

Vijay Kumar Sharma Vs. Appropriate Authority

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Court : Allahabad

Decided On : Sep-20-1994

Reported in : (1996)135CTR(All)367; [1996]220ITR509(All)

Judge : Om Prakash and ;M.C. Agarwal, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 269UD

Appeal No. : Civil Miscellaneous Writ Petition No. 669 of 1993

Appellant : Vijay Kumar Sharma

Respondent : Appropriate Authority

Advocate for Pet/Ap. : Kavin Gulati, Adv.

Judgement :

M.C. Agarwal, J.

1. In this petition under Article 227 of the Constitution counter and rejoinder affidavits have been exchanged and as agreed by the parties, the writ petition was finally heard and is disposed of by this order at the admission stage itself.

2. The petitioner is a lessee of residential plot No, 133 in Block 'A', Sector 15A, at NOIDA, District Ghaziabad. The lessor is the New Okhla Industrial Development Authority and the area of the plot is about 465 square meters. The petitioner

entered into an agreement to sell the aforesaid plot to one Devesh Behari Saxena for a consideration of Rs. 20,21,000, vide agreement to sell dated January 22, 1993. In accordance with Section 269UC of the Income-tax Act, 1961 ('the Act'), a statement in Form No. 37-I was filed by the petitioner and the prospective buyer. The appropriate authority, vide order dated March 24, 1993, made an order under Section 269UD of the Act for the purchase by the Central Government of the said plot of land. It is that order which is under challenge in the present petition.

3. The petitioner's contention is that he is an exporter and having obtained larger export orders, he was in urgent need of money and started looking for a buyer and, ultimately, agreed to sell the property to Devesh Behari Saxena for the aforesaid consideration. It is alleged that Shri Saxena paid a sum of Rs. 7 lakhs as earnest money while the other persons were not willing to pay more than Rs. 2 lakhs. A copy of the agreement to sell with Shri Saxena has been annexed as annexure-1 to the writ petition. After the filing of the statement in Form No. 37-I, the petitioner received a letter from the Valuation Officer of the Income-tax Department asking for certain information. A similar letter dated February 8, 1993, was received from the appropriate authority. The petitioner, vide his letter dated February 20, 1993, informed that he had received a sum of Rs. 7 lakhs as earnest money by cheque which had been credited to his account. The petitioner also received a notice dated February 25, 1993, asking the petitioner to show cause till March 16, 1993, as to why the property in question should not be acquired by the Central Government. According to the petitioner, the said show-cause notice did not contain any reason as to why the property was being acquired and what was the material before the appropriate authority which enabled it to exercise its option of purchase. According to the petitioner, the option to purchase could be exercised only if the appropriate authority was satisfied that there had been a deliberate effort to evade tax.

4. After receipt of the notice, the petitioner started making efforts to find out what were the reasons that could have weighed with the appropriate authority. However, the petitioner suddenly fell ill and was confined to bed, as he was running high fever. The petitioner, therefore, through letter dated March 12, 1993,

sent through speed post, asked for another date. In spite of the petitioner's illness, he sent a letter dated March 16, 1993, which was received by the appropriate authority on the same date, mentioning, inter alia, that no grounds had been given in the notice which had lead the appropriate authority to come to the conclusion that the property in question needed to be acquired. According to the petitioner, for want of the aforesaid information, the show-cause notice was illusory.

5. The appropriate authority adjourned the hearing for a period of just three days and the next date was fixed as March 19, 1993. The petitioner, therefore, sent a telegram on March 17, 1993, requesting further adjournment. According to the petitioner, the appropriate authority disregarding the request made by the petitioner proceeded to deal with the matter ex parte which is wholly illegal, perverse and against the provisions of law.

6. According to the petitioner, under Section 269UC, a reasonable opportunity of hearing should have been given to the petitioner and this implies that the person required to show cause should be informed of the grounds on which the authority concerned is placing reliance. It is further stated that although the petitioner was unable to attend the hearing on March 19, 1993, the purchaser filed a reply on March 19, 1993. It is alleged that the disregard of the petitioner's request for postponement of the hearing was illegal and the appropriate authority passed the impugned order mechanically, without application of mind and on irrelevant considerations. It is contended that the sale consideration agreed to between the parties represented the correct fair market value of the property as there was a sewerage outlet in front of the aforesaid plot and there was a 14 feet deep huge pit on the plot which required considerable expenditure in filling up, and the location of the plots relied upon by the appropriate authority was better as compared to the plot in question. It is further contended that no case of evasion of tax was made out by the appropriate authority and, hence, the purchase by the Central Government could not be ordered. According to the petitioner, in the examples cited by the appropriate authority in two cases, there had been no sale.

7. The appropriate authority has estimated the fair market value of the property by increasing the consideration in respect of other plots at the rate of 10 per cent. per

annum. According to the petitioner, this notional increase is illegal. According to the petitioner, the fair market value of the plot did not exceed the sale consideration as agreed to between the parties by more than 15 per cent. and in view of the Government instructions, the plots could not be ordered to be purchased.

8. In the counter-affidavit filed on behalf of the respondents, it has been stated that there was nothing to demonstrate that the petitioner was an exporter and needed money urgently. It is contended that a proper opportunity of showing cause was given to the petitioner by the issue of a notice dated February 25, 1993, and fixing March 16, 1993, as the date of hearing. According to the respondents, before the issue of the aforesaid notice, the members of the appropriate authority considered the facts of the present case and those of other cases dealt with by them and they were of the opinion that the fair market value of the property was certainly 15 per cent. more than the sale consideration. According to the respondents, the notice dated February 25, 1993, was sent by speed post and there was enough time for the petitioner to appear for the hearing. It is contended that personal appearance of the petitioner was not necessary and he could have appeared through an authorised representative and he was also given the liberty of filing written submissions. It is alleged that on March 16, 1993, a telegram was given to the petitioner fixing the hearing for March 19, 1993, but the petitioner did not appear on that date. According to the respondents, on March 16, 1993, one Ashok Behari Saxena holding the power of attorney from the prospective buyer Shri Devesh Behari Saxena, appeared before the appropriate authority and specific instances of sale of property at higher rates were furnished to him and a final opportunity was granted to him to appear on March 19, 1993.

9. It is contended that in accordance with the judgment of the Supreme Court in the case of C.B. Gautam v. Union of India : [1993]199ITR530(SC) , an opportunity of hearing was provided to the petitioner and since under Section 269UD(1), the period of limitation would have expired on March 31, 1993, only a short adjournment was granted. According to the respondents, the appropriate authority allowed the petitioner a proper opportunity of hearing which the petitioner failed to avail of. It is also contended that the Bombay High Court has in its judgment dated

March 10, 1993, passed in Civil Miscellaneous Writ No. 514 of 1993, Smt. Vimla Devi G. Maheshwari v. Union of India : [1994]208ITR734(Bom) , observed that the High Court cannot act as an appellate authority over the order of the appropriate authority. The respondents have asserted that the fair market value of the property in question, as evidenced by other instances, was higher by more than 15 per cent. of the apparent sale consideration and, therefore, the order for the purchase of the property in question was properly passed.

10. We have heard learned counsel for the petitioner and learned standing counsel.

11. We first deal with the question whether the petitioner has been given a reasonable opportunity of being heard before making the impugned order of compulsory purchase of the property in question.

12. Chapter XX-C of the Act in which the provisions for purchase by the Central Government of immovable properties in certain cases of transfer have been made did not contain any provision requiring the appropriate authority to grant an opportunity of hearing to the affected parties. The vires of the relevant provisions was challenged in a writ petition before the Delhi High Court that was transferred to the Supreme Court and was decided by a judgment in C.B. Gautam's case : [1993]199ITR530(SC) . The Supreme Court upheld the validity of the provisions observing 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 of the Act and that before an order for compulsory purchase is made under Section 269UD, 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.

13. The Supreme Court further observed that the provisions of Chapter XX-C can be resorted to only when there is a significant undervaluation of the property to the extent of 15 per cent. or more than shown in the agreement of sale and that though a presumption of an attempt to avoid tax may be raised by the appropriate authority concerned in the case of the aforesaid circumstances being established,

such a presumption is rebuttable and this would necessarily imply that the parties concerned must be given an opportunity to show cause as to why such a presumption should not be drawn.

14. In the present case, the show-cause notice dated February 25, 1993, issued to the petitioner, reads as under ;

'Please refer to the statement in Form No. 37-I, filed by you on January 28, 1993, in the matter of property located at 133, Block 'A', Sector XVA, NOIDA. As per details submitted in this form, the Appropriate Authority, Lucknow, proposes to exercise the right of pre-emptive purchase in respect of the aforesaid property, under Chapter XX-C of the Income-tax Act, 1961.

2. I have, therefore, been directed to say that an opportunity of being heard is being given to you to appear before them either in person or through an authorised representative on March 16, 1993, at 11.00 a.m. at Central Revenue Building, near Hapur Chungi, District Ghaziabad, before they take a final decision in the matter. In case you do not want to appear, you may send your written submissions before the said date to the undersigned.'

15. As is evident, the aforesaid notice did not state that in the opinion of the appropriate authority, the fair market value of the property in question was 15 per cent. more than the apparent consideration mentioned in the agreement to sell between the parties nor did it refer to the material on which such an opinion was formed. No document whatsoever was annexed to this show-cause notice. The result apparently was that the petitioner was absolutely in the dark about the material that was intended to be used against him for making the order of compulsory purchase.

16. In order that an effective opportunity of showing cause is given to the affected parties, it was, in our view, necessary to annex with the notice all the relevant materials that the appropriate authority had collected for forming its tentative opinion and which it wanted to use in support of the order under Section 269UD.

17. In CIT v. Smt. Vimlaben Bhagwandas Patel : [1979]118ITR134(Guj) in which the provisions of Section 269A to Section 269S relating to acquisition of immovable properties to prevent evasion of tax were the subject-matter of discussion, the Gujarat High Court spelled out the requirement of natural justice and explained the nature of the opportunity deserved by the aggrieved parties. It was observed as under (at page 181) :

'In the perspective of this settled legal position of law, we have to examine as to what would be the contents of the principles of natural justice in the inquiry before the competent authority. By and large, it can be said that in the enquiry under Chapter XX-A of the Income-tax Act, 1961, the transferor and/or transferee as well as the occupant and any other known interested person should be told the nature of allegations against him including the material collected so far by the competent authority, and be furnished copies of the statements recorded and those of the documents collected by the competent authority on which he intends to rely so as to give the person interested or affected an opportunity to state his case and to correct or controvert the material sought to be relied upon, and the competent authority should act in a just manner at all stages of such inquiry which would necessarily imply that the authority shall furnish any other additional material which it might have collected after the initiation of the proceedings in the course of the inquiry to the person interested or affected by the proposed acquisition. . . .'

18. We are in respectful agreement with the above observation.

19. Apparently, in the present case, the material, i.e., the exemplars, that have been used in the impugned order of compulsory purchase, were not forwarded to the petitioner along with the show-cause notice and he never had any opportunity of controverting the same. After the exemplars are supplied, the affected person would need time to study them, see the location of the properties to assess their advantages and disadvantages vis-a-vis the property in question, contact the parties to those agreements or sale deeds to find out if there were any special circumstances affecting the price, and then collect other exemplars on which he may rely. The appropriate authority has denied this opportunity to the petitioner by not furnishing to him the copies of the relevant documents pertaining to the

exemplars and by not giving him sufficient time to make an effective reply after making the necessary enquiries.

20. There is another angle also regarding the denial of opportunity of hearing. As stated above, by the first notice dated January 25, 1993, the hearing was fixed for 11.00 a.m. on March 16, 1993, at the Central Revenue Building, Ghaziabad. The property in question was situate at NOIDA in the district of Ghaziabad. The petitioner applied for adjournment vide an application dated March 12, 1993, stating that he was unable to attend the hearing on March 16, 1993, as he was running high fever. In reply the appropriate authority by a telegram dated March 17, 1993, fixed the hearing for March 19, 1993, at Lucknow, i.e., about 500 kms. away from Ghaziabad. The telegram reached the petitioner on March 18, 1993. These circumstances would show that the adjournment of the hearing for a very short period and the change of venue of hearing to Lucknow without giving the petitioner sufficient time to make travel arrangements and in disregard of the fact that the petitioner had applied for the earlier adjournment on the ground of illness depict a complete disregard of the principles of natural justice and the judgment of the Supreme Court in the case of C.B. Gautam : [1993]199ITR530(SC) which made it mandatory for the appropriate authority to grant a reasonable opportunity of hearing to the aggrieved persons. The conduct of the appropriate authority in this case in hurrying up the proceedings and in not furnishing the relevant material to the petitioner is far from reasonable. For the above reasons, we hold that the impugned order is vitiated by the denial of an opportunity of hearing to the petitioner, who is the owner of the property proposed to be sold and the same has to be quashed.

21. In view of the above finding, we do not think it necessary to go into the question as to whether the appropriate authority was right in coming to the conclusion that the fair market value of the property in question was high by more than 15 per cent. than the apparent consideration. Section 269UD prescribes a period of two months from the end of the month in which the statement referred to in Section 269UC was received by the appropriate authority. That period has already expired and after hearing learned counsel for the parties, we are of the view that it is not a fit case in which we should remit the matter back to the

appropriate authority.

22. For the above reasons, the writ petition is allowed with costs and the impugned order dated March 24, 1993, is hereby quashed.

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