

Ashwani Kumar Vs. Inspecting Assistant

Ashwani Kumar Vs. Inspecting Assistant

SooperKanoon Citation : sooperkanoon.com/62272

Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Dec-18-1986

Reported in : (1987)20ITD643(Delhi)

Judge : G Krishnamurthy, S Vice, M Agarwal, J Member

Appellant : Ashwani Kumar

Respondent : inspecting Assistant

Judgement :

1. These are two appeals by the purchasers of property being land and building forming part of plot No. 56, Block No. 10, Golf Links, New Delhi, which has been ordered to be acquired under Section 269F of the Income-tax Act, 1961 ('the Act').
2. We have heard the learned Counsel for the appellants and the learned departmental representative and have perused the material placed before us.
3. Shri Amar Kumar Kapoor and Shri Ram Kapoor, sons of Gurandatta Kapoor were the owners of the aforesaid property which was sold by them to the present appellants Iqbal Chand Khurana and Ashwani Khurana, who are father and son respectively, by a sale deed dated 21-8-1984. Prior to the execution of the sale deed, an agreement to sell had been executed by the aforesaid vendors in favour of the vendees on 7-2-1984.

The property in question is situate on leasehold land measuring 1250 sq. yards. The lessor is the Government of India. A lease deed dated 16-8-1962 was

executed on behalf of the President of India in favour of the aforesaid vendors. The lease was effective from 3-3-1952. Under the terms of the lease before any assignment or transfer of the lease property, the lessee had to obtain from the lessor approval in writing of the assignment or transfer and the lessor is entitled to claim and recover a portion of the unearned increase (i.e., the difference between the premium already paid and the current market value) in the value of land, the decision of the lessor in this behalf shall be final ; the amount to be recovered being 50 per cent of the unearned increase. Under the agreement to sell entered into between the vendors and the appellants, the latter had agreed to pay up to the sum of Rs. 10 lakhs towards the payment in respect of unearned increase payable to the Government of India and they had in addition agreed to pay a price of Rs. 37,50,000 to the vendors as consideration for the property in question. A sum of Rs. 10,26,362.50 was actually paid to the Government of India in respect of its share of the unearned increase and out of this the purchasers contributed Rs. 10 lakhs in accordance with the terms of the agreement to sell. The sale deed was ultimately executed in favour of the appellants on 21-8-1984 in which the consideration for sale was mentioned as Rs. 37,50,000 only. There was no reference in the sale deed to the sum of Rs. 10 lakhs paid to the Government of India.

4. On receipt of the requisite information the competent authority, i.e., the IAC, Acquisition Range, New Delhi made some enquiries and even referred the matter to the Valuation Officer. He also deputed an inspector who reported the fair market value of this property at Rs. 61,22,990. The Valuation Officer, however, had reported that the apparent consideration shown by the purchasers at Rs. 37,50,000 was acceptable. The learned competent authority was of the opinion that the Valuation Officer's report was not correct and the valuation as reported by the inspector was more reliable. The difference between the fair market value as reported by the inspector (Rs. 61,22,990) and the apparent consideration (which the competent authority took at Rs. 37,50,000) being 63.2 per cent of the apparent consideration, the learned competent authority felt satisfied that the conditions for initiating proceedings for acquisition under Section 269C of the Act existed. He, therefore, recorded his reasons on 14-5-1985 and initiated proceedings for acquisition by getting the requisite notification published in Extraordinary Gazette

dated 25-5-1985.

5. During the course of the preliminary enquiry also, the notices were served on the purchasers and they had participated in the preliminary enquiry and they were duly served with the requisite notice under Section 269D of the Act as well. The purchasers filed a written reply before the competent authority asserting that the report of the Valuation Officer was a report of an expert and should not have been ignored. The purchasers asserted that the consideration paid by them for acquiring the property as mentioned in the agreement to sell and the sale deed was the true consideration and represented the fair market value of the property. It was contended that the inspector's report has been wrongly acted upon and the same was based on a sale which was not comparable. The purchasers cited a sale instance of property No. 3 in Block No. 10, Golf Links and on that basis justified the correctness of the consideration paid by them. It was also contended that there was no material before the competent authority to have a reason to believe that the understatement in the consideration was with the object of avoiding taxes and no proceedings for acquisition could, therefore, be initiated. The vendors did not contest the proceedings.

6. The learned competent authority held that the fair market value of the property in question as on the date of transfer was Rs. 61,25,750, the apparent consideration was only Rs. 37,50,000 as mentioned in the sale deed and that since the fair market value exceeded the apparent consideration by more than 25 per cent, understatement was presumed to be with the object of tax avoidance. The learned competent authority, therefore, with the prior approval of the Commissioner, ordered the acquisition of the property in question.

7. At the hearing before us, the learned Counsel for the assessee moved an application dated 6-10-1986 praying that the assessee be allowed to take up the following additional ground : That the competent authority did not publish the notice in the Official Gazette for acquisition within the stipulated period of 9 months inasmuch as the Official Gazette became available to the public only on 13-6-1985 whereas the last date for publication was 31-5-1985.

No such contention was raised by the assessee before the learned competent authority and no reason is given either in the application or in the course of arguments before us for the omission. Similarly no reason was advanced why such a ground was not raised in the memorandum of appeal initially or at the earliest opportunity. The order sheet will show that this appeal had earlier been heard in March 1986. The prayer in question is, therefore, highly belated and the delay is not explained. In view of this delay we do not find any justification for permission to allow this plea to be raised because the assessee only wants to raise a technical point which would require taking of additional evidence about the date on which the Gazette was printed and on which date it was made available to the public for sale. No prejudice is alleged to have been caused to the appellants on this account because as already mentioned the competent authority had associated the assessee in the preliminary enquiry itself and the assessee knew that acquisition proceedings are under contemplation. For these reasons, we reject the assessee's application for admission of additional ground.

8. As regards the grounds already raised in the appeal, the learned Counsel for the assessee first challenged the initiation of proceedings for acquisition. It was contended that the initiation of proceedings was made on the basis of the report of the inspector, who was not an expert in the valuation of property, and by ignoring the report of an expert appointed by the Government, i.e., the Valuation Officer. As already mentioned, the learned competent authority had made a reference to the Valuation Officer under Section 269L of the Act, for determining the market value of the property in question. By a report dated 12-4-1985 (copy placed at pages 27 to 33 of the paper book) the Valuation Officer reported that the consideration of Rs. 37,50,000 declared by the transferees was acceptable. The learned competent authority found that the report was not complete as the basis on which the District Valuation Officer had relied for reporting that the consideration shown by the assessee was acceptable had not been given.

The learned competent authority, therefore, directed the inspector to inspect the property and report about its valuation. The inspector reported the value at Rs. 61,22,990 vide report dated 7-5-1985. In arriving at this valuation he relied upon a sale instance of a property at Jor Bagh, a colony which, in his opinion, was

comparable to the Golf Links area where the property in question was situated. On the basis of the inspector's report the learned competent authority felt satisfied that the fair market value of the property in question was more than the consideration shown to have passed between the purchasers and the seller. The learned Counsel for the assessee contended that the inspector's report could not have been acted upon in the face of the report of the Government valuer. He drew our attention to Section 269L(1)(a) wherein the competent authority is required to appoint a Valuation Officer to 'determine' the fair market value of a property.

The learned Counsel laid stress on the use of the word 'determine' as against the word 'estimate' used in Clause (b) of Section 269L(1). It was contended that the word 'determine' according to dictionary meaning means to settle, to decide and to give a decision and, therefore, the determination of the fair market value by the Valuation Officer is binding on the competent authority. This contention, in our opinion, is not acceptable. The word 'determine' does not appear to have been used in the sense contended by the learned Counsel. Section 269L is prefaced by the heading 'Assistance by Valuation Officer'. If the Legislature had any such intention, then a specific provision to that effect would have been incorporated in Section 269L on the same lines as has been done by incorporating Sub-section (6) in Section 16A of the Wealth-tax Act, 1957. In their objections before the learned competent authority, the purchasers had specifically stated that the jurisdiction of the Valuation Officer was advisory in character. In CIT v. Trustees of Shri Maneklal Chunnilal Shah Trust [1980] 125 ITR 417, it was held by the Hon'ble Gujarat High Court that the Valuation Officer, who is called upon to determine the fair market value of any particular immovable property acts as an expert authority and advisor to the competent authority for the purpose of enabling the competent authority to determine the fair market value either prima facie at the stage of initiation of proceedings or finally at the time when he has to decide the question whether the property should be acquired or not. Thus, the function of the Valuation Officer is merely that of an advisor and it cannot be said that at any stage of the proceedings, the competent authority cannot ignore the Valuation Officer's report and rely on other material and to come to a different conclusion. This contention of the learned Counsel for the assessee is, therefore, rejected.

9. The next contention on behalf of the appellants was that even if the function of the Valuation Officer was merely that of an advisor, the Valuation Officer being an expert his report should not have been ignored.

The learned competent authority has mentioned that the Valuation Officer's report was incomplete. A copy of that report was placed before us and is found on the paper book. It was contended before us that in the first report submitted by the Valuation Officer, the basis of the report and the manner in which the value was determined was not disclosed. As a matter of fact in the report dated 12-4-1985 the learned Valuation Officer did not determine the fair market value of the property himself. What he stated was that the consideration of Rs. 37,50,000 shown by the purchasers was acceptable. It was sometimes later during the course of the proceedings that the Valuation Officer submitted the relevant details. Therefore, when the competent authority had to decide whether or not to initiate the proceedings for acquisition, those details were not there and the report of the Valuation Officer was, therefore, substantially defective. So much so that it mentioned the consideration at Rs. 37,50,000 while in fact the purchasers parted with Rs. 47,50,000 out of which Rs. 10 lakhs were paid to the Government of India towards its share in the unearned increase and the balance of Rs. 37,50,000 was paid to the vendors. The fact that the Valuation Officer had the agreement to sell with him when he compiled his report and the omission to make any reference to the sum of Rs. 10 lakhs, provided sufficient grounds to doubt the credibility of the valuer's report. In our view, therefore, there was nothing wrong in the conduct of the learned competent authority in deputing an inspector to make an enquiry.

10. As regards the propriety of initiation of acquisition proceedings on the basis of the inspector's report, the learned Counsel for the purchasers contended that the inspector was not an expert and his report, therefore, did not provide sufficient material to justify initiation of acquisition proceedings. It is true that the inspector was not an expert in the art of valuing immovable properties. The learned departmental representative did not contend that the inspector concerned in this case had any formal training in the valuation of immovable properties. That, however, does not mean that an inspector's report cannot be acted at all. All persons who purchase and sell immovable properties are not experts in valuation,

nor do people always take the help of practising valuers for determining what consideration should be charged or paid for a particular transaction. The purchasers and sellers know at what rates properties are being sold and purchased in the neighbourhood and that is always the basis for determining the price that has to be charged or paid for a particular property and it is well settled that the determination of the market value of a property involves some guess work. In the case before us the inspector inspected the property in question and he adopted as exemplar the sale of a property situated in Jor Bagh. Except that the size of that property was smaller than the property in question, the learned Counsel for the purchasers did not contend that Jor Bagh locality was in any way superior to Golf Links. No mala fides or apparent mistakes were ascribed to the inspector. Therefore, in our view, at the stage of initiation the inspector's report did provide the competent authority sufficient material to have a reason to believe that the apparent consideration for the transaction in question was less than the fair market value of the property and this difference was more than the permissible limit. At the stage of initiation of proceedings the competent authority is not required to decide the things finally and it has only to make a prima facie opinion. The inspector's report was, in our view, sufficient to provide the competent authority sufficient material to show prima facie that the consideration was not truly stated in the sale deed and, therefore, to have a reason to believe in terms of Section 269C. We are, therefore, unable to accept the contention of the learned Counsel for the appellants that the initiation of proceedings for acquisition on the basis of the inspector's report, particularly in the presence of the Valuation Officer's report, was defective.

11. It was then contended that the learned competent authority did not record any reasons for the initiation of the proceedings for acquisition of the property and did not apply its mind to the facts before initiating proceedings. This contention is absolutely without force. At pages 51, 52 and 53 forming part of the assessee's own paper book, we have a copy of the reasons recorded by the learned competent authority. These reasons were recorded on 14-5-1985, as is evident from pages 49 and 50 of the paper book. The contention that no reasons were recorded has, therefore, no force.

12. As regards the application of mind, it was pointed out by the learned Counsel for the appellants that on the inspector's report, the learned competent authority had merely written one word 'seen' and made his signatures. A photocopy of the inspector's report is placed at pages 59 to 61 of the paper book. Reliance was placed on a judgment of the Hon'ble Punjab and Haryana High Court in CIT v. Amrit Sports Industries [1984] 145 ITR 231. In that case the competent authority had made an endorsement 'seen, initiate action on the inspector's report' and no reasons were recorded by the competent authority before initiating proceedings. It was in these circumstances that the initiation of proceedings was held to be without application of mind and, consequently bad. The position in the present case is entirely different. The inspector submitted his report on 7-5-1985. The endorsement 'seen' made by the competent authority does not bear any date. This endorsement does not say that any action is to be initiated for acquisition. For that the competent authority recorded his reasons separately as discussed above. A perusal of those reasons would show that the competent authority applied its mind to the facts and circumstances of the case. This is also evident from the fact that even before the competent authority had been enquiring into the matter and had even deputed an inspector to make enquiries when it found that the report of the Valuation Officer was not complete. It is, therefore, not a case in which it could be said that the proceedings have been mechanically initiated without application of mind in a fair and proper manner.

13. Lastly, it was contended that the initiation was not proper because in the reasons recorded by the competent authority it has not made any reference to the Valuation Officer's report and has not given any reasons for ignoring the same. We are unable to find any obligation on the competent authority to discuss everything in the reasons for initiation of proceedings. He has referred to the inspector's report and that in our view, was sufficient. Mere omission to explain why the valuer's report was not being accepted would not invalidate the initiation of proceedings particularly when the Valuation Officer's report was patently incomplete and ignored a huge sum of Rs. 10 lakhs.

For the reasons discussed above, we find the contentions raised on behalf of the appellants challenging the initiation of proceedings for acquisition unacceptable.

We hold that the proceedings were validly initiated.

14. As is evident from the facts narrated above, there is a dispute in this case whether a sum of Rs. 10 lakhs paid by the purchasers for the payment of the Government's share of unearned increase in the value of land is to be treated as a part of the price paid by the appellants for the purchase of this property. There is no dispute that such an amount was actually paid by the appellants in addition to the sum of Rs. 37,50,000 paid to the vendors aforesaid. The learned competent authority has taken the sum of Rs. 37,50,000 only as the apparent consideration for the property in question. This is because the term 'apparent consideration' has been defined in Section 269A of the Act, meaning the consideration as specified in the instrument of transfer.

In this case the instrument of transfer is the sale deed executed by the vendors in favour of the present appellants. In that document, a copy of which is to be found at pages 43 to 48 of the paper book, there is no reference to the sum of Rs. 10 lakhs paid to the Government of India and the document says that the property is being transferred to the appellants in consideration of Rs. 37,50,000. The learned Counsel for the appellants contended that in this case it was agreed between the vendors and the appellants that the latter would pay up to Rs. 10 lakhs towards the Government's share of unearned increase and such a term was specifically recorded in the agreement to sell dated 17-2-1984 (pages 7 to 11). The learned Counsel for the appellants contended that the agreement to sell aforesaid is a part of the transaction and should be treated as a part of the sale deed and that, if so done, the total amount of Rs. 47,50,000 paid by the appellants would become the apparent consideration, which in fact, is the actual apparent consideration paid out by the purchasers. He did not cite any authority for this proposition of law and we are unable to find any force in it.

An agreement to sell is a mere agreement and does not convey any immovable property to the purchaser. Therefore, it cannot by any imagination be called to be an instrument of transfer or a part thereof. An instrument of transfer is the document that actually conveys the property to the purchaser and that is the sale deed executed between the parties. The term 'apparent consideration' has been

defined in the Act and in view of that definition only the amount mentioned in the instrument of transfer, that is the sale deed, can be taken to be the apparent consideration. The Legislature had a special purpose in defining the term 'apparent consideration' and was probably alive to a situation in which it might be claimed that apart from the consideration mentioned in the instrument of transfer, there was some other consideration also that passed between the parties. In our view, therefore, the learned competent authority was right in taking for the purposes of acquisition, the apparent consideration at Rs. 37,50,000 only.

15. The question, however, is whether the sum of Rs. 10 lakhs admittedly paid by the appellants for acquiring this property as share of the unearned increase payable to the Government can be totally ignored. This has been so done by the learned competent authority and the learned departmental representative stuck to the same line of action placing reliance on the definition of apparent consideration given in the Act. In this case, the land on which the house in question is built is owned by the Government and the vendors aforesaid held it on a perpetual lease from the Government. Clause III(13) of the lease deed provides as under : The lessee shall before any assignment or transfer of the said premises hereby demised or any part thereof obtain from the lessor or such officer or body as the lessor may authorise in this behalf approval in writing of the said assignment or transfer and all such assignees and transferees and the heirs of the lessee shall be bound by all the covenants and conditions herein contained and be answerable in all respects thereof.

Provided also that the lessor shall be entitled to claim and recover a portion of the unearned increase (i.e., the difference between the premium already paid and current market value) in the value of land the decision of the lessor in this behalf shall be final at the time of transfer (whether such transfer is an entire site or only a part thereof) the amount to be recovered being 50 per cent of the unearned increase.

This means that the vendors had only leasehold right in the land and they had no absolute power to transfer their leasehold rights. If they intended to transfer the leasehold rights they had to obtain the prior approval of the Government and the

Government had the right to claim its share of unearned increase. It is in compliance with this obligation that the vendors paid an amount of Rs. 10,26,362.50 to the Government as its share of the unearned increase and the purchasers paid a sum of Rs. 10 lakhs to the vendors on that account. The payment of Rs. 10 lakhs, therefore, cannot be totally ignored. In view of the definition of apparent consideration, this amount cannot be treated as part of the apparent consideration, but then a person can transfer only such rights as he has in the property. The vendors in this case had no right to transfer the leasehold rights without the prior approval of the Government which was to be granted only after the Government's share of unearned increase had been paid. Therefore, if we exclude this payment from the apparent consideration then the market value of the property will have to be determined in a condition in which the property was sought to be transferred in an unauthorised manner, that is, without the transfer having been approved by the Government. Clause IV of the lease deed takes care of such a situation and gives the lessor, i.e., the Government of India a right to re-enter. That means the title of the vendors would be defective and we will have to take into consideration the value of the property with such a defective title. The learned competent authority has not determined what would be the value of this property if it was proposed to be transferred without obtaining the prior approval of the lessor. We are of the opinion that roughly we can reduce the fair market value of the property as determined for a valid title and then deduct therefrom the sum of Rs. 10,26,362.50 payable to the Government to arrive at the value of the property if it was sold without the approval of the lessor. Ignoring the payment of unearned increase altogether and for all purposes will, in our view, be not possible and would result in patent injustice which cannot be assumed to have been intended.

16. The next contention made by the learned Counsel for the appellants was that the fair market value of the property in question was not properly determined by the competent authority. According to him, the consideration paid by the appellants was the proper amount of price that this property could fetch. In support of his arguments the learned Counsel referred to certain rulings to show what considerations prevail for determining the fair market value of a particular property. The learned departmental representative, on the other hand, contended that the fair market value of the property in question was properly determined by the

competent authority on the basis of the sale price of another property and he too relied on certain rulings to support his contentions. Before proceedings further it would be better if we refer to the various rulings cited on either side.

17. CIT v. Smt. Vimlaben Bhagwandas Patel [1979] 118 ITR 134, is a judgment of the Hon'ble Gujarat High Court on which reliance was placed from either side. Laying down the principles for determining the fair market value of a property in proceedings for acquisition under the Act, the Hon'ble High Court observed that in fixing the fair market value of an immovable property it would not be safe to import wholly the principles enunciated by the Courts in ascertaining the market value while determining the amount of compensation for acquisition of a property or land since the perspective of acquisition under the Land Acquisition Act, 1894 and that under Chapter XXA of the Income-tax Act are different. In the perspective of acquisition proceedings under Chapter XXA which are penal provisions having far reaching repercussions the competent authority must be satisfied and assured by cogent, reliable and relevant evidence that the fair market value of the property in question exceeds the apparent consideration by a prescribed margin. The Hon'ble High Court further observed that it would be too hazardous to prefer one of the recognised methods of valuation which may be advantageous to the cause of the revenue and arrive at an estimate of fair market value of a property on that basis.

Such a lopsided approach on the part of the competent authority would not be in consonance with the burden of proof required to be discharged in such quasi-criminal proceedings. It would be virtually acting on too slender a material since the decision of the competent authority to acquire would expose not only the transferee to the consequences of being deprived of the property but also the transferor to the liability of capital gains under Section 52 of the Act. The Hon'ble High Court went on to say that it is incumbent on the competent authority to apply two or all of the recognised methods so that he may resort to checks and counter checks in arriving at the fair market value. The competent authority should apply the well known methods, viz., land and building method, contractor's method, rental or yield method and comparable sales method and work out each estimation of the market value by application of all the four methods and for purposes of counter check compare it with the municipal valuation for the purpose of property

tax assessment and adopt generally the minimum valuation unless there are special facts and circumstances where he may be constrained to apply one or two methods only and/or adopt the higher valuation rather than the minimum one for reasons to be recorded by him. Reliance was also placed on Smt. Lalita Todi v. CIT [1980] 123 ITR 40 (Pat.) in which the Hon'ble High Court held that in ascertaining price of a property all factors having any depreciating or appreciating effect on the value of the property had to be taken into account and if considerations germane for such ascertainties have not been taken into account or if irrelevant considerations have entered enquiry, the finding becomes vitiated in law.

18. In Wenger & Co. v. DVO [1978] 115 ITR 648, the Hon'ble Delhi High Court approved the valuation of self-occupied portion of a building on the land and building method. It was further observed that the market value has to be ascertained by considering the sale of similar properties in the same neighbourhood or similar environment. If there are no such instances of sale available then capitalisation of rent or making some sort of comparative evaluation of sales of other properties is an acceptable mode of valuation. This was a case relating to valuation of a building for wealth-tax purposes.

19. The learned Counsel for the appellants placed reliance also on a judgment of the Hon'ble Punjab and Haryana High Court in Mani Singh Avtar Singh v. IAC [1985] 115 ITR 233 in which the Hon'ble High Court held that where for determining the value of a bigger piece of property the instances of sale of smaller plots in different areas were considered, the acquisition was not proper. As already stated in the case before us the competent authority has used as an exemplar the sale of a property in Jor Bagh colony and has ignored an exemplar relied upon by the appellants in respect of the sale of another property situate in Golf Links itself. To support his argument that such a course was possible the learned departmental representative relied upon a judgment of the Hon'ble Karnataka High Court in Subbas Malharirao Kachure v. IAC [1986] 26 Taxman 407. In that case of acquisition under the Act, the property proceeded against was in Bhuspet sector of Hubli City. The Hon'ble High Court held that sales of properties in a more important area known as Lamington Road could be considered to determine the

fair market value of a property situate in Bhuspet.

20. On behalf of the appellants, reliance was also placed on K.P.Varghese v. ITO [1981] 131 ITR 597 (SC). That was a case involving the assessment of capital gains and it was held by the Hon'ble Supreme Court that the burden lies on the revenue to prove that the full value of consideration in respect of the transfer is shown at a lesser figure than that actually received by the assessee. The learned Counsel pointed out that in the case before us there is no evidence to show that the appellants actually paid something more than Rs. 47,50,000 or that the purchasers received more than that and that in the absence of such proof the acquisition was invalid. The learned departmental representative countered this argument by referring to the provisions of Section 269C(2) which creates a presumption in favour of the revenue in case the fair market value exceeds the apparent consideration by more than 25 per cent. The learned departmental representative contended that in provisions relating to assessment of capital gains no such presumption has been created and, therefore, the law as laid down by the Hon'ble Supreme Court in the aforesaid case cannot be applied to acquisition proceedings. We are in complete agreement with this argument. Special provisions have been made in Sub-section (2) of Section 269C creating a presumption in favour of the revenue and, therefore, the principles laid in the case of K.P. Varghese (supra) cannot properly be applied.

21. Having regard to the various rulings relied on either side we now proceed to find whether the determination of the fair market value of the property by the learned competent authority at Rs. 61,25,750 is proper or the consideration paid by the assessee for acquiring this property represents the fair market value of the property.

22. Before proceeding further it would be better to have an idea of the nature of the property in question. As already stated the bungalow in question is situate on land measuring 1,250 sq. yards taken on perpetual lease from the Government of India. The lessees have to pay Rs. 940 per month as ground rent. The ground rent was liable to revision from 1-1-1982 and thereafter at the end of each successive period of 30 years (clause VIII of the" agreement). The enhancement has to be

limited to 50 per cent of the increase in the letting value of the site without buildings at the rate of which the enhancement is made. Although the transfer in question has taken place after the revision in ground rent had become due, the ground rent payable from 1-1-1982 does not appear to have yet been determined. The Government before permitting the transfer to the present purchasers has obtained from them an undertaking to pay the revised ground rent [see pages 40 and 41]. The lease deed provides that the lessee cannot use the land for any trade or business and can use it only for building a double storey residential building for a private dwelling house for one or two families in all with a barsati on the second storey [see Clause III (7)]. It is also provided in the same clause that the lessee shall not do or suffer to be done thereon any act or thing whatsoever which in the opinion of the lessor ... may be an annoyance or disturbance to the President of India or his tenants in the new capital of Delhi. Clause III(5) prohibits the lessee from erecting, without the previous consent of the lessor, any building other than and except the building erected thereon at the date of the lease.

23. The aforesaid are some of the important conditions that may have a bearing on valuation. The property in question is 2\ storey bungalow and the total built up area was 6,417.57 sq. ft. including the garages and servant quarters. This is as reported by the assessee's valuer, who had visited this property a little before the execution of the sale deed. The Government valuer had, however, reported the constructed area at 738.80 sq. mts. as found by him at the time of inspection in April 1985, i.e., several months after the sale in question. Similarly the inspector has reported the built up area at 7,477 sq. ft. The purchasers had contended that they got the property extensively renovated after the purchase at a cost of Rs. 4,57,000. The learned competent authority has estimated the cost of construction of the property as existing on the date of sale at Rs. 9 lakhs and the cost of the land at Rs. 52,25,750. In valuing the land the learned competent authority has adopted a rate of Rs. 5,000 per sq. mt. for the land in question measuring 1,250 sq. yards or 1,045.15 per sq. mt.

24. The first contention that was raised on behalf of the appellants regarding the determination of the fair market value of the property was that the report of the Government valuer should have been accepted and acted upon as he was an

expert. We have already dealt with this point in some detail and agreed with the competent authority that the valuer's report was only fit to be rejected. In his initial report he did not determine the fair market value and merely reported that the consideration shown by the appellants may be accepted and he had not referred to the sum of Rs. 10 lakhs. In the details filed subsequently he placed reliance on certain sale deed in another colony, namely, Friends Colony without mentioning the distance from the property in question and the other factors which may show that the two localities are similar in nature. Further he has relied upon sales of smaller plots with different floor area ratios. It may be mentioned here that the FAR (floor area ratio) permitted in Golf Links area is 0.812 while the FAR in the Friends Colony was much more. The learned Valuation Officer did make some adjustments for the said difference but they are all mathematical exercises which may not lead to correct results. The Government valuer's report was, therefore, in our view, rightly rejected by the learned competent authority.

25. But the question still remains as to what a competent authority should do if it finds the report of the valuer submitted under Section 269L as unacceptable. As observed by the Hon'ble Gujarat High Court in Vimlaben Bhagwandas Patel's case (supra), the competent authority must be satisfied and assured by cogent, reliable and relevant evidence. The Legislature was alive to the fact that officers employed in the Income-tax Department are not architects and engineers and are, therefore, not experts in valuation and they would generally need the assistance of experts. It is for this reason that Section 269L has been enacted for the assistance of the competent authority. The Legislature was also probably alive to the fact that some of the Valuation Officers may not be efficient enough and may not determine the fair market value in an acceptable manner. That is why, probably, that the Legislature has not made the report of the Valuation Officer binding on the competent authority and has not debarred the competent authority from making reference to another Valuation Officer. In the present case, the determination of the fair market value of the property in question by the competent authority is based exclusively on the report of an inspector and it was, in our view, one of the fittest cases in which after initiating the proceedings, instead of hurrying through the same and passing the acquisition order within a very small period of about two months the competent authority should have made a fresh reference to some

other Valuation Officer and collected some more evidence to reassure itself and appellate authorities that the fair market value as determined by it is closest to reality.

26. Coming to the inspector's report, we find that he has determined the fair market value of this property by adopting as an exemplar a sale of property No. 175 situate in Jor Bagh colony. That was a house built on a plot of land measuring 375 sq. yards. The sale took place in January 1983, i.e., about 18 months prior to the sale in question. The consideration paid for the property was stated to be Rs. 18 lakhs. The inspector mentioned that the Jor Bagh, Sunder Nagar and Diplomatic Enclave are colonies which are comparable with Golf Links where the property in question is situate. The inspector started his calculations by adopting a basic rate of land at Rs. 4,713 per sq. mt. The material part of the inspector's report may be reproduced below :Property No. 175 in Block No. 172, Jor BaghBase rate Rs. 4,713gives a good index +15 per centaddition of at least 15 per cent +15 per centallowed. The net result is as under -20 per centBase rate Rs. 4,713 per sq. mt.cent), i.e., 30 per cent of 4,713 Rs. 1,414For size of plot 20 per cent of 4,713 Rs. 942 The land rate is thus arrived at Rs. 5,185 per sq. mt. I apply the rate of Rs. 5,000 per sq. mt. At this rate the value of land comes to Rs. 52,25,750.

The total covered area as shown by the approved valuer in his report a copy of which was submitted by the transferor is as under :Main Block Garage BlockG.F. 2,760 sq. ft.

G.F. 457 sq. ft.F.F. 2,028 sq. ft.

G.F. 602 sq. ft. (servant qrs.)S.F. 571 sq. ft.

F.F. 1,059 sq. ft.5,359 sq. ft.

2,118 sq. ft.

Total covered area of main block and garage block comes to 7,477 sq.

ft.

The year of construction is stated to be 1955-56. I apply the rate of Rs. 190 per sq. ft. and accordingly the value of building is determined as under : In the absence of any evidence regarding renovation and alteration and in view of DVO's report quoted above it is difficult to accept the contention of the transferee that the entire renovation work was done after the property was purchased by the transferee. Therefore, I estimate the cost of construction at Rs. 8,97,240 for the main block and the garage block.

In view of the facts mentioned above the fair market value of the subject property is estimated as under :
Land value 52,25,750
Cost of construction 8,97,240
Total 61,22,990
Apparent consideration declared 37,50,000
Difference 23,72,990
On behalf of the assessee another sale of a property No. 3 in Block No.10 of Golf Links itself was relied upon. As stated in the assessee's reply at page 57 of the paper book, that property consisted of a plot of land measuring 2,471.5 sq. yards on which two bungalows were built in the year 1960 each of which is a 2 1/2 storeyed house containing six bedrooms each with attached bathrooms, two garages and four servant quarters. The total built up area was said to exceed 16,500 sq. ft. It was admitted at the hearing before us that proceedings under Section 269C were initiated in respect of that property also and the District Valuation Officer determined the value of the land of that property at Rs. 57 lakhs and of constructions at Rs. 11.41 lakhs giving a land rate of Rs. 2,306 per sq. yard and that of buildings at Rs. 65.2 per sq. ft.

At those rates, according to the assessee, the value of the property now under consideration, i.e., 56, Golf Links, would come to Rs. 33,70,000 only.

27. As is evident, from both sides a single instance of sale was relied upon and no other material was placed on record to ensure that the results obtained by adopting either of the exemplars were fairly correct.

28. The sale in respect of property No. 10/3, Golf Links took place in January 1983 that is at almost the same time when the property of the other exemplar (Jor Bagh property) was sold. As stated in the order passed by the competent authority the apparent consideration in that transaction was Rs. 56 lakhs but the competent authority determined the fair market value at Rs. 84,22,000 and initiated

proceedings for acquisition. Those proceedings were pending when the competent authority passed the impugned order in July 1985 and when this appeal was heard before us, it was contended that those proceedings are still pending. It is a matter of regret that the same competent authority concluded the present proceedings with such a great hurry while the proceedings in respect of another property which could have provided better evidence for the determination of the fair market value of the property involved in the present appeal have not been concluded. The learned competent authority rejected the transaction in respect of property No. 10/3, Golf Links solely for the reason that the proceedings for acquisition were pending in respect of that property.

In our view, it would have been proper to conclude those proceedings first so that there could be better evidence.

29. As stated by the competent authority in its order the competent authority adopted the fair market value of property No. 10/3 Golf Links at Rs. 84,22,000 while the value as reported by the Valuation Officer was only about Rs. 57 lakhs. According to the learned counsel for the assessee even if the fair market value of property No. 10/3, Golf Links was taken at Rs. 84,22,000 then also the fair market value of the property in question (56, Golf Links) would be only about Rs. 47 lakhs as the area of the land and buildings is almost half. This contention is mathematically correct. The learned competent authority as well as the learned departmental representative have not explained how in the face of the determination of the value of property No. 10/3, Golf Links at Rs. 84,22,000 by the competent authority itself, the fair market value of the property in question would exceed Rs. 47,50,000 by more than 15 per cent. In the order under appeal, however, a misconceived explanation has been offered by the learned competent authority by referring to a judgment of the Hon'ble Supreme Court in *S.R.M.V. Rao Bahadur Rani of Buyer v. Collector of Madras* [1968] 2 SCJ 869. He has quoted the following observation : It seems to be only fair that the highest value shown in the sale deeds relied on by Government should be preferred to the rest, unless there are strong circumstances justifying a different course.

There is no reason why an average of the sale deeds should have been taken in the instant case.

The learned competent authority stated that since the rates in respect of Jor Bagh property were higher it were those rates that should be preferred for determining the fair market value of the property in question and, therefore, he declined to use as an exemplar the sale in respect of the Golf Links property. This line of approach, in our view, is wholly untenable in view of the very different nature of the proceedings. The judgment referred to by the competent authority appears to be one relating to acquisition of land under the Land Acquisition Act where land is compulsorily acquired against the wishes of the owner for a public purpose. Under the Act, the property is acquired as a punishment to those who are found to have acquired property at a higher price but have shown the consideration at a lower figure in order to avoid taxes. The determination of the fair market value in the proceedings, therefore, cannot be the same. As observed by the Hon'ble Supreme Court in a case under the Land Acquisition Act, the owner should be paid what could be the highest value that he might have got in a private sale but in a case under Section 269C the property can be acquired only if the apparent consideration is less than what could be the minimum price which could be available to a vendor. We have already referred to the observations of the Hon'ble Gujarat High Court in Vimlaben Bhagwandas Patel's case (*supra*) where their Lordships have observed that it would not be safe to import wholly the principles enunciated by the Courts in ascertaining the market value while determining the amount of compensation for acquisition of a property or land since the perspective of acquisition under the Land Acquisition Act and that under Chapter XX-A of the Income-tax Act are different.

The learned departmental representative also adopted the same line of reasoning as adopted by the learned competent authority and for the reasons just mentioned, we are of the view that this approach is wholly incorrect. Property No. 10/3, Golf Links was situate in the same locality and its sale, therefore, provided a very good exemplar unless the competent authority could point out cogent reasons for rejecting the same. As already stated even if the fair market value as determined by the competent authority for initiating proceedings in respect of 10/3, Golf Links,

i.e., Rs. 84,22,000 is accepted as the correct fair market value of the property, the fair market value of the property in question on that basis would be only about Rs. 47,50,000 which is the consideration paid by the assessee.

30. It is unfortunate that while relying on the sale transaction of the Jor Bagh property the learned competent authority did not bring on record a copy of the instrument of transfer and other connected documents to show what are the relevant factors governing the price, what were the circumstances under which the sale took place and who are the parties to the transaction. Similarly although the appellants relied upon a sale in respect of property situate in Golf Links itself they too did not bring on record copies of the sale deed, lease deed, etc. Nor is the report of the Valuation Officer or of the inspector/competent authority determining the value at Rs. 84,22,000 on record. Therefore, we have nothing before us except the figures relating to the area of land, the date of sale and the consideration paid. Therefore, none of the parties brought cogent evidence on record.

31. As regard the sale instance in respect of Jor Bagh property, it is evident that that was a smaller plot of 375 sq. yards or 313.54 sq.

mts. The area of the property in question is almost four times larger and, therefore, that transaction cannot properly be called to be a good exemplar. Further in the absence of the relevant documents relating to that property we cannot determine what are the relevant advantages/obligations pertaining to that property and in what respect, there is identity or difference with the property in question. The inspector in his report had proceeded by mentioning that the land rates in respect of Jor Bagh property works out to Rs. 4,713 per sq. mt. He has not given any basis for that. As is evident an area of 313.54 sq.

mts. with some building thereon was sold for Rs. 18 lakhs. The inspector has not mentioned the extent and the quality of the building and has not explained how he has determined the land rate at Rs. 4,713 per sq. mt. In the same manner there is nothing in the order under appeal passed by the competent authority to explain this most important point. Unless we know the value of the building, we cannot determine the price of the land and vice versa and if a single consideration is paid for the land and building. Since copy of the sale deed has not been brought on

record it is also not possible to find if there is any indication therein to find out what was the extent of the buildings standing on that plot and if any separate price was mentioned for the land.

32. The learned competent authority has mentioned that the Valuation Officer had done merely a mathematical exercise, but he has approved a similar exercise undertaken by his own inspector. A perusal of the inspector's report would show that his report is nothing but a mathematical exercise based on certain assumptions. Although proceedings for acquisition under the Act are of a quasi-criminal nature and expose the parties to very serious consequences, the learned competent authority has not bothered to improve upon the inspector's report and furnish the missing links. It is also important to note that for determining the fair market value of the property in question, the competent authority not only deputed an inspector but also personally inspected the property accompanied by an inspector. However, neither the inspector nor the competent authority appears to have visited and inspected the Jor Bagh property, the sale of which is relied upon by the competent authority as a good exemplar. We are unable to understand how and when the property was neither inspected by the competent authority nor by an inspector or a Valuation Officer, the land rate in respect of that property could be determined. It may be mentioned here that it is the value of the land which was the bone of contention on either side. The value of the constructions existing on the property in dispute was not the subject of any serious controversy before us.

33. On behalf of the appellants great reliance was placed on the letter of the land and development officer fixing rates of land for various colonies for the realisation of unearned increase. The said letter No.J-22011/3/80-LD (DOI) dated 27-7-1983 along with its schedule is found at pages 13 to 16 of the paper book. This letter was issued by the land and development officer fixing market rates of land in various colonies of Delhi and New Delhi for the purposes of realisation of the Government's share of unearned increase. This letter extends the rates fixed by an earlier letter dated 21-10-1981 for two more years with effect from 1-4-1983 to 31-3-1985. According to the schedule the market rate for residential lands in Golf Links and Jor Bagh colonies has been fixed at Rs. 2,000 per sq. mt. or about Rs. 1,800 per sq. yd. The learned Counsel for the assessee contended that this letter

shows that the Government did not enhance the rates fixed by an earlier letter dated 21-10-1981 which shows that there was a static trend in the prices of land and that if the price of the property in question is determined at these rates, the fair market value would be much lower than what has been paid by the assessee. The learned departmental representative, on the other hand, contended that this letter is not conclusive of the market rates and was not issued under any statute.

According to the learned departmental representative, by this letter the rates were fixed so that the necessity of determining the market value may not arise for each transaction separately, as keeping in view the innumerable sales throughout the territory of Delhi that may be an impossible task. Both these arguments have some force. The letter cannot be totally ignored nor can it be the sole basis for determining the fair market value of the property in question. We are, however, of the view that along with proper exemplars some aid can certainly be derived from the rates fixed in this letter because the Government must have issued this letter only after its experts had properly investigated into the prevailing rates and other factors.

34. For the reasons discussed above, we are of the opinion that in this case none of the parties has brought on record cogent and reliable evidence. This is largely because the competent authority hurried through the proceedings. In this situation we deem it just, proper and equitable to set aside the acquisition order and restore the proceedings to the competent authority to redetermine the matter after collecting further evidence in the light of observations made above.

The evidence so procured shall be brought to the notice of the appellants and copies of relevant documents shall be supplied. The appellants will also be permitted to produce such evidence as may be relevant.

35. The appeals are accordingly allowed. The acquisition order is set aside and the matter is restored to the learned competent authority for a fresh decision in accordance with law in the light of our observations and directions stated above.