

G.R. Radhakrishnan and Vs. Appropriate Authority

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Court : Chennai

Decided On : Dec-24-1998

Reported in : [2001]249ITR690(Mad)

Judge : R. Jayasimha Babu, J.

Acts : Income-tax Act, 1961 - Sections 269UD

Appeal No. : W.P. Nos. 10034 and 10045 of 1997 and W.M.P. Nos. 15973 and 15986 of 1997

Appellant : G.R. Radhakrishnan and ;t.L. Sankaran

Respondent : Appropriate Authority

Advocate for Def. : S. Sundaresan, Adv.

Advocate for Pet/Ap. : P.P.S. Janarthana Raja and ;Mohsin Ahmed, Adv.

Judgement :

R. Jayasimha Babu, J.

1. The petitioner is aggrieved by the order of the appropriate authority directing the pre-emptive purchase of an immovable property located at Door No. 50, North Usman Road, T. Nagar, Chennai. The property admeasures two grounds and 613 sq. ft. (5,413 sq. ft.). It has a 70 year old building. The ground floor admeasures

1,941 sq. ft. and the first floor admeasures 717 sq. ft. The property was agreed to be sold for a sum of Rs. 1,20,00,000 as per the agreement dated March 7, 1997.

2. After the petitioners filed Form No. 37-I, the appropriate authority issued a show-cause notice to them asking them to show cause as to why the property should not be pre-emptively purchased, as according to the authority, though the property is a residential building, it falls in a mixed residential zone as per the proposed master plan of the MMDA and the entire stretch of the front row are classified as commercial and the property would continue to have the same zone of classification and that the sale consideration of this property, as agreed between the parties compared with the sale realisation from sale of property at No. 33, North Usman Road which was auctioned by the Revenue on June 12, 1996, there was an undervaluation to the extent of 38.558 taking the discounted consideration under the agreement between the parties as Rs. 1,27,27,132. The property at No. 33, North Usman Road, had been purchased by the appropriate authority in February, 1994, and in the auction conducted by it on June 12, 1996, the property fetched a sum of Rs. 1,18,00,000. That property was also located on North Usman Road, but was away from Panagal Park, it consisted of land admeasuring 4,164 sq. ft. with a double storeyed building with a plinth area of 7,325 sq. ft., that building' having been constructed during 1987. That was also a corner property having 50 ft. frontage on North Usman Road and 77 ft. frontage at Bharathi Nagar II Street and falls in the same development zone.

3. The property at No. 50, North Usman Road, is situated near the Panagal Park and it is in rectangular shape with frontage of 90 ft. on the North Usman Road and 80 ft. on Coats Road.

4. The petitioners filed their objection to the show-cause notice contending, inter alia, that the property with which the authority wanted to compare this property was not really comparable and even if it was the value of the land, as claimed by the Department, it was not correct. The petitioners also relied on several transactions by other parties. Counsel for the petitioner submitted that the property at No. 75, North Usman Road, was sold in February, 1997, at the rate of Rs. 30,00,000 per ground.

5. The authority after hearing the parties has held that the land rate for the property which was sold in auction worked out to Rs. 65,75,000 per ground and taking that as a limit, the market value per ground of the petitioners' property in that area was fixed at Rs. 1,49,17,000. The authority also referred to the sale of two other properties in that area to which no reference had been made in the show-cause notice and these sale transactions, according to the authorities, showed that the land was sold for Rs. 1,09,55,000 in July, 1995 and for Rs. 73,41,000 in January, 1996. Out, however, observed that it was confining its estimate of the market value to the figure of Rs. 65,57,000 per ground. The authority computed the value of the property that was auctioned by it on June 12, 1996, by deducting from the total consideration of Rs. 1,18,00,000 the scrap value of the building which was taken as Rs. 4,24,222. In the valuation report prepared by the Department's valuer, the depreciated value of the structure on the property that was sold at auction is given as Rs. 36,69,522. The authority during the course of its order have not given any explanation whatsoever as to why the building which was nine years old and which consisted of a ground and first floor should be treated as scrap for the purpose of valuation of the land when even according to the valuer, the depreciated value of that building was Rs. 36,69,522. The person who bought the property, bought the land with building which was usable and when it is usable, there was no foundation for the conclusion that the construction is to be demolished. The construction, apparently, had been put up at a cost which was in excess of Rs. 36 lakhs which is the depreciated value for the nine years old building. When the depreciated value of the building is deducted from the total sale price, the land cost, even according to the valuer of the Department would work out to Rs. 46,86,000 per ground. According to the petitioner, the rate at which his properties was agreed to be sold is Rs. 53lakhs, per ground, a figure which is higher than the rate per ground of the properties that were auctioned, if the depreciated value of the building is deducted from the total consideration.

6. The submission of learned counsel for the Revenue is that the authority had only adopted a uniform method and taken the scrap value of the building for the purpose of comparison. It is not open to the authorities to proceed to pre-emptively purchase the property by seeking to compare a property with a 70 year old building, with one on which there exists a recently constructed building such

construction having been effected at a cost of several millions. By taking a notional scrap value, of such expensive construction the value of the land on which that building exists cannot be artificially boosted. The person who buys a property with a recently constructed building, normally buys it with an idea of using the building and it is only in rare cases where the sole purpose of the purchase is to put up a new development, the existing structure would be demolished. It is not the finding of the appellate authority that the person who has purchased the property in auction had purchased it with an intention of putting up a new development thereon and, therefore, the consideration paid for the property is relatable only to the land alone and not to the building.

7. When two things are sought to be compared, it is necessary that the things are in fact comparable. When plots with buildings thereon are compared, the buildings cannot be treated as scrap, irrespective of their age, the amount invested in putting up the construction, the present depreciated value and the potential for further use of the building. The building cannot be treated as scrap solely with a view to make the land on which that building had been put up comparable as land. The buildings which are put up at enormous cost are normally meant for use for several decades. The ownership of the buildings need not be hand in hand with the ownership of the land. Even where land is held by one, the building can be owned by another. For the purposes of ascertaining the value of the land on which the building had been put up, normally the depreciated value of the building is required to be deducted from the total consideration paid for the property. The exception would be cases where it is clearly established that the price paid for the property is in fact the price paid for the land and scrap value of the building.

8. The appropriate authority acted perversely in treating the value of the building on the auctioned property as scrap for the purpose of valuing the land, even in the absence of any evidence to show that the persons who bought the property bought it with an intention of completely demolishing the existing structure and putting up a new development on that land. The petitioner's counsel stated at the Bar that the building was purchased by a bank for locating its office in the building in that property and the building is being so used even now.

9. The impugned order of the authority therefore, cannot be sustained and is set aside. Learned counsel for the Revenue submitted that the authority may be directed to furnish to the petitioner the details of the two other sales referred to in its order and thereafter, determine as to whether the consideration agreed to between the petitioners is or is not below 15 per cent, of the market value. It was submitted by learned counsel for the petitioner that the appropriate authority by a letter dated July 22, 1397, subsequent to the date of the agreement to which the petitioners are parties, had issued no objection to the registration of the sale of a property on the same North Usman Road at a rate of Rs. 30 lakhs per ground.

10. In view of these submissions, I consider it just to permit the authority to re-examine the matter. The authority shall furnish to the petitioners all the relevant details with reference to the two transactions to which it had adverted to in paragraph 23 in its order. It will be open to the petitioners to file before the authority the details regarding the sale transaction, which according to them, has been approved by the authority at the rate of Rs. 30 lakhs per ground as also any other relevant material. The authority shall, after considering all the materials and hearing the petitioners, pass orders in accordance with law. The W. M. Ps. are dismissed.