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Bansal Contractors (India) Limited and Another Vs. Union of India and Others

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Court : Delhi

Decided On : Sep-22-1998

Reported in : 1998VIIAD(Delhi)315; 76(1998)DLT805; 1999(48)DRJ382; [2000]241ITR97(Delhi); 1999RLR92

Judge : R.C. Lahoti and; C.K. Mahajan, JJ.

Acts : [Constitution of India, 1950](#) - Article 226; [Income Tax Act, 1961](#) - Sections 269

Appeal No. : Civil Writ Petition No. 2306 Of 1991

Appellant : Bansal Contractors (India) Limited and Another

Respondent : Union of India and Others

Advocate for Def. : Mr. K.S. Jaggi and ; Mr. A.K. Wali, Advs.

Advocate for Pet/Ap. : Mr. P.N. Lekhi Sr. Adv. and; Mr. Subhash Mittal, Advs

Judgement :

C.K. Mahajan, J.

1. By way of this writ petition the petitioner seeks a declaration that the sale of property bearing No. C(C)-18, Kalkaji, New Delhi, purchased by the petitioner from the President of India by way of registered Sale Deed dated 5.4.1989 after its acquisition under Sections 269UD and 269UE of the Incometax Act, 1961 (hereinafter 'the Act', for short) is a first sale and full ownership rights, title and interests vest in the petitioner and further seeks quashing of paras 3, 4 and 5 and portion of A, 2A in para 1 of the letter dated 11.1.1991, issued by the Assistant Settlement Commissioner for and on behalf of the President of India demanding enhanced ground from Rs. 9/- to Rs.72,409/- per annum. The petitioner further seeks a declaration that the ground rent demanded is in abuse and excess of authority and offends Articles 14 and 300A of the onstitution.

2. One Surjit Singh Sahni s/o Sh. Jai Singh acquired rights in immovable property bearing plot No.18 Block No. C (C) Kalkaji, New Delhi measuring 866 square yards from the Central Government through Settlement Commissioner, Government Built Property, New Delhi vide auction held on 4.12.1955. A lease deed dated 6.8.1959 was executed between the President of India and Surjit Singh Sahni and registered in the office of the Sub Registrar on 19.8.1959. For the purpose of the present petition the relevant Clauses of the lease deed are extracted and reproduced as under :

(b) The lessee shall before any assignment or transfer of the said premises hereby demised or any part thereof obtain from the Lesser 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 therefore.

(c) The Lessee can transfer the land after obtaining the permission of the Lesser aforesaid and the Lesser will not share any unearned increment in the value of the land being the different in the premium paid by him to the Lesser and the market value of the land then prevailing) for permitting such transfer. The Lesser will, however, be entitled to claim and recover the unearned increment in the value of the land in the event of any subsequent transfer of the land by a transferee.....

In the case of any subsequent transfers the Lesser shall have the preemptive right to purchase the premises as hereby demised and all the buildings and structures standing thereon, after deducting 50% of the unearned increment as aforesaid.

(d) The Lesser shall also have the right to revise the annual ground rent at the time of any assignment or transfer of the premises hereby demised subsequent to the first transfer or assignment as aforesaid. The revised ground rent payable in such case shall be at the rate of OB 2-1/2% of the value of the land at the time of such transfer.

Provided further that in the case of any transfer or assignment subsequent to the first transfer or assignment the Lesser shall also have the right to revise the ground rent hereby reserved on the first day of January of the year following the year in which thirty years from the date of such subsequent transfer or assignment shall be complete and thereafter at the end of each successive period of not less than thirty years.

3. Sh. Surjit Singh Sahni gifted his rights in the said plot of land to Sh. Surinder Singh Sahni, his son. The gift deed was registered on 2.3.1960 by the Sub Registrar.

4. Sh. Surinder Singh Sahni, entered into an agreement to sell the said property to the petitioner, M/s. S.K. Bansal Contractors and Engineers on 7th September, 1987. A statement was furnished under Section 269UC of the Incometax Act to the appropriate authority. The appropriate authority exercised its powers under Section 269UD of the Act and made an order on 6.11.1987 for the purchase of the said plot of land by the Central Government.

5. The said property with single storey builtup residential house, was acquired by the Central Government vide order dated 6.11.1987 passed by the Appropriate Authority under Section 269UD(1) of the Incometax Act. The said property on its being acquired vested in the Central Government under Section 269UE(1) of the Incometax Act. The plot Along with the single storeyed residential house standing thereon was surrendered by Shri Surinder Singh Sahni and possession delivered to the appropriate Government under Section 269UE(2) of the Act, whereupon the

Central Government made a payment of Rs. 39 lakhs to Surinder Singh Sahni. The said property so having vested in the Central Government was put to public auction. Clause 14 of the terms of conditions of transfers read as under :

'14 Unearned increased if any will be paid by the Department and ground rent of 2-1/2 % will be paid by the purchaser.'

6. The petitioner was the highest bidder and was declared the purchaser having paid a sum of Rs. 55,11,000/- . The entire consideration amount was paid and sale deed was registered on behalf of the President of India in favor of the petitioner. The peaceful possession of the aforesaid property was also delivered to the petitioner. A sale deed was duly executed and registered in the office of the Sub-Registrar as document No. 3031 in additional book No.1, volume No. 6373 at pages 149-152 on 5.4.1989, transferring by way of sale all its right, title and interest in the said property to the petitioner. The relevant terms of the sale deed are reproduced as under :

'This sale deed is made on 5th April, day of One thousand nine hundred Eighty nine between the President of India through Sh. Hari Narain (hereinafter called the vendor) of the one part AND M/s. Bansal Contractors (India) Ltd., E-7, 2nd Floor, Kalkaji, New Delhi-110019, through its Managing Director Sh. Kanshi Ram Bansal, S/o, Sh. Arjan Das (hereafter called the auction purchaser) of the One part.

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AND WHEREAS the said property was purchased by the Central Government vide order No. AA/87/88/1383 (R.No. 725) dated 6.11.1987, passed by the Appropriate Authority u/s 269UD(1) of the said Act from Shri Surinder Singh Sahni S/o, Shri Surjit Singh Sahni and the property vested in the Central Govt. U/s 269UE(1) of the said Act from all encumbrances.

AND WHEREAS the said property having so vested in the Central Government u/s 269UE(1) of the Act, was put to auction sale by the Chief Commissioner (Tech.) of Income Tax, New Delhi on behalf of the Central Government (Vendor) and at such

sale the auction purchaser being the highest bidder was declared purchaser of the same for Rs. 55,11,000/- (Rupees Fifty five lakhs eleven thousand only).

AND WHEREAS the said auction was later on confirmed by the Chief Commissioner (Tech) of Income Tax, New Delhi on behalf of the Central Government (Vendor) by his letter No. F.No. CC (Technical)/AA//R-625/87-88/294 dated 17.2.1988.

AND WHEREAS the Auction purchaser has already paid the full amount of Rs. 55,11,000/- (Rupees Fifty five lakhs eleven thousand only) to the Chief Commissioner (Technical) of Income Tax, New Delhi and the same has been acknowledged by him vide his letter aforesaid dated 17.2.1988.

AND WHEREAS the Vendor has already delivered peaceful possession of the said property, vesting in the Central Government u/s 269 UE(1) of the said Act free from all encumbrances, to the auction purchaser on 27.2.1988, through Shri Gurmej Singh, Valuation Officer-III, Income Tax Department, Rohit House, New Delhi.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. In pursuance of the said Auction sale and in consideration of sum of Rs. 55,11,000/- (Rupees Fifty five lakhs eleven thousand only) already paid by the Auction Purchaser as aforesaid (the receipt of which the vendor hereby acknowledges) the Vendor hereby transfers to the Auction Purchaser by way of sale all its rights, title and interest in the said property.

2. The vendor hereby covenants with the Auction purchaser as follows:

(i) The aforesaid property shall thus vest in the Auction Purchaser and the Vendor is left with no right, title or interest therein.

(ii) The vendor has already paid to the transferor the full amount of consideration payable in accordance with the provisions of Section 269UE of the said Act and no litigation or dispute of any nature whatsoever is pending in respect of the said property as to the quantum of apparent consideration payable to the transferor.

iii) It is further agreed that this deed conveys unto the Auction Purchaser all the estate rights, title, interest of the said vendor in, or to upon the said property'.

7. The petitioner applied for mutation of the said property in its favor to the L & DO in 1998 as the plans submitted by them for sanction for construction were not being passed. For almost two years no step was taken by the L & D.O. to mutate the property in the favor of the auction purchaser. The petitioner moved the High Court by way of a writ petition being C.W.P. No. 1741/90 seeking directions that the property be mutated in its favour. During the pendency of the writ petition the court was informed that mutation in the name of the petitioner had been effected on the same terms and conditions as laid down in the lease deed executed on 6.8.1959 and a copy of the mutation letter dated 11.1.1991 was handed over to the petitioner. The Land and Development Officer demanded enhanced ground rent from the petitioner at the rate of Rs.72,409/- per annum as provided in clause (d) of the Lease Deed w.e.f. 17.2.1988, the date of taking over possession of this property from the Income Tax Department. Hence the present writ petition.

8. The question that arises for consideration is whether a purchaser from the President of India of the property which has been previously acquired under Section 269UD of the Incometax Act, is the absolute owner of the property and as to whether petitioner was liable to pay ground rent or enhanced ground rent.

9. To appreciate the point of law involved in the present petition the relevant sections under Chapter XX-C of the Incometax Act are reproduced hereunder :

'Section 269UD Order by appropriate authority for purchase by Central Govt. of immovable property :

(1) The appropriate authority, after the receipt of the statement under sub-section (3) of section 269UC in respect of any immovable property, may notwithstanding anything contained in any other law or any instrument or any agreement for the time being in force, and for reasons to be recorded in writing, make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration :

Section 269UE

Vesting of property in Central Government

(1) Where an order under sub-section (1) of section 269UD is made by the appropriate authority in respect of an immovable property referred to in sub-clause (i) of clause (d) of section 269UA, such property shall, on the date of such order, vest in the Central Government free from all encumbrances.'

10. [In C.B. Gautam Vs . Union of India & Ors. : [1993]199ITR530(SC) their Lordships have held that the words 'free from all encumbrances' are not to be read in the section, to save it from being rendered ultra vires.]

11. Another relevant fact that has to be taken into account is the letter dated 9.12.1987 respondent No. 2, L&DO;, to the Chief Commissioner of Incometax (Technical), Central Revenue Building, I.P. Estate, New Delhi, in relation to the charges payable to the L&DO; in respect of the properties ordered to be purchased by the Central Govt. under section 269UD(i) of the Act on 6.11.1987. In respect of the property subject matter of the petition it was stated as under :

1. C(C)/18 Kalkaji

A sum of Rs. 90/- is due on account of Nominal Ground Rent @ Rs. 9/- P.A. w.e.f. 15.1.78 to 14.1.89. This will be treated as first sale. However in case of second sale 50% unearned increase will be chargeable.

12. At the time when property was acquired by the Central Government under Section 269UE of the Incometax Act, the property vested in the Central Government by virtue of the provisions of Chapter XX-C of the Incometax Act. The owner of the property was holding this plot under a lease executed by President of India. The owner entered into an agreement to sell the leasehold rights. After Chapter XX-C proceedings the property was sold through public auction and clause 14 of the terms and conditions enjoined upon the Department to pay the unearned increase and ground rent of 2-1/2% to be paid by the auction purchaser. The auction purchaser in fact purchased leasehold rights in this property of the original lesser.

13. Chapter XX-C of the Incometax Act borders on law of acquisition of property. The said Chapter was introduced as a measure of countering tax evasion by under valuation in transfer deeds. The Central Government was authorised to exercise powers of preemptive purchase in respect of any immovable property on its sale or transfer under certain circumstances, where the appropriate authority comes to the conclusion that on account of under valuation of the property the property is fit for purchase by the Central Government. The property when acquired by the Central Government consequent to the passing of purchase order by the appropriate authority, vests automatically in the hands of the Central Government. The vesting is by operation of law.

14. It was contended by the petitioner that respondent No. 2 had illegally and in abuse of its power and authority demanded enhanced rent from Rs. 9/- to Rs.72,409/- per annum treating the sale by the President of India to the petitioner as second sale. It was further contended that from a reading of the sale deed executed by the President of India it was crystal clear that all rights, title and interest in the said property had been conveyed to the petitioner who, upon the registration of the sale deed, became the full owner of the property in question. In the circumstances the petitioner was not liable to pay ground rent as demanded by respondent No. 2.

15. The petitioner also contended that the Central Government/President of India on acquisition of property in question under section 269UD and Section 269UE of the Incometax Act became the full and absolute owner of the property in question and was therefore empowered to either sell or lease the property in its discretion. In any event the purchase of the property by the petitioner from the President was to be treated as first sale and therefore the petitioners were not liable to pay any ground rent. The petitioners also reiterated that the President, who was already the lessee of the property in question, on acquisition of the lease hold rights of the property on 6.11.1987 became paramount owner of the property and thereafter transferred all its rights, title and interest in the property to the petitioner by registered deed.

16. The petition was resisted by the respondents. It was contended that what was sold to the petitioner after its acquisition from the original lessee were the lease old rights in the property. The vendor (Central Government/President) had only lease hold title upon the leased premises and therefore could not pass to the buyer a title better than what he himself had or conversely the buyer could not get a title better than what the seller had. It was further contended that the petitioners were aware that what they had purchased were lease hold rights and therefore approached respondent No. 2 for carrying out mutation of the said premises in their favour. The action of respondent No. 2 in claiming enhanced ground rent at the rate of Rs. 72,409/-, per annum was in accordance with the terms of the lease deed dated 6.8.1959 which is a contract and any action flowing from the contract was not open to the challenge by way of the writ petition.

17. From a reading of the relevant clauses of the sale deed which have been extracted and reproduced with emphasis in para 6 above, it is clear that the sale of the property in question was made by the President of India by a registered sale deed and all right, title and interest in the property were sold and transferred to the petitioner. On registration of the sale deed, the petitioner became the absolute owner of the property in question.

18. The property having been acquired by the Appropriate Authority, the same vested in the Central Government and the Central Government was at liberty and authorised to deal with the property in any manner as it deemed fit. It was competent to either make an outright sale of the said property or to sell the lease hold rights, as it had done earlier when the property was purchased by Surjit Singh in 1955. Once the lease hold rights reverted back to the Central Government who was the lesser and absolute owner of the property, the lease came to an end by operation of doctrine of merger. While making a sale of the said property after acquisition the Central Government transferred to the auction purchaser by way of sale all its rights, title and interest in the said property and it was a covenant of the sale deed that the property vested in the auction purchaser and the Central Government was left with no right, title and interest therein. What was conveyed to the auction purchaser was all the estate, rights, title, interest of the Central Government in or upon the said property as is evident from reading of the various

clauses of the sale deed executed by the President of India in favor of the petitioner, the relevant clauses where of are set out in para 6 above. The Central Government did not revive nor create afresh the lease. It purported to sell and demise its absolute estate, right, title and interest in the property sold to the petitioners and in their hands it is a free hold property. The nature and extent of transfer is to be determined on the basis of the recitals in the sale deed, reading the sale deed as a whole. The President of India was the paramount lessor/owner of the property and while exercising his powers in respect of the sale of the property sold all the rights, title and interest in the said property to the petitioner.

19. The perpetual lease granted to Surjit Singh was governed by the Government Grants Act of 1895. Section 2 of the said Act excludes operation of the Transfer of Property Act, 1882 to the Government Grants. By virtue of Section 3 any rule of law, statute or enactment of the legislature to the contrary is excluded and all provisions, restrictions, conditions and limitations contained in the grant are valid and shall take effect according to their tenor. The grant of property by the Government partakes the nature of the law since it over rides even legal documents which are contrary to the tenor of the grant documents. On acquisition of the property under the Incometax Act the lease hold rights vested in the Central Government. At this stage the President of India being the paramount/supreme owner was also in possession of the lease hold rights. The property in question was sold by the Central Govt./President of India absolutely and fully and completely to the petitioner with all right, title and interest by way of registered sale deed dated 5.4.1989. The President of India being the owner of the property in his discretion made an absolute sale of the property and has subsequent to 5-4-1989 ceased to be the owner of the property.

20. The contents of the sale deed executed by the President of India in favor of the petitioner bear testimony to what was intended to be sold by the President/Central Government. What has to be construed is the document of sale executed by the President of India in favor of the petitioner. While making the sale of the property the Central Government did not think fit to impose any condition but transferred to the petitioner by way of sale all its right, title and interest leaving with itself no right, title or interest in the said property.

21. The respondents are not right in contending that what was sold to the petitioners was mere lease hold rights of Sh.Surjit Singh Sahni. The estate, right, title and interest which has passed on from the Central Government to the petitioner is to be seen by reading the recitals of the sale deed executed by the President in favor of the petitioners. The terms are clear and explicit. They do not admit of any ambiguity. Hence there is no occasion for looking into any evidence de hors the terms of the sale deed for the purpose of determining nature of title and interest vesting in and conferred on the petitioners by the deed of sale.

22. A perusal of the letter dated 11.1.1991 (Annexure P-12) issued by the L. & D. O. to the petitioners shows that they have effected mutation in favor of the petitioners in the records of their office on the same terms and conditions as laid down in the lease deed executed originally, having also referred to the recitals of the original lease deed for the purpose of holding the petitioners liable to pay enhanced ground rent. That is how the demand has been created. Obviously the L & DO is belabouring under the misapprehension that the petitioners are mere lessees in whom the rights of the original lessee i.e. Sh. Surjit Singh Sahni have come to vest. This approach is wholly erroneous as we have already discussed herein above. The lease has come to an end and the owner of the property has executed a sale deed in favor of the petitioners wherein neither the President has reserved to the Central Government the right to realise the rent nor the petitioners have been obliged to pay anything by way of ground rent. The demand is, therefore, illegal and liable to be struck down.

23. It is true that the agreement entered into by Surinder Singh Sahni was for sale of lease hold rights. If that agreement would have materialised then the purchaser would have acquired lease hold rights merely and would have remained liable to pay ground rent. However, that agreement did not materialise. It was frustrated because of Chapter XX-C Incometax Act proceedings. The petitioners having purchased the property from the Central Government in a public auction followed by the execution of the sale deed by the President of India in their favour, it is futile to refer to the agreement dated 7.9.1987 for the purpose of determining the rights of the petitioners.

24. The petition is allowed. The impugned demand of ground rent contained in the letter dated 11.1.1991 (Annexure P-12) of the L.& D.O. is hereby quashed and set aside. No order as to the costs.

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