

Dlf Universal Ltd. Vs. Appropriate Authority and anr. Etc.

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SooperKanoon Citation : sooperkanoon.com/675712

Court : Supreme Court of India

Decided On : May-04-2000

Reported in : (2000)160CTR(SC)401

Appeal No. : Civil Appeal No. 2423 of 1999 4 May 2000

Appellant : Dlf Universal Ltd.

Respondent : Appropriate Authority and anr. Etc.

Advocate for Pet/Ap. : Mr. K.N. Rawa,; Mr. C.S. Vaidyanathan,; Mr. R. N. Trivedi, Additional Solicitor Generals,; Mr. Harish N. Salv

Judgement :

D. P. Wadhwa, J.

This batch of 12 appeals is directed against the judgment dated 1-12-1998 of the Division Bench of the Delhi High Court interpreting section 269UC of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and Rule 48L and Form 37I of the Income Tax Rules, 1962 (hereinafter referred to as 'the 'Rules')

2. A number of writ petitions had been filed in the High Court by various parties challenging rejection of Form 37-I by the Appropriate Authority. High Court by its impugned judgment allowed the petitions, set aside the orders of the Appropriate Authority and requiring it to take fresh decision in each of the cases in accordance

with law and keeping in view the principles laid by the High Court in its judgment. Aggrieved Appropriate Authority has filed 11 appeals. M/s. DLF Universal Ltd. (hereinafter referred to as 'DLF') has also filed one appeal. It is aggrieved by that portion of the judgment of the High Court where the High Court said 'no objection by the Appropriate Authority based on an agreement for transfer of property which is to be constructed cannot be utilised for procuring a deed for transfer of that property which has been constructed'.

3. To understand the controversy between the parties and findings arrived at by the High Court, we may examine facts in two cases, one pertaining to DLF and the other to M/s. Ansal Properties and Industries Ltd. (hereinafter referred to as 'Ansal'). Both DLF and Ansal are engaged in the business of developing and dealing in real estate, constructing multi-stored buildings and selling or letting them. Ansal floated a scheme which was widely advertised inviting applications from the public for allotment of apartments. In one of the cases the scheme pertained to apartments in 'Celebrity Homes', Palam Vihar, Gurgaon. One Mr. Sudarshan Kumar Kohli and his wife Mrs. Nibha Kohli applied on 13-7-1995 for booking of an apartment. The application was in the form prescribed by Ansal. The application contains details regarding the apartment number, rates, accommodation available and payment plan. Initial deposit was made at the time of booking of the apartment. Building had yet to come up and payment was to be made as construction progressed. A formal agreement incorporating the terms of sale of the apartment was entered into on 1-1-1997. This agreement is in more details but incorporates all the terms of the application for booking of the apartment which was accepted by Ansal. By the time agreement dated 1-1-1997 was entered into, certain payment as per the plan had already been made, In January 1997 itself, Ansal as transferor and Kohlis as transferee filed Form 37-I before the Appropriate Authority seeking no objection to the registration of the apartment with the registering authority. On 13/14-3-1997 Appropriate Authority sent a notice to Ansal and Kohlis under section 269UC (4) pointing out certain defects in Form 37-I and requiring them to remove these defects within 15 days and not later than 28-3-1997 by filing revised Form 37-I. This was replied to by Ansal by their letter dated 27-3-1997. However, by order dated 28/29-4-1997 made under section 269UC(4) Appropriate Authority held that Form 37-I had been

belatedly filed in contravention of Rule 48L and was not maintainable. In short, Form 37-I was rejected. It was already held that Form 37-I was defective inasmuch as particulars required in Column 12 of Form 37-I had not been furnished. Ansal challenged the order of the Appropriate Authority by filing writ petitions.

4. In the case of DLF, a scheme was advertised for sale of flats in Richmond, a multi-stored complex which was to come up in DLF Qutub Enclave, Gurgaon. Mrs. Ranjana Singh applied for allotment of a flat by making an application on 9-4-1997. DLF agreed to allot a flat to Mrs. Singh. All the relevant terms and conditions find mention in the letter of allotment. It gives the details of accommodation, mode of payment as and when construction progressed and in the table for office use in the application for allotment, details of the price etc. were all mentioned including the initial payment received on making of the application. A more detailed agreement called the 'Apartment Buyers' Agreement' was then entered into on 2-1-1998. By this time, some payments towards construction of Richmond apartments had already been made by Mrs. Singh. On 30-1-1998, statement in Form 37-I was filed by DLF and Mrs. Singh before the Appropriate Authority. A notice under section 269UC (4) of the Act was issued by the Appropriate Authority to both DLF and Mrs. Singh on 2/3-4-1998 requiring them to remove certain defects within 15 days failing which it was intimated that Form 37-I shall be deemed not to have been furnished. DLF sent their reply on 13-4-1998 giving the relevant information. However, by order dated 30-4-1998 passed under section 269UC (4) of the Act Appropriate Authority held as under:

'It is the considered view of the Appropriate Authority that the transaction would fall into sub-clause (ii) of clause 'D' of section 269 UA and once the property is not in existence, only the rights therein can be transferred. Since the major terms and conditions were finalised on the date of booking/allotment, the Form 37-I should have been filed within 15 days thereof. Since this was not so, the form is treated as belated form. Further in absence of any power of condonation of delay, the form has to be treated as non-maintainable.'

This was challenged by DLF by filing writ petition in the High Court. These are some of the bare details,

5. We may now examine certain provisions of law relevant to the issues before us. Chapter XX-C consisting of sections 269U to 269UO was inserted in the Act by the Finance Act, 1986 with effect from 1-10-1986. This was to curb the menace of black money. The basic scheme of Chapter XX-C is that the immovable property can be acquired by the Central Government if the apparent consideration as agreed to between the transferor and the transferee under agreement to sell does not represent the true market value of the property. The provisions spread a wide net by expanding the definition of immovable property and the transfer of such property. They envisage transfer of immovable property yet to be constructed. 'Agreement for transfer' is defined in clause (a) of section 269UA, 'immovable property' in clause (d) and 'transfer' in clause (f) thereof. For the performance of provisions under Chapter XX-C, an Appropriate Authority is constituted under section 269UB. Section 269UC provides for restrictions on transfer of immovable property. Under Rule 48L Form 37-I is prescribed which is to be filed before the Appropriate Authority signed by both the transferor and the transferee within 15 days from the date on which the agreement for transfer is entered into. This is the requirement of Rule 48L of the Rules. Section 269UD deals with the order by Appropriate Authority for purchase by the Central Government of immovable property subject matter of the agreement to sell. This the Appropriate Authority does after examining. Form 37-I. As to how the immovable property which is yet to be constructed could vest in the Central Government after order by the Appropriate Authority is mentioned in Sub-sections (6) and (7) of section 269UH. If there is failure on the part of the Central Government to make payment as required under section 269UE, the property reverts in the transferor as provided under section 269UH. Section 269UK provides that after Form 37-I has been filed the agreement for transfer could not be revoked or altered. Section 269UL places restrictions on the registering authority from registering a deed of transfer of immovable property unless no objection certificate has been issued by the Appropriate Authority. When order for purchase of any immovable property by the Central Government is made, transferor is indemnified from any claim that the transferee may have against him under the agreement for transfer (Section 269UM). If we concentrate on the relevant provisions of Chapter XX-C as applicable in the present appeals, it will be seen that immovable property means

any right in or with respect to any building or part of a building which is yet to be constructed which right accrues or arises from any transaction including that by way of any agreement or any arrangement of whatever nature or being a transaction by way of sale exchange or lease of such building or part of a building. 'Transfer' in relation thereto means the doing of anything including by way of an agreement or arrangement which has the effect of transferring or enabling the enjoyment of such immovable property. No transfer of immovable property shall be effected except after an agreement for transfer as defined in clause (a) of section 269UA is entered into between the parties, i.e., the transferor and the transferee at least four months before the intended date of transfer. This is so notwithstanding anything contained in the Transfer of Property Act, 1882 or in any other law. This agreement for transfer is now required to be reduced in writing in the form of a statement by both the parties. The statement is to be in Form 37-I and is to be furnished to the Appropriate Authority within 15 days from the date on which agreement for transfer is entered into. If a defective statement in Form 37-I is filed Appropriate Authority is required to intimate the defect to the parties concerned and give them an opportunity to rectify the same within a period of 15 days or within such further period as may be allowed by the Appropriate Authority. In case the statement remains defective, it shall be deemed never to have been furnished. If the statement in Form 37-I is proper, Appropriate Authority may make an order for purchase of the immovable property, subject matter of Form 37-I, by the Central Government at the rate equal to the amount of apparent consideration. In *C.B.Gautam v. Union of India and Ors.* : [1993]199ITR530(SC) this court laid down principles how the Appropriate Authority would apply its mind to the term 'apparent consideration'. Time limit has been laid by which the Appropriate Authority has to make an order for purchase by the Central Government of the immovable property. After an order is made, immovable property vests in the Central Government in terms of the agreement for transfer referred to under sub-section (1) of section 269UC. When the order is made under section 269UD (1) in respect of an immovable property being rights of the nature referred to in sub-clause (ii) of clause (d) of section 269UA the order shall have the effect of vesting such right in the Central Government and placing the Central Government in the same position in relation to such rights as the person in whom such a right would have continued

to vest if such order had not been made. After statement in Form 37-I has been filed under Section 269UC terms of agreement for transfer cannot be altered unless of course no order has been made by the Appropriate Authority for purchase of the immovable property by the Central Government or the order if any made stands abrogated under section (1) of section 269UH. Any transfer of immovable property made in contravention thereof shall be void. Registering Officer under the Registration Act 1908 is forbidden to register any document for transfer of immovable property unless a certificate from the Appropriate Authority that it has no objection to the transfer of such immovable property is furnished. There is also a prohibition on any person from doing any act which has the effect of transferring any immovable property unless the Appropriate Authority certifies that there is no objection thereto. In case no order for purchase by the Central Government is made by the Appropriate Authority or its order stands abrogated, it shall issue a certificate of no objection for transfer of the property. Where an order for the purchase of immovable property by the Central Government is made, no claim by the transferee shall lie against the transferor by reason of such transfer not being in accordance with the agreement for the transfer of immovable property entered into between the parties.

6. There is no dispute that agreement for transfer, which has been reduced into writing in Form 37-I, pertains to immovable property and amounts to transfer of immovable property within the meaning of clauses (d) and (f) of section 269UA High Court, after examining the terms of the agreement and the provisions of Chapter XX-C, reached various findings in paragraph 28 of the judgment, which we reproduce:

'To sum up, our findings are: -

(i) Agreement for transfer as defined in clause (a) of section 269 UA refers to an agreement which is entered into privately between the parties thereto; such an agreement may be oral or in writing.

(ii) An agreement for transfer entered into by the parties in Form 37-I under section 269 UC is not an agreement defined by clause (a) of section 269 UA. It is an agreement statutorily ordained to be entered into in a prescribed proforma.

(iii) Agreement for transfer, the phrase as occurring in Chapter XXC has two meanings depending on the context where it occurs. It may be an agreement for transfer as defined in clause (a) of section 269 UA (which in this judgment has been referred to as private agreement). It may be an agreement for transfer as defined in section 269 UC (which in this judgment has been called a proforma agreement). Since the agreement for transfer under section 269 UC is to be drawn up in the form of a statement, in Chapter XX-C, the word 'statement' has been used interchangeably with agreement for transfer in Form 37-I. 'Agreement for transfer as occurring in section 269 UKI, section 269 UM and section 269 UD is to be assigned the meaning as defined by clause (a) of section 269 UA. At all the other places in Chapter XX-C, agreement for transfer means and must be read as proforma agreement i.e. an agreement for transfer in the prescribed Form 37-I as the context so requires.

(iv) The Appropriate Authority cannot be found fault with refusing to act upon or take cognisance of proforma agreement in statement Form 37-I (i) if the requisite particulars though available are not supplied or (ii) if the requisite particulars would be available at the time when the property has reached a state in which it is proposed to be transferred and yet the particulars are not being made available with precision because the form is being filed with a view to secure NOC for a transfer in contemplation.

(v) A delay in filing Form 37-I is not a defect. The period of 15 days prescribed by Rule 48-L is directly and not mandatory.

(vi) The period of 15 days is to be calculated from the date of entering into the proforma agreement in Form 37-I and not from the date of any other proceeding private agreement between the parties.

(vii) If there are agreement more than one entered into between the parties, then it is the latest of the agreements which supersedes the earlier ones which has to accompany Form 37-I when filing before the Appropriate Authority. Other agreements if relevant may or looked into by the Appropriate Authority.

(viii) A defect contemplated by section 269 UC (4) is one which is capable of being cured.

(ix) The stage for entering into the statutory agreement or proforma agreement in Form 37-I arises when the parties are ready to make available all the particulars contemplated by several clauses of Form 37-I consistently with the nature of the property. The date of entering into the proforma agreement must have proximity of relationship by time with the proposed transfer of property as defined in clause (f) of section 269 UA. The test for determining proximity of relationship is the availability of the property agreed to be transferred in such status in which it is proposed to be transferred.

(x) A no objection certificate issued by Appropriate Authority based on an agreement for transfer of property to be constructed cannot be utilised for securing registration of property which has been constructed.'

7. Agreement for transfer and statement in Form 37-I are two different documents. As rightly held by the High Court agreement for transfer can be oral as well as in writing but then this agreement for transfer has to be reduced in writing in Form 37-I. High Court has held that in certain sections in Chapter XX-C 'agreement for transfer' in fact means statement in Form 37-I as mentioned in sub para (iii) of its findings.

8. The question that arises for consideration is if the period of 15 days, as mentioned in Rule 48L, is to be calculated from the date when a prospective buyer applies for allotment of a flat or from the date when a regular agreement called the 'Apartment Buyers' Agreement' is entered into between the transferor and the transferee or when the agreement for transfer is reduced into writing in Form 37-I. Appropriate Authority has held that 15 days are to be counted from the date when booking of the flat is done by the DLF or Ansal as the letter for booking and the official endorsements thereon constitute a regular agreement between the parties. This question, however, becomes academic if we hold that 15 days period is to be counted from the date when agreement for transfer is reduced into writing in the form of statement (Form 37-I). Can it be said under Rule 48L that the term 'agreement for transfer' mentioned in clause (c) of sub rule (2) thereof in fact

means statement in Form 37-I. If we take the literal meaning, this provision will become rather otiose. An 'agreement for transfer' is inter-parties and that can always be changed. That the term 'agreement for transfer' in fact means statement in Form 37-I, we can get clue from section 269UK which says that no person shall revoke or alter an agreement for the transfer of an immovable property or transfer such property in respect of which a statement has been furnished under section 269UC. Reference to this statement is certainly to Form 37-I. It would mean that agreement for transfer can be changed by the parties but they have been forbidden from doing so after statement in Form 37-I has been furnished. We have, therefore, to give appropriate meaning to the term 'agreement for transfer' appearing in clause (c) of sub-rule (2) of Rule 48L and cannot just adopt literal meaning. Foundation for exercise of jurisdiction by the Appropriate Authority under section 269UD is the statement in Form 37-I and not agreement for transfer.

9. In *C.B. Gautam v. Union of India and Others* : [1993]199ITR530(SC) , reference was made to an earlier decision by this court in the case of *K.P. Varghese v. Income Tax Officer* : [1981]131ITR597(SC) where the following passage was quoted with approval:

'The court observed that the task of interpretation of a statutory enactment is not a mechanical task. The famous words of Judge Learned Hand of the United States of America that '....it is true that the words used even in their literal sense are the primary and ordinarily the most reliable source of interpreting the meaning of any writing : be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning' were quoted with approval.'

It has, therefore, to be held that this term 'agreement for transfer' in clause (c) of sub-rule (2) of Rule 48L has reference to statement in Form 37-I.

10. The next question that arises for consideration is if clause (c) is mandatory or the Appropriate Authority has power to extend the time if the circumstances so require. Sub-rule (2) of Rule 48L in which clause (c) occurs was substituted by the

Income Tax (Seventh Amendment) Rules, 1987. Sub-section (4) of section 269UC was inserted by Finance Act, 1995 with effect from 1-7-1995. Before the insertion of sub-section (4) this court in *Appropriate Authority v. Tanvi Trading and Credits P. Ltd.* : [1991]191ITR307(SC) approved the decision of the Delhi High Court in *Tanvi Trading and Credits P. Ltd. v. Appropriate Authority* : [1991]188ITR623(Delhi) by holding: -

'We agree that two alternatives are open under the scheme of the legislation - (i) The Union of India through the Appropriate Authority could buy the property, or (ii) in the event of its decision not to buy, it has to issue a 'No Objection Certificate' leaving it open to the parties to deal with the property. In that view of the matter the High Court was right in its conclusion. The special leave petition is dismissed. No costs.'

Sub-section (4) of section 269UC was considered by this court in *Jagdish A. Sadarangani v. Government of India* : [1998]230ITR442(SC) . That case related to the interpretation of the provisions of sub-section (4) of section 269UC of the Act. Sadarangani, the appellant entered into an agreement dated 9-9-1995 for purchase of certain property in Madras for a sum of Rs. 5.50 crores. The property comprised upon land and built-up area. On the same date application in Form 37-I was filed before the Appropriate Authority. A letter dated 30-10-1995 was addressed by the Appropriate Authority to issue the certificate of no objection under section 269UL (3). The said decision of the Delhi High Court came up for consideration before this court in *Appropriate Authority v. Tanvi Trading and Credits P. Ltd.* : [1991]191ITR307(SC) . This court, while dismissing the special leave petition against the said judgment of the Delhi High Court, has said (page 308):

'We agree that two alternatives are open under the scheme of the legislation - (i) The Union of India through the Appropriate Authority could buy the property, or (ii) in the event of its decision not to buy, it has to issue a 'no objection certificate' leaving it open to the parties to deal with the property. In that view of the matter the High Court was right in its conclusion.'

11. Then this court construed sub-section (4) of section 269UC as under:

'We are unable to construe the provisions contained in sub-section (4) of section 269UC as conferring a power on the Appropriate Authority to decide the question about the legality of the agreement which has been entered into by the parties and on the basis of which the statement under section 269UC (2) has been submitted. What is contemplated by sub-section (4) of section 269UC is that if there is a defect in the statement submitted under section 269UC (2), which must comply with the requirements of sub-section (3), then the Appropriate Authority may intimate to the parties concerned about the said defect and give them the opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period as may be allowed by the Appropriate Authority on an application made in this behalf. The said provision in sub-section (4) of section 269UC envisages a defect which can be removed/rectified within the period of fifteen days or the further period which is given by the Appropriate Authority. A defect regarding the legality and validity of the agreement which renders the agreement void and unenforceable cannot be rectified. Since a defect which cannot be rectified was not within the contemplation of the legislature in enacting sub-section (4) of section 269UC a defect regarding the legality or validity of the agreement would not fall within the ambit of the said provision. The Objects and Reasons of the Bill which was enacted as Finance Act, 1995, also do not give an indication that by inserting sub-section (4) in section 269UC Parliament intended to confer a power on the Appropriate Authority to go into the legality or validity of the agreement.'

12. Now Appropriate Authority is obliged to give opportunity to the parties to rectify the defects, if any, in Form 37-I within a period of 15 days or such extended period as the Appropriate Authority may allow. If we consider section 269UC (4) vis-a-vis Rule 48L scenario or setting is rather incongruous. If statement in Form 37-I has no defect Rule 48L mandates that it should be filed within 15 days but if it is defective then opportunity can be granted by the Appropriate Authority under sub-section (4) of section 269UC to correct mistakes even beyond the period of 15 days after filing of the statement in Form 37-I. It would appear that no thought was given to amend clause (c) of sub-rule (2) of Rule 48L while inserting sub-section (4) of section 269UC of the Act. It would further appear as rightly held by the High Court that Rule 48L is only directory and not mandatory.

13. We may also note the argument of the Appropriate Authority which was pressed into service to support its plea that 15 days period in Rule 48L is mandatory and that section 276AB provides for prosecution in case there is failure to comply with the provisions of section 269UC. Submission of Form 37-I within the prescribed period is not the only requirement of section 269UC. Then under section 278AA if a person is proceeded against under section 276AB and shows reasonable cause for his failure to file the statement in Form 37-I within the prescribed period, he cannot be punished. We do not think that the provision of section 276AB makes Rule 48L in any way mandatory.

14. DLF and Ansal have strong objection to findings of the High Court in sub-paras (ix) and (x) in para 28 of the judgment reproduced above. However, according to the Appropriate Authority keeping in view the principles laid by this court in G. B. Gautam's (supra) case it can exercise its jurisdiction to acquire the property if consideration agreed to is less than 15 per cent of the market value. Mr. Verma, who appeared for the Appropriate Authority, said that the agreement for transfer contains variables and unless all these are known, Appropriate Authority will be handicapped in making an order under section 269UD. The variables which form terms in the agreement for transfer are external development charges that may be levied by the State of Haryana and price escalation up to 20 per cent of the agreed consideration. It is a matter of common knowledge that in course of time, there can be escalation in the prices of various articles like steel, cement, labour etc. One can say with certainty that price escalation would be within the limit of 20 per cent escalation and the external development charges that may be levied by the State of Haryana would be on certain set principles. Provision of Chapter XX-C do not require the parties to enter into more than one agreement for transfer. It is on the basis of the terms of that agreement for transfer which is reduced into writing in the shape of Form 37-I that the Appropriate Authority has to make up its mind to pass an order under section 269UD. These provisions do not contemplate filing of more than one Form 37-I and grant of more than one no objection certificate by the Appropriate Authority. We may in this connection refer to sub-sections (6) and (7) of section 269UE, immovable property, subject matter of transfer is of the nature referred to in sub-clause (ii) of clause (d) of section 269UA and when an order is made under section 269UD with respect to that property, it shall place the

Central Government in the same position in relation to such right as the person in whom such a right would have continued to vest if such order had not been made. The whole agreement for transfer and Form 37-I are before the Appropriate Authority. It has to make its mind once for all whether to pass an order under section 269UD or not. If not, it is bound to grant no objection certificate as required by section 269UL. We do not, therefore, think that the High Court was right in its findings as given in sub paras (ix) and (x) of para 28 of its judgment.

15. One of the grounds of rejection of Form 37-I was that it did not contain particulars required by paras 12 and 13 given in the Form. It must be seen that Form 37-I is a composite form used whether the transaction is sale, lease or exchange. It may not, therefore, be necessary that all the paras are required to be filled in when the transaction is either for sale or lease or exchange. Para 12 requires the particulars about the acquisition of the property which is proposed to be transferred. Requirement of para 13 is that names of the persons interested in the property be given and so also the consideration specifying their shares and basis thereof. As far as paras 12 and 13 are concerned, these requirements and particulars in the case of agreement for transfer in the present case would appear to be rather unnecessary. When the Appropriate Authority pointed out that this was a defect and required Ansal to remove the defect, it was submitted by Ansal that it had purchased agricultural lands from time to time, obtained the licenses for sale of plots, houses, flats etc. and after obtaining the licenses, plots, houses and flats etc, were being sold regularly. It was further submitted that since last so many years permission under Chapter XX-C was also being given regularly and further that the lands were being developed by Ansal and were in their possession. Similarly, DLF had stated in Form 37-I with reference to paras 12 and 13 that immovable property was acquired from 29-10-1980 onwards and cost of acquisition of land worked out Rs.1,534.00 per square meter. We do not think anything more was required to be stated in paras 12 and 13 of Form 37-I. As pointed out by this court in C. B. Gautam's case (*supra*) that the very historical setting in which the provisions of Chapter XX-C were enacted indicates that it was intended to be resorted to only in cases where there is an attempt at tax evasion by significant under valuation of immovable property agreed to be sold. It is the fair market value of the immovable property, which is to be found out and if the

Appropriate Authority is satisfied that the apparent consideration shown in the agreement for sale is less than the market value by 15 per cent or more it may draw a presumption that this under-valuation has been done with a view to evading tax. While examining the statement in Form 37-I this object has been kept in view by the Appropriate Authority. It cannot act in a mechanical fashion and pass its order on irrelevant considerations. Sub-section (4) of section 269UC is not a device for the Appropriate Authority to raise irrelevant considerations ignoring the very object of Chapter XX-C. Paras 12 and 13 of Form 37-I cannot be said to be relevant in the present cases. We, therefore, fail to understand as to what prevented the Appropriate Authority to exercise jurisdiction under section 269UD. The view which we have taken of Rule 48L there is no delay in submission of statement in Form 37-I in any of the cases. Thus, taking note of all the relevant consideration, we are of the opinion that the Appropriate Authority was not correct in passing orders that the statement in Form 37-I was deemed never to have furnished, thus, creating a stalemate for sale of the flats which have by now been built but could not be transferred.

16. High Court by its impugned judgment allowed the writ petitions and set aside the orders of the Appropriate Authority. It directed that the Appropriate Authority shall take decisions afresh in each of the cases in accordance with law and consistently with the principles stated in the judgment which may be done within a period of three months. Since we have not agreed with all the findings of the High Court and in our opinion Appropriate Authority was not justified in holding that statement in Form 37-I was deemed never to have furnished, the question arises as to how the relief is to be moulded.

17. Under section 269UD an order by Appropriate Authority has to be made within three months of the receipt by it of the statement in Form 37-I. We have already held that statement filed in Form 37-I was in order. Since the Appropriate Authority did not pass any order within the prescribed period it had to issue no objection certificate under section 269UL. It is no use at this distant time sending the matter back to the Appropriate Authority for it again to apply its mind as period prescribed within which it has to pass order for purchase of the property by the Central Government has long since expired.

18. In *MOI Engineering Ltd. & Anr. v. Appropriate Authority & Ors.* : [1992]198ITR270(Cal) , which is a judgment of the Calcutta High Court, one of us (Ruma Pal, J.) noted that in view of the decision of Delhi High Court and the Supreme Court in *Tanvi Trading and Credits P. Ltd.* the Appropriate Authority, in exercise of its powers under section 269UD of the Act, did not have the jurisdiction to adjudicate upon the legality of the transaction, which was proposed to be entered into by the parties. It was also held that the only order which could be passed under section 269UD was an order of purchase and none other. The only point, therefore, which fell for consideration, was whether, in the circumstances, the court could direct the Appropriate Authority to issue a 'No Objection Certificate' under section 269UL (3) of the Act or whether the court should direct the Appropriate Authority to decide the matter afresh. After examining provisions of Chapter XX-C and considering various decisions of the High Courts and of this court the order of the Appropriate Authority first holding that the statement filed in Form 37-I was pre-matured and then refusing to grant 'No Objection Certificate', were quashed and directions were issued to the Appropriate Authority that 'No Objection Certificate' under section 269UL (3) of the Act in respect of the transfer of the premises in terms of the agreement between the parties be issued.

19. In *Murlidhar Ratanlal Exports Ltd. v. Appropriate Authority* (1999) 8 DTC 241 : (1998) 101 Taxman 562 (Cal.) the High Court was considering an appeal against the order of the learned Single Judge in *Shree Digvijay Cement Co. Ltd. v. Appropriate Authority* (1999) 12 DTC 219 : (1998) 99 Taxman 32 (Cal). Here the agreement of sale was dated 7-3-1994. By insertion of section 269UL the Appropriate Authority treated the form 37-I as non-est. The only question before the High Court was as to whether upon the submission of Form 37-I the Appropriate Authority had any option to pass order, the like of which it has done in the present case. In other words, under the Scheme of Chapter XX-C, particularly with reference to section 269UC, 269UD and 269UL, read with section 276AB, whether the Appropriate Authority is legally bound and obliged upon submission of Form No. 37-I only to pass order either granting 'No Objection Certificate' to the parties or to direct the preemptive purchase of the property in terms of section 269UD, and not to pass any other order whatsoever. In effect and substance, therefore, the Appropriate Authority has only two options, either to grant 'No

Objection Certificate' or to invoke section 269UD. The Division Bench noticed that under the agreement for sale, which was on the basis of Form 37-I, it was clear that the possession of the property in question was handed over by the vendor to the vendee not in pursuance of the sale agreement but as a consequence of the agreement for lease and that, therefore, there was no transfer within the meaning of clause (f) of section 269UA of the Act. Then the High Court went on to hold as under: -

'After having, thus, found that the Appropriate Authority acted in violation of law and beyond the jurisdiction vested in it, we have no hesitation in holding that it has lost the right to adjudicate upon the issue of the genuineness or otherwise on the apparent consideration, particularly because the time during which this had to be done has since expired. Since the Appropriate Authority failed to exercise the jurisdiction vested in it by law, and because we are proposing to set aside the order dated 24-6-1994, no purpose would be served by sending the matter back to the Appropriate Authority for reconsideration on the question of the appropriateness or otherwise of the apparent consideration. As no decision was taken by the Appropriate Authority within the time envisaged under section 269UD with regard to the apparent consideration, and because of the reason that we have set aside that order, the time limit cannot be extended by us and, therefore, the Appropriate Authority is bound to issue the Certificate of 'No-Objection' to the parties. We are fortified in our view by the two judgments of the Calcutta High Court in the cases of *MOI Engineering Ltd. v. Appropriate Authority* : [1992]198ITR270(Cal) and *Hindustan Lever Ltd. v. Appropriate Authority* : [1994]207ITR772(Cal) .'

20. We are of the opinion that these two decisions in *MOI Engineering Ltd.* and *Murlidhar Ratanlal Exports Ltd.* (supra) state correct principles which can be applied in the present cases. We have held that statement in Form 37-I was in order and was furnished to the Appropriate Authority within the time prescribed. The Appropriate Authority did not make any order within three months of its receipt of the said statement for purchase by the Central Government of the immovable property in question. That being the position, the Appropriate Authority is duty

bound to issue no objection certificate to the transfer of the property. In the circumstances of the case we can also exercise jurisdiction under article 142 of the Constitution. We would, therefore, direct the Appropriate Authority to grant 'no objection certificate' to the parties forthwith.

21. The appeals are disposed of accordingly. Considering the issues involved in these appeals we leave the parties to bear their own costs.

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