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Court : Kolkata

Decided On : Jan-17-1992

Reported in : (1992)2CALLT28(HC),[1992]198ITR270(Cal)

Judge : Ruma Pal, J.

**Acts : [Income Tax Act, 1961](#) - Section 269UC, 269UD, 269UD(1) and 269UL(3);
;Urban Land (Ceiling and Regulation) Act, 1976**

Appeal No. : Matter No. Nil of 1991

Appellant : Moi Engineering Ltd. and anr.

Respondent : Appropriate Authority and ors.

Advocate for Def. : D. Pal, ;Pronob Pal and ;M. Bhattacharjee, Advs.

Advocate for Pet/Ap. : R.N. Bajoria, ;Samer Chakraborty and ;B. Das, Advs.

Judgement :

Ruma Pal, J.

1. On April 17, 1989, the petitioners jointly entered into an agreement with one K. S. Binayak for sale of certain land, building, structure and machinery at a price of Rs. 1,50,000. The petitioners and the transferee filed a statement under Section 269UC of Chapter XXC of the Income-tax Act, 1961 (referred to as 'the Act'),

before respondent No. 1 being the appropriate authority for considering whether the Central Government would purchase the immovable property being the subject-matter of the sale under Section 269UD(1) of the Act.

2. By an order dated June 12, 1989, the appropriate authority, being respondent No. 1, held that the statement was premature inasmuch as the agreement dated April 17, 1989, could not be implemented by reason of the restrictions contained in the Urban Land (Ceiling and Regulation) Act, 1976 (referred to as the '1976 Act'). It was stated that unless the proceedings under the 1976 Act were completed, no statement could be filed. This is the first order which has been impugned in this proceeding.

3. The petitioners then made an application under the 1976 Act to the Competent Authority for a no-objection certificate on May 16, 1990. In that application, it was stated that the proposed transfer under the agreement dated April 17, 1989, was not affected by the provisions of the 1976 Act. As no reply was received from the Competent Authority under Section 26(2) of the 1976 Act within the statutory period of 60 days, the petitioner wrote to respondent No. 1 on August 21, 1990, to grant the necessary 'no objection certificate' in respect of the proposed transfer under Chapter XXC of the Act. A fresh statement in Form No. 37-1 was enclosed with the letter.

4. By an order dated October 25, 1990, respondent No. 1 refused to grant a 'no objection certificate' on the ground that there was no change in the facts and circumstances of the case, and that the reasons mentioned in the order dated June 12, 1989, stood. This is the second order which has been impugned in these proceedings.

5. It is not disputed by the respondents that both the orders dated June 12, 1989, and October 25, 1990, are without jurisdiction and illegal in view of the decision of the Supreme Court in the case of *Appropriate Authority v. Tanvi Trading and Credits P. Ltd.* : [1991]191ITR307(SC) by which the Supreme Court affirmed the decision of the Delhi High Court (*Tanvi Trading and Credits P. Ltd. v. Appropriate Authority* : [1991]188ITR623(Delhi)).

6. The Delhi High Court, in a similar fact-situation as this, had held that the appropriate authority, in exercise of its powers under Section 269UD of the Income-tax Act, did not have the jurisdiction to adjudicate upon the legality of the transaction which was proposed to be entered into by the applicant. It also held that the only order which could be passed under Section 269UD was an order of purchase and none other. In view of the affirmation of the decision of the Delhi High Court by the Supreme Court, the impugned orders dated June 12, 1989, and October 25, 1990, passed by the appropriate authority in this case are liable to be quashed.

7. The only point which remains for consideration is whether, in the circumstances, the court should direct the appropriate authority to issue a 'no objection certificate' under Section 269UL(3) of the Act or whether the court should direct him to decide the matter afresh.

8. The rival contentions of the parties as to the relief to be granted in this writ may be appreciated if a brief summary of the relevant provisions in the Act is considered first. An agreement for transfer of immovable property has to be entered into three months prior to the actual transfer [Section 269UC(1)]. The agreement is to be reduced into a statement (Form No. 37-1) and submitted to the appropriate authority within a prescribed time (see rule 48L of the Income-tax Rules, 1962). The appropriate authority has to take a decision for purchase of the property within two months from the end of the month of the receipt of the statement (Section 269UD(1)). If a decision is taken to purchase the property, on the date of the order the property vests in the Central Government, and the person in possession is required to surrender or deliver possession to the appropriate authority within 15 days of the service of the order on him (Section 269UE(2)). If an order of purchase is made, the Central Government is required to tender the amount of consideration to the persons entitled within a period of one month from the date of vesting of the property (Section 269UG(1)). In default of tendering the money within such period, the order of purchase stands abrogated and the immovable property is re-vested in the transferor (Section 269UH). If, on the other hand, no order is passed for purchase under Section 269UD(1), the appropriate authority is required to issue a certificate of no objection (Section 269UL(3)).

9. It has been submitted by the petitioners that respondent No. 1 is bound to issue a 'no objection certificate' and that there was no question of respondent No. 1 exercising any right of pre-emption to purchase property under Section 269UD of the Act now, as the time prescribed under the Act for exercising that right has long since expired. It is submitted that the respondents not having exercised their right within the time prescribed had lost such right, and were bound to issue a no objection certificate under Section 269UL(3) of the Act. It is submitted that the court cannot extend the period of limitation under Section 269UD and should issue a writ of mandamus directing the appropriate authority to issue the certificate under Section 269UL(3). Reliance has been placed on the following decisions :

1. Tanvi Trading and Credits P. Ltd. v. Appropriate Authority reported in : [1991]188ITR623(Delhi) .

2. Irwin Almeida v. Union of India reported in : [1992]197ITR609(Bom) .

3. Smt. Satwant Narang v. Appropriate Authority reported in : [1991]188ITR656(Delhi) .

10. On behalf of the respondents, it has been contended that petitioner No. 1 had accepted the order passed by the appropriate authority on June 12, 1989, and had acted upon it by taking steps to move the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976. It is stated that petitioner No. 1 was fully aware that the time to pass the order under Section 269UD(1) of the Act in Form No. 37-1 filed on April 19, 1989, had expired and with such knowledge had filed a fresh application in Form No. 37-1 for consideration by the appropriate authority again. The appropriate authority had not given any fresh reasons but had reiterated the earlier reasons which had been expressed in the order dated June 12, 1989, which had been accepted and acted upon by petitioner No. 1. It is contended that petitioner No. 1 had, therefore, clearly waived the limitation which was imposed by the first proviso to Section 269UD(1) of the Act. It is finally submitted that petitioner No. 1 was also estopped from challenging the reasoning of the appropriate authority in the order dated June 12, 1989. The respondents have relied upon Director of Inspection of Income-tax (Investigation) v. Pooran Mall and Sons : [1974]96ITR390(SC) and Grindlays Bank Ltd. v. ITO :

[1980]122ITR55(SC) .

11. The first question to be resolved is whether the period of limitation prescribed under Section 269UD(1) may be waived.

12. The respondents have cited the decision of the Supreme Court in Director of Inspection of Income-tax (Investigation) v. Pooran Mall and Sons : [1974]96ITR390(SC) , to contend that the period of limitation prescribed under Section 269UD(1) could be waived.

13. In Pooran Mall and Sons' case : [1974]96ITR390(SC) , the Income-tax Officer had passed an order under Section 132(5) of the Act. An order under Section 132(5) is required to be made within 120 days of the seizure of money, bullion, jewellery or other valuable Article or thing under Section 132(1) or 132(1A) of the Act. The order under Section 132(5) was challenged in writ proceedings. This writ application was disposed of by a consent order in terms of which the order under Section 132(5) was quashed and the Department was permitted to pass a fresh order after giving an opportunity to the petitioner of being heard. The Income-tax Officer accordingly passed a fresh order after hearing the petitioner. This fresh order was challenged in a second writ petition. It was contended that the order, being passed beyond the period prescribed under Section 132(5), was without jurisdiction. The Supreme Court rejected the contention. The Supreme Court held that the period prescribed under Section 132(5) could be waived by the assessee. In considering whether the period of limitation prescribed under Section 132(5) could be waived, the Supreme Court held that ' to hold that the period of 90 days which is mentioned in Section 132(5) is an immutable one would cause more injury to the citizen than to revenue'. That reasoning does not obtain here. On the contrary, it would be prejudicial to the citizen to construe the period under Section 269UD(1) as mutable and subject to waiver. I am not persuaded to read the provisions of Section 269UD(1) as permitting the principle of waiver.

14. The conduct of the petitioner subsequent to the order dated June 12, 1989, is, therefore, irrelevant. It is also well-established that there is no estoppel against a statute (see Elson Machines P. Ltd. v. Collector of Central Excise, : 1988(38)ELT571(SC)).

15. Assuming that the period of limitation under Section 269UD(1) can be waived, I am of the view that the conduct of petitioner No. 1 subsequent to the order dated June 12, 1989, cannot be construed as waiver. Waiver is a conscious and voluntary relinquishment of a known right (see *Motilal Padampat Sugar Mills Co. Ltd, v. State of U. P.* : [1979]118ITR326(SC) and *Provash Chandra Dalui v. Biswanath Banerjee*, : [1989]2SCR401). It was not clear whether the appropriate authority could have passed the order he did on June 12, 1989, when the petitioners are alleged to have acted in compliance with that order. The Supreme Court authoritatively determined this question only on April 23, 1991, in the case of *Tanvi Trading and Credits P. Ltd.* : [1991]191ITR307(SC) , when it was held that such an order could not be passed. The petitioners were not fully informed as to their right when they took the steps which the respondents claim amounted to waiver. It cannot also be said that petitioner No. 1 had taken those steps with the intention of abandoning or surrendering its rights to a no objection certificate under Section 269UL(3) within the expiry of the period specified under Section 269UD(1).

16. Even assuming that, by submitting a statement in Form No. 37-1 for the second time under Section 269UC, the petitioner had waived its rights in respect of the first statement in Form No. 37-1 that the second statement was filed on August 21, 1990. If this is taken as a fresh submission under Section 269UC, the appropriate authority was bound to consider the same within a period of two months under the first proviso to Section 269UD. That period expired in October, 1990, or at the most in November, 1990. If the order of the appropriate authority dated October 25, 1990, rejecting the statement is construed as one of refusal, Section 269UL(3) came into play immediately thereafter. If the order dated October 25, 1990, is not construed as a refusal, then there was no decision at all within the period prescribed, in which case also, the provisions of Section 269UL(3) would be clearly attracted. It is not the case of the respondents that the petitioners had taken any steps waiving their rights under the second statement in Form No. 37-1.

17. I am, therefore, unable to accept the submissions of the respondent authorities that the petitioners had waived the period of limitation under Section 269UD(1).

18. The last question is whether the court can and if so should extend the period for the appropriate authority to consider the matter afresh. In my view, the court cannot and should not.

19. Under the provisions of Section 269UD, the transferor and the transferee have to enter into an agreement to transfer land at least three months before the intended date of transfer. This agreement is required to be reduced into writing in the form of a statement (Form No. 37-I). This statement is to be submitted to the appropriate authority. Under Section 269UD, the appropriate authority is empowered to make an order for the purchase of the property sought to be transferred for the apparent consideration stated in the agreement for transfer. However, under the first proviso to Section 269UD(1), no such order can be made by the appropriate authority after the expiration of a period of two months from the end of the month in which the statement submitted under Section 269UC has been received by the appropriate authority.

20. The appropriate authority has to look at the transaction as it stands, however illegal or defective it may be, and decide whether the Central Government wishes to purchase the property irrespective of and subject to such illegality or defect. If not, the appropriate authority is bound to issue a certificate of no objection under the provisions of Section 269UL(3). The provisions of Section 269UL(3) clearly show that, where an order under Section 269UD(1) is not passed for purchase of the property sought to be transferred, 'the appropriate authority shall issue a certificate of no objection . . . and deliver copies thereof to the transferor and the transferee', (emphasis* supplied)

21. The terms of the statute are, therefore, explicit. There is no ambiguity which requires construction. In terms of the statute, immediately upon the expiry of the period prescribed under the first proviso to Section 269UD(1), the appropriate authority is under a mandatory obligation to issue a certificate of no objection.

22. This time-frame has been obviously evolved for the purpose of minimising the period of uncertainty in the transaction. The language of Section 269UD and Section 269UL(3) are explicit. There is no ambiguity relating to limitation. There is no hiatus between the expiry of the period under Section 269UD(1) and the

commencement of the obligation under Section 269UL(3).

23. It does not appear from the language of Section 269UD that the court has been given any discretion to extend the period within which the appropriate authority may exercise its power of pre-emption. There can be no doubt that the provisions of Section 269UD are a serious inroad on the right of a citizen to dispose of the property to a person of his choice. This inroad is justifiable perhaps in the light of the purpose sought to be achieved, namely, the control of black money. However, being such an inroad, the provisions of Section 269UD are to be strictly construed. The Legislature has protected the right of the citizen to some extent by laying down a time-frame within which the entire exercise is to be completed. Where the Legislature wanted to provide for an extension of the period, it has specifically provided for it, as in the second proviso to Section 269UD(1).

24. This reading of the provisions is also borne out by considering their legislative background.

25. The background for the introduction, and the ambit, of the preemptive right of the Central Government in respect of transfer of immovable property have been stated in the paper published by the Central Government on the Long-term Fiscal Policy, 1985, in respect of the Seventh Plan as follows (at page 16 of 157 ITR (Journal Section)) :

'5.29 As a measure for countering evasion, the Income-tax Act at present contains a provision empowering the Government to acquire an immovable property on its sale or transfer if the consideration recorded in the transfer deed is found to be less than its estimated fair market value by more than a specified margin. These provisions have not proved to be effective and have generated a great deal of litigation and harassment. It is essential to find ways in which taxpayers would be induced to disclose the true values of their properties.

5.30 One way of tackling this problem is to confer on the Government a preemptive right to acquire any immovable property undergoing a transfer for consideration at a value of 15 per cent. above the price or consideration stated in

the transfer deed. The scope of such a provision may be limited initially to the metropolitan towns and also properties worth more than Rs. 10 lakhs. To be fair, selection will have to be based on a system of random sampling. Furthermore, the Government will be required to make full payment for any property it notifies for acquisition within 30 days of such notification. To reduce undue uncertainty in property transactions the Government's pre-emptive right of purchase will automatically lapse after 60 days of the seller's applying for the clearance certificate from the Income-tax Department for any particular property sale. ' (emphasissupplied)

26. The intention of the Legislature was that the pre-emptive right under Section 269UD would automatically lapse after 60 days. No power of extension was intended.

27. In Grindlays Bank's case : [1980]122ITR55(SC) , cited by the respondents, there was no question of extending the period of limitation at all. It was found that the bar of limitation for making an assessment had not come into play at all, such assessment proceedings having been stayed during the pendency of writ proceedings. The Supreme Court also held that the court could direct a fresh assessment unless there was a complete want of jurisdiction to make the assessment at all. This case is not apposite. The question here is whether the period of limitation prescribed should be extended at all. In Pooran Mall's case : [1974]96ITR390(SC) , the Supreme Court held that the court could otherwise extend the time if the Income-tax Officer had not lost jurisdiction over the matter (see : page 398 of the report). In this case, the appropriate authority has lost the jurisdiction which it now claims to exercise. After the expiry of the period under Section 269UD(1), the provisions of Section 269UL(3) came into operation and the appropriate authority automatically lost the power under Section 269UD(1). When Section 269UL(3) is operative, the appropriate authority does not continue to retain his jurisdiction under Section 269UD(1). Therefore, these cases are of no assistance to the respondents.

28. In the absence of any express provision for extension of time and, given the nature of the power sought to be exercised, no principle of interpretation or equity

could justify the court in exercising its inherent jurisdiction to extend the time for the appropriate authority to reconsider the matter under Section 269UD(1).

29. The issue is not *res Integra*, In the decision in *Satwant Narang* : [1991]188ITR656(Delhi) , in substantially similar circumstances, a Division Bench of the Delhi High Court stated that (at page 664) ' the Act lays down a very tight schedule for the appropriate authority to make up its mind to purchase or not to purchase the property. There is no provision for extension of time. The respondents have missed the bus and have passed the impugned order on December 15, 1989, rejecting the permission on quite irrelevant considerations. This court would not like to extend the period and frame a fresh time schedule for the Department specially when the statute does not give any such power to the court.'

30. Other High Courts have also held that once the period under Section 269UD(1) has expired, there is no option for the appropriate authority but to issue the certificate under Section 269UL(3) and the court should enforce such obligation by way of a writ of mandamus. In the decision in *Tanvi Trading and Credits P. Ltd.* : [1991]188ITR623(Delhi) , the Delhi High Court at page 630 of the report held :

' The impugned orders show that the appropriate authority has not exercised its pre-emptive right of purchase within the stipulated period. The decision not to issue a certificate under Section 269UL(3) and the direction that the statement under Form No. 37-I be filed are clearly without jurisdiction.

For the aforesaid reasons, we issue a writ of certiorari quashing the impugned orders and we also issue a writ of mandamus directing respondent No. 1 to issue to the petitioners within four weeks from today a ' no objection certificate' in terms of Section 269UL(3).'

31. In the case of *Irwin Almeida v. Union of India* : [1992]197ITR609(Bom) , a Division Bench of the Bombay High Court held that the appropriate authority may either decide that the property should be purchased by the Central Government or issue a no objection certificate. The Division Bench further held that, upon the

failure to exercise jurisdiction under Section 269UD(1), within the prescribed period, the jurisdiction of the appropriate authority to direct purchase of the property by the Central Government stands extinguished and the petitioners are entitled to secure a no objection certificate. (See also *Satwant Narang v. Appropriate Authority* : [1991]188ITR656(Delhi)).

32. Therefore, I have no hesitation in quashing the impugned orders dated June 12, 1989, and October 25, 1990, and I direct the respondents to issue the 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 petitioners and the transferee being annexure B to the writ petition within two weeks from date. The application is, accordingly, allowed. However, there will be no order as to costs.

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