

Flash Builders Vs. Appropriate Authority, Income-tax Department and Others

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Court : Chennai

Decided On : Apr-15-1990

Reported in : [1993]199ITR112(Mad)

Judge : K.M. Natarajan, J.

Acts : [Income Tax Act, 1961](#) - Sections 269UD, 269UD(1), 269UE, 269UE(2) and 269UF

Appeal No. : Writ Petitions Nos. 1920 and 5041 of 1989 in Writ Miscellaneous Petition No. 1259 of 1989

Appellant : Flash Builders

Respondent : Appropriate Authority, Income-tax Department and Others

Advocate for Def. : Mrs. Nalini Chidambaram, Adv.

Judgement :

K.M. Natarajan, J.

1. The brief facts for filing these two petitions are as follows : Writ Petition No. 1259 of 1989 is filed by the purchaser for issue of a writ of certiorari calling for the records to quash the impugned order dated January 9, 1989, issued by the first respondent in the writ petition, namely, the Appropriate Authority, Income-tax Department, Madras, under section 269UD(1) of the Income-tax Act, 1961,

ordering the purchase of the property at No. 85, Chamiers Road, Alwarpet, Madras-600 018, by the Central Government, in respect of which the writ petitioner is claimed to have entered into an agreement for purchase with the third respondent for a consideration of Rs. 50,50,000 and in respect of which he had advanced Rs. 3,75,000 in addition to substantial amounts of expenditure, which he had incurred for making an application to the M. M. D. A. for permit and sanction of plan for construction and other developmental matters. By virtue of the impugned order under section 269UD(1), the property shall vest in the Central Government free from all encumbrances from the date of the order. The first respondent also directed that under the provisions of section 269UE(2) of the Act the transferor or any other person who may be in possession of the property shall surrender or deliver possession of the said property to the first respondent or any other person who is authorised by them within 15 days of the service of the order free from all encumbrance. According to the writ petitioner, the above provisions are unconstitutional and as such, the impugned order is totally illegal. He has also filed W. M. P. No. 1920 of 1989 for granting interim stay of operation of the impugned order of the first respondent and restraining the first respondent from taking further steps in pursuance of the said order. The writ petitioner obtained interim stay on February 2, 1989. To vacate the said interim stay, the third respondent filed W. M. P. No. 5041 of 1989.

2. It is averred in the affidavit filed in support of the petition for vacating the grant of stay that the agreement was entered into by him with the first respondent on October 18, 1988, and at the time of the said execution, a sum of Rs. 1,00,000 was received by him and the sale consideration was fixed at Rs. 50,50,000. As per the agreement, the balance amount was required to be paid in two instalments, namely, the first of such instalments of Rs. 4,50,000 should be made on or before January 15, 1989, and the second payment of the balance of Rs. 45,00,000 should be made on or before March 15, 1989, and since the first respondent contravened the said terms, the third respondent became entitled to rescind the same. According to the third respondent, the impugned order dated January 9, 1989, was received by him on January 20, 1989. He would submit that apart from Rs. 1,00,000, no further amount was paid and the allegations contra are false. Since the writ petitioner has committed breach, he has not only lost his right to

purchase the property but he is also debarred from challenging the action of the first respondent. The writ petitioner cannot challenge the action of the authority, namely, the first respondent, the Appropriate Authority of the Income-tax Department. It is further stated that unless the sale consideration of Rs. 50,50,000 due and payable by the appropriate authority (first respondent) is received by him, he will not be able to tide over his financial commitments and problems. He would submit that he has been living in the property ever since 1971. He closed down his business and he is not doing any business at present. His two sons are prosecuting studies in the U. S. A. and the third one is undergoing studies in Guindy Engineering College, Madras, and hence he is in dire need of funds. He would further state that he met with an accident recently and is incurring heavy expenditure on that account. He would further state that there is no constitutional violation of the present piece of legislation and that it is perfectly valid. The same is intended to curb the dealings in relation to black money, concealment of income and other anti-social activities. Since the said legislation is within the power of Parliament, the writ petitioner has no case for stay. Hence, he prays for vacating the stay as well as for issue of a direction to the first respondent to pay the sum of Rs. 50,50,000 with interest at 18 per cent. per annum.

3. The writ petitioner filed a reply-affidavit denying the said allegations made by the third respondent in the writ petition. He would state that the interim stay was granted by this court after appreciation of the facts and the interim stay ought to be made absolute. Further, the third respondent has deliberately omitted to mention and/or acknowledge the receipt of a further sum of Rs. 2,75,000 on various dates mentioned in paragraph 5 of the writ petition. He was ready and willing to pay the amount of the first instalment of Rs. 4,50,000 on January 15, 1989, and he has already paid Rs. 2,65,000 on various dates. But even before the first instalment became due and payable, he was paying the abovesaid sum in instalments at the demand of the third respondent. The impugned order dated January 9, 1989, was passed in the meantime. The third respondent had assured the writ petitioner that he would take steps to have the order of the first respondent set aside and secure the permission of the first respondent for the sale in terms of the agreement and that it was only on the basis of the said assurance, the writ petitioner effected a payment of Rs. 15,000 on January 15, 1989, and another sum of Rs. 10,000 on

January 19, 1989. The third respondent has purposely suppressed all these facts with ulterior motives. According to the writ petitioner, he has not committed any breach thereof. The allegations to the contrary made by the third respondent are opposed to facts and they were made with the obvious intention of gaining an unfair addition to the extent of Rs. 2,75,000. With regard to the non-mention of Rs. 50,000 in Form No. 37(1), it was said that the said amount was paid subsequent to the agreement and there is no provision in Form No. 37(1) which should reflect the terms of the agreement and what transpired subsequently. It is further stated that the third respondent having agreed to obtain the approval of the appropriate authority and having obtained Rs. 3,50,000 is seeking to gain an unfair addition. According to the writ petitioner, he has acquired a right under the agreement to purchase the property and as such, he is competent to question the impugned order of the first respondent in the writ petition. It is only the third respondent who is liable to reimburse the writ petitioner all the expenses incurred by him for preparing the plan for M. M. D. A. approval and the other work connected with the development and also liable to pay compensation as the writ petitioner had incurred loss, and the loss of profit, in addition to repaying the amount of Rs. 3,50,000 together with interest. It is also submitted that since the third respondent is an honest seller and the writ petitioner is an honest buyer, they should be protected and the injunction should be made absolute and the impugned order should be set aside. It is further submitted that the overzealousness with which the third respondent is seeking to support the acquisition of the property would prove his motive. The third respondent instead of co-operating with the petitioner in challenging the said order, is now attempting to put a spoke in his wheel which proves his mala fides. Hence, the writ petitioner prayed for dismissal of the petition to vacate the injunction.

4. Learned counsel for the third respondent drew the attention of this court to the decision in W. A. Nos. 1359 to 1361 of 1988, dated January 18, 1989 (Y. V. R. Moorthy v. Government of India by its Secretary, Department of Income-tax, Ministry of Revenue, New Delhi), wherein a Bench of this court directed the Income-tax Department to pay the vendor a sum of Rs. 10.75 lakhs out of the total consideration of Rs. 18 lakhs, after deducting the advance paid by the buyer to the seller, namely, Rs. 7.25 lakhs, in the manner set out in the order and also directed

the vendor to hand over possession to the Department and also hand over the discharged mortgage deed. While so doing, the Bench had directed the Department not to auction or sell the property during the pendency of the writ petitions. It was further observed that in case the petitioners in the writ petitions succeed, they should pay a sum of Rs. 10.75 lakhs to the Department and on the contrary, if the writ petitions fail, a sum of Rs. 7.25 lakhs shall be paid by the Department to the writ petitioners. Learned counsel for the third respondent is willing to sell the property of the Income-tax Department if the writ petitioner is not willing to act as per the terms of the agreement and purchase the property, and if the writ petitioner wants to prosecute the writ petition, he should be directed to deposit the balance of the sale consideration or otherwise, the stay should be vacated so as to enable him to get the entire sale price from the Income-tax Department by virtue of the impugned order.

5. Learned counsel appearing for the writ petitioner drew the attention of this court to the decision in *Padma (R.) v. Appropriate Authority, Income-tax Department* : [1990]185ITR269(Mad) , wherein a Division Bench of this court held :

'Even though the contingent vesting of the property had taken place under section 269UE, when the Central Government had been prevented from paying the consideration under section 269UF at the instance of the purchase of the purchaser, there is considerable risk in directing the Government to pay the entire sale consideration. If the writ petition is allowed, the vesting disappears, and the ownership will be with the appellants. No owner of property could ever ask for payment of sale consideration, before transfer of title in immovable property.... It will be highly inappropriate to direct public funds to be parted with especially when the Central Government is prevented from implementing the provisions of the Act.'

6. The learned judges while referring to the order passed by this court in *W. A. No. 1637 of 1987* dated October 15, 1987, (*Tirath Kaur v. Shyam Investments, represented by its partners*), observed (see : [1990]185ITR269(Mad) :

'It has been made clear that the directions given therein were confined to the facts of that case. Therefore, the said order could have no relevance to the claims made by the appellants herein.'

7. Learned counsel appearing for the Income-tax Department, Mrs. Nalini Chidambaram, submitted that the order passed in W. A. No. 1359 to 1361 of 1988 cannot be relied on in support of the case of the third respondent as the said order was passed in the circumstances of the said case wherein the parties agreed to the terms and it was not an order passed on merits after taking into consideration all the relevant provisions and their impact. In Padma's case : [1990]185ITR269(Mad) , referred to above, it was observed (at page 271) :

'While entering into the agreement, the appellants (vendors) having known about the existence of Chapter XXC in the Act, ought to have stipulated terms and conditions which would not involve an order being passed under section 269UD(1). Having entered into an agreement of sale, which is one that cannot be permitted under Chapter XXC of the Act, it is the appellants who will have to be blamed in the manner in which they have stipulated the terms and conditions therein. Therefore, no owner of property can ever ask the Government to pay any portion of the sale consideration, unless and until the proceedings in the court are disposed of. If any loss is occasioned because of the conduct of the fourth respondent, it is for the appellants to take such proceedings as are available to them in law against him for indulging in litigation. Public funds cannot be taken away by an owner of property when the agreement holder resorts to litigation of this nature.'

8. It is to be noted that the vendors in that appeal were the vendors while the fourth respondent was the purchaser. It was ultimately held (at page 272 of 185 ITR) :

'Hence, in matters of this nature, whenever a stay order is obtained at the instance of any of the parties to the agreement of sale, and if there is any interdiction by the court preventing the authorities from pursuing further steps consequent to the issue of an order under section 269UD(1), then there would be no directive from the court to the Income-tax Department to pay the sale consideration during the pendency of proceedings in court.'

9. Consequently, the Bench dismissed the appeal. It is clear from the ratio laid down in the abovesaid decision that the remedy of the third respondent-vendor, is

only to take such proceedings as are available to him in law as against the writ petitioner for indulging in litigation if any loss is occasioned because of his conduct and no direction can be given to the Income-tax Department to pay the sale consideration during the pendency of proceedings in the court. The reason for not issuing such direction is also obvious from the observations made by the Bench, which are to the effect (at page 271 of 185 ITR) :

'It is common knowledge as to how difficult it is for the Government to realise amounts by sale of immovable property. In spite of success in the writ petition, the fourth respondent may thereafter commit a breach of the contract. It would be unwise to subject the Government to part with public funds and thereafter face litigation, and in doing so, it would be spending more funds to succeed in those matters.'

10. It is not disputed by both the parties that the constitutionality of Chapter XXC of the Act is pending consideration before various High Courts and the Supreme Court. In the event of certain provisions being struck down, the vesting under section 269UD would disappear, and in such event, the owners will have to look to the purchaser for the sale consideration. It is to be noted that the third respondent as well as the writ petitioner were aware of the existence of Chapter XXC of the Act when they entered into the agreement and that it is applicable to this transaction. As per the terms of the agreement, it is for the third respondent in the writ petition to obtain the necessary permission from the Income-tax Department to sell the property, and only on production of the same the sale deed is to be executed and the entire amount will have to be paid. Even before the period fixed for payment of the first instalment, namely, January 15, 1989, the impugned order was passed on January 9, 1989. The third respondent is in possession of the property and he has not parted with possession. It is significant to note that according to the third respondent the impugned legislation is valid and the writ petitioner has no case for stay. According to the writ petitioner, he has paid Rs. 3,75,000 towards the sale price as per the terms of the agreement, whereas according to the third respondent in the writ petition, he received only Rs. 1,00,000 and not any other payment and that the writ petitioner has come forward with false version, which is a matter to be enquired into in the proceedings. The above

dispute cannot be resolved here as it is oath against oath and the writ petition cannot be dismissed on the ground that the writ petitioner has come forward with false allegations. As rightly observed by the Division Bench of this court in Padma's case : [1990]185ITR269(Mad) , cited above, the third respondent is at liberty to take such proceedings which are available under law as against the writ petitioner for rescinding the agreement recover the loss incurred by him and other remedies before the competent civil court. Applying the ratio laid down in the Division Bench decision of this court in Padma's case : [1990]185ITR269(Mad) , I am of the view that the interim stay already granted is to be made absolute and the petition to vacate the stay is to be dismissed.

11. Accordingly, W. M. P. No. 1920 of 1989 is allowed, while W. M. P. No. 5041 of 1989 is hereby dismissed. However, there will be no order as to costs.

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