

A.D. Thiru (Huf) Vs. Appropriate Authority and Another

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Court : Chennai

Decided On : Jan-12-1995

Reported in : 1995(1)CTC316; [1995]215ITR914(Mad)

Judge : R. Jayasimha Babu, J.

Acts : [Income tax Act, 1961](#) - Sections 269(UC) and (UD)

Appeal No. : Writ Petition No. 20599 of 1994

Appellant : A.D. Thiru (Huf)

Respondent : Appropriate Authority and Another

Advocate for Def. : N.V. Balasubramanian, Adv.

Advocate for Pet/Ap. : P.P.S. Janarthana Raja, Adv.

Judgement :

Jayasimha Babu, J.

1. By consent this matter has been taken up for final hearing and learned counsel for the parties heard.

2. The petitioner is aggrieved by the order of the first respondent passed on November 29, 1994, on the statement in Form No. 37-I filed by the petitioner on August 31, 1994, for the transfer of the property located at 33, Rudra Road, St.

Thomas Mount, Madras. By that order the authority did not decide to acquire the property. Nor did it issue a no objection certificate for the transfer of the property to respondent No. 2. The authority's decision was merely to lodge the statement :

3. The reason given for this unusual order is that, according to the authority, the land sought to be transferred was in excess of the ceiling limit laid down in the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

4. This order is wholly unsustainable. The authority's powers and jurisdiction are limited to safeguarding the interests of the Revenue in accordance with the provisions of the Income-tax Act. It can either decide to acquire the property in accordance with Chapter XXC or grant a no objection certificate. If the authority has doubts about the petitioner's right to the property proposed to be transferred, it may decide not to acquire the property. It cannot thereafter prevent the petitioner from dealing with the property by declining to grant a no objection certificate.

5. The Supreme Court, in the case of *Appropriate Authority v. Tanvi Trading and Credits P. Ltd.* : [1991]191ITR307(SC) , dealt with this issue and held (at 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.'

6. A perusal of the order of the authority shows that it has misconceived its role under the Act. Breaches of other laws by the owner, or limitations placed by other enactments on the extent of the property that can be retained by the owner may be relevant for deciding as to whether the authority should acquire the property. The authority, however, cannot itself proceed to penalise the owner by withholding the no objection certificate even after deciding that the property is not to be acquire.

7. The no objection certificate only signifies that the authority had decided not to acquire the property and nothing more. Such a certificate is necessary only for the

purpose of registering the document of transfer. Such a certificate neither confers immunity from penal or other action for violation of other laws, nor does it have the effect of validating a transfer made in contravention of any other statute.

8. The view of the authority that the land sought to be transferred is in excess of the ceiling limit, it is submitted by learned counsel for the petitioner, is also erroneous. Counsel referred to certain documents to which there is no reference in the impugned order. The petitioner may produce before the authority the documents relied on by him if the same had not been produced earlier to show that the land is not in excess of the ceiling limit.

9. The impugned order of the authority is set aside. The authority shall reconsider the matter in accordance with this order within a period of eight weeks from the date of the receipt of a copy of this order. If after such reconsideration the authority decides not to acquire the property, the authority shall issue the 'no objection certificate' to the petitioner.