.62 is a sub-road to Road No.62.

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

(d) Plot No.1187 admeasuring 1104 Sq. yards on Road No.45 was sold in January, 1996 by one Mr. Syed Asif for a total consideration of Rs. 18,50,000/-

thus working out to Rs. 1676/- per Sq. yard under a registered document No. 175/96.

(e) Plot No. 1127 on Road No.58 is facing on two roads namely Road No,54 and Road No.58 was sold by one Mr. G-S. Reddy for a total consideration of Rs.30,00,000/- in 1995. The plot is admeasuring 985 Sq. yards with a plinth area of 5,558 Sq. ft. The appropriate rate per square yard would be Rs.900/- per Sq. yard.

(f) Plot NO.1145-A on Road No.58 sold by one Mrs. Nandila P. Sen admeasuring 1379 Sq. yards with a plinth area of 3675 Sq. ft and the total consideration is Rs.27,00,000/- and the rate work out at Rs. 1,000/- per Sq. yd.

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

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

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

6. As regards Plot No. 1363 on Road No.45 the land rate has been worked out at Rs.2,428/- and this is a comparable sale as Plot No. 1143 is very much nearer to Road No.36 which run from the stretch of Road No.2 from Banjara Hills. Road No.36 in Jubilee Hills is an important arterial road and this fact can be clearly seen

that the guidelines rate suggested for Road No.36 ranges from Rs.3,000/-to Rs.4,000/- per Sq. yard whereas the guidelines rates for Road Nos.45 and 48 are kept at Rs.2,500/- per Sq. yard. It is not necessary to refer to other reasons given with reference to the other sale transactions relied on by the petitioners except one instance of sale dealt with by the appropriate authority which is relevant to the facts of the present case. It is necessary to extract the relevant paragraph as it is in toto :

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

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

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

From the narration of facts and the grounds in the Show-Cause Notice explanation offered by the petitioners and the reasons given by the appropriate authority for the rejection of explanation offered by the petitioners, it emerges that in Road No.62 the land value in respect of Plot No.1250-A as on 25-4-1996 worked out at Rs.4,927/- per Sq. yd and the land value in Plot No. 1363 in Road No.45 on 7-6-1994 worked out at Rs.2,427/- per Sq. yd and these two values are comparable sales with the disputed transaction in Road No.58 and that the land value in respect of Plot No. 1127 in Road No.58 which worked out at Rs.849/- per Sq. yd, on 29-11-1994, cannot be taken into account as the transferor is a NRI. Before considering whether the finding of the appropriate authority that the proposed sale

in Road No.62 in respect of Plot No.1250-A and Plot No.1363 in Road No.45 is a comparable sale or not it is necessary to refer to Section 269UD(1) of the Income Tax Act.

'269-UD(1) Subject to the provisions of sub-section (1A) and (1B), the appropriate authority after the receipt of the statement under sub-section (3) of Section 269UC in respect of any immovable property, may notwithstanding anything contained in any other law or any instrument or any agreement for the time being in force make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration.'

At this stage it is necessary to refer to the principles laid down by the Supreme Court and various other Courts interpreting Section 269UD(1) of the Income Tax Act. In C.B. Gautam v. Union of India, ITC 1993 530, the Supreme Court having realised that Section 269UD(1) of this Act has not laid down any guidelines for preemptive purchase of the property relying on the historic legislative background for enacting Chapter XX-C, and the instruction No.IASS issued by the Central Board of Direct Taxes of the Government of India, Ministry of Finance, Department of Revenue and the counter-affidavit filed by the Under-Secretary Central Board of Direct Taxes, Department of Revenue and it was observed that:

'The powers of compulsory purchase conferred under the provisions of Chapter XX-C of the Income Tax Act are being used and intended to be used only in cases where in an agreement to sell an immovable property in an urban area to which the provisions of the said chapter apply, there is significant undervaluation of the property concerned, namely, of 15 per cent or more. If the appropriate authority concerned is satisfied that, in an agreement to sell immovable property in such areas as set out earlier, the apparent consideration shown in the agreement for sale is less than the fair market value by 15 per cent or more, it may draw a presumption that this undervaluation has been done with a view to evade tax. Of course, such a presumption is rebuttable and the intended seller or purchaser can lead evidence to rebut such a presumption. Moreover, an order for compulsory purchase of immovable property under the provisions of Section 269UD(1) requires to be supported by reasons in writing and such reasons must be germane to the

object for which Chapter XX-C was introduced in the Income Tax Act, namely, to counter attempts to evade tax.'

'The conclusion that the provisions of Chapter XX-C are to be resorted to only where there is significant under-valuation of the immovable property to be sold in the agreement of sale with a view to evade tax finds support from the decision of this Court in the case of K.P.. Varghese v. I.T.O. : [1981]131ITR597(SC) .

After referring to the observations of the Supreme Court in K.P. Varghese and CIT v. Smt. Vimlaben Bhagawandas Patel : [1979]118ITR134(Guj) the Supreme Court held that

" It cannot be said that the provisions of the said chapter confer an unfettered discretion on the appropriate authorities to order the purchase by the Central Government of immovable properties agreed to be sold and hence they cannot be regarded as conferring arbitrary or unfettered discretion on the appropriate authorities.'

Holding as above the learned Judges held that Chapter XX-C is not violative of Article 14 of the [Constitution of India](#). It was also held that:

'the requirement of a reasonable opportunity being given to the concerned parties, particularly, the intending purchaser and the intending seller must be read into the provisions of Chapter XX-C. In our opinion, before an order for compulsory purchase is made under Section 269UD(1), the intending purchaser and the intending seller must be given a reasonable opportunity of showing cause against an order for compulsory purchase being made by the appropriate authority concerned. As we have already pointed out, the provisions of Chapter XX-C can be resorted to only where there is a significant undervaluation of property to the extent of 15% or more in the agreement of sale as evidenced by the apparent consideration being lower than the fair market value by 15 per cent or more. We have further pointed out that, although a presumption of an attempt to evade tax may be raised by the appropriate authority concerned in case of the aforesaid circumstances being established, such a presumption is rebuttable and this would necessarily imply that the concerned parties must have an opportunity to show

cause as to why such a presumption should not be drawn.'

It was further held:

'Moreover, if such a requirement were not read into the provisions of the said chapter, they would be seriously open to challenge on the ground of violation of the provisions of Article 14 on the ground of non-compliance with the principles of natural justice. The provision that, when an order for purchase is made under Section 269UD(1), reasons must be recorded in writing is no substitute for a provision requiring a reasonable opportunity of being heard before such an order is made.'

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

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

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

9. Therefore, we have to see whether in mentioning Rs.36 lakhs as consideration in the agreement of sale, there is significant undervaluation of the property to the extent of 15 per cent or more or the apparent consideration is lower than the fair market value by 15 per cent or more. If the apparent consideration mentioned in the agreement of sale is lower than the fair market value by 15 per cent, then the

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

10. It is an undisputed fact that the property under dispute is a house property, whereas the plot in Road No.62 over an extent of 1196 Sq. yds, is a vacant plot. Further the purchaser is a non-resident Indian. There is no evidence as to the distance between the disputed plot and the plot in Road No.62 though as regards time angle there is only one month difference as Form 37-1 was filed in April in so far as land in Road No.62 is concerned while Form 37-1 was filed in May in so far as disputed land is concerned. Further, Road No.62 although categorised as HIG the comment made by the Revenue Authorities is that it is in posh area. Secondly it is not disputed that the purchaser is a non-resident Indian. The appropriate authority himself rejected the sale of plot No.1127 in Road No.58 dated 29-11-1994 on the ground that the transferor in this case is a non-resident Indian. In other words, the appropriate authority rejected the transaction between a NRI transferor and a local transferee. The appropriate authority cannot apply inconsistent standards in treating a particular transaction as a comparable transaction. Having rejected the transaction in respect of Plot No. 1127 in Road No.58 on the ground that the transferor is a non-resident Indian, he cannot consider the transaction in Road No.62 wherein the transferor is also a non-resident Indian treating it as comparable sale for the purpose of ascertaining fair market value and determine the apparent consideration as lower than 15 per cent of the fair market value, the appropriate authority is adopting inconsistent stand. He is adopting double standards for the purpose of determining the fair market value and apparent consideration. Therefore, the transaction in Road No.62 is not relevant and cannot be taken as basis for the purpose of ascertaining the fair market value and for the purpose of determining the apparent consideration being,

lower than the fair market value by 15 per cent of the disputed property. If the transaction in Road No.62 is excluded, the other transaction relied upon by the appropriate authority is the sale of property in Road No. 45. There is no evidence as to the distance between the property in Road No.45 and the property in Road No.58 namely the disputed property'. According to the map furnished along with the material papers, it appears, that the distance would be 2 kms if not more than 2 kms. Apart from that, Plot No. 1369 in Road No.45 is on the main road, whereas the disputed land in Road No.58 is in the bye-lane. Road No.45 appears to be an arterial road. Further, the land area is 1245 Sq. yards. The year of construction is also 1986. Further, the locality is categorised as a good residential locality. The entire flooring is marble flooring. Whereas in the disputed construction, the flooring is Kota stone and the lime 60% Terrazzo tiles, 10% CC flooring and 30% marble flooring. The total constructed building area is 4,600 Sq. ft. Further Road No.45 is the main road while Road No.58 is far away from the main road and it is in the interior of Jubilee Hills. Therefore, the property in Road No.45 cannot be taken into account for the purpose of assessing the fair market value in order to determine the apparent consideration of the disputed property as less than 15 per cent or more. The appropriate authority except stating that the engineering report has classified the neighbouring land in this case also as HIG and that the guidelines rate kept at Road No,45 was fixed by the A.P. Government at Rs.2.500/- per Sq. yd., no other reasons are given for taking into account the property in Plot No.1363 on Road No.45 for the purpose of assessing fair market value, It is now well settled for the purpose of taking into account comparable instances out of genuine instances one of the consideration is proximity from situation angle and proximity from time angle (Chimanlal v. Spl. Land Acquisition Officer, Poona : AIR 1988 SC1652 ) apart from the fact that Road No.45 is the main Road and the distance between Road No.45 and 58 is nearly 2 kms. There is no proximity between the two from the situation angle. Therefore, the property namely Plot No.1363 on Road No.45 cannot be taken as basis for the purpose of ascertaining the fair market value.

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

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

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

13. In the above paragraphs, we have discussed the material that is available on record for the purpose of ascertaining the fair market value. We are of the view that the property in Road No.62 being a vacant land apart from other considerations, cannot be taken into account for the purpose of determining the fair market value. Similarly having regard to the situations and other considerations, the property in Road No.45 cannot be taken into account for the purpose of determining the fair market value. The value determined by the Government for the purpose of stamp duty is subsequent to the date of agreement of sale. Further the Government Engineer himself determined the value at Rs. 1,5967- per Sq. yard.

14. From the above, it is clear that there is no material to draw a presumption that the apparent consideration mentioned in the agreement of sale is less than the fair market value at 15 per cent or more. The appropriate authority while holding that the property in Road No.62 and the property in Road No.45 is relevant for the purpose of determining the fair market value, was influenced not only by an irrelevant considerations but also adopted unreasonable attitude. We are conscious of the fact that we are not sitting in appeal over the judgment of the appropriate authority and it is also now well settled that the function of the Court in judging the correctness of administrative or executive action taken in exercise of statutory powers, we can only go into the matter as a secondary reviewing the Court to find out if the Executive or the Administrator in their primary roles have arrived at a reasonable decision on the material before them. There cannot also be two opinions that the choice of the options available is for the authority and the Court/Tribunal cannot substitute its view as to what is reasonable. (Union of India v. G. Ganayutham : (2000)11LLJ648SC ). Had the appropriate authority arrived at a reasonable decision we would not have interfered with the decision of the appropriate authority. In our view, the decision arrived at by the appropriate authority is unreasonable as he has allowed irrelevant considerations to go into his decision and therefore, this Court in exercise of its power under Article 226 of the [Constitution of India](#), can interfere with the decision of the appropriate authority and the said right is unreasonable decision.

15. In view of the above, it follows that the petitioners are entitled to succeed and the writ petition is accordingly allowed with costs. The impugned order is quashed. Advocate's fee Rs.5,00/-.