CASE NO.:
Appeal (civil) 3376-3377 of 2000

PETITIONER:
Krishnaswamy S.Pd. and Anr

RESPONDENT:
Union of India and Ors

DATE OF JUDGMENT: 21/02/2006

BENCH:
ARIJIT PASAYAT & R.V. RAVEENDRAN

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Challenge in these appeals is to the judgment rendered by a Division Bench of the Karnataka High Court dismissing the Writ Petitions filed by the appellants.

The factual background in a nutshell is as follows:

The fourth Respondent and appellants entered into an agreement of sale dated 16.7.1987 in respect of premises bearing No.377 R.M.V. Extension, Bangalore measuring 50' x 90'. The total consideration was fixed at Rs.18,00,000/-. Appellants paid a sum of Rs.6,00,000/- by two cheques dated 16.7.1987 to the fourth respondent and the balance consideration was agreed to be paid at the time of registration of sale deed. The parties to the agreement were required under Chapter XX-C of the Income Tax Act, 1961 (in short the 'Act') read with Rule 48(L) of the Income Tax Rules, 1962 (in short the 'Rules') to file a Statement in Form No.37-I before the appropriate authority specified under Chapter XX-C. Accordingly, appellants and fourth respondent filed Form No.37-I along with certain documents on 29.10.1987. Thereafter, the appropriate authority passed an order dated 18.12.1987 purported to be under Section 269UD(1) of the Act, for pre-emptive purchase of the said property by the Central Government at an amount equal to the apparent consideration. It was stated that the reasons were recorded separately. The said order dated 18.12.1987 was challenged before the Karnataka High Court in W.P. Nos. 247-248 of 1988. Challenge in the writ petitions was to the constitutional validity of Chapter XX-C of the Act with consequential prayer to quash the order dated 18.12.1987.

The High Court stayed the order of purchase dated 18.12.1987 on 7.1.1988. The interim order of stay was subsequently modified on 13.1.1988 by staying only the delivery of possession under Section 269-UE and further proceedings pursuant to vesting subject to the condition that the transferees and the transferor shall not effect any change in the nature and character of the property or alienate or encumber the property during the pendency of the writ petition. On 1.8.1991, the High Court vacated the interim stay by the following order :

"After hearing both the learned Counsel, we are of the view that stay of delivery of possession ordered by the learned Single Judge cannot be continued. Accordingly, the stay is vacated. Therefore, the transferor-respondent-4 W.G.S. Saldhana shall deliver possession in favour of respondent-3. the Income Tax Officer, without

any demur. Within two weeks from the date of delivery of possession, the said W.G.S.Saldhana shall be paid by the Revenue whatever amount is due to him. It is open to the Department to bring the property to public auction. We make it clear that the order relating to delivery of possession and payment of amount shall be subject to the ultimate result of the writ petitions.

Sri. Sarangan, learned Counsel for the petitioners states that a sum of Rupees Six Lakhs paid by way of advance under the agreement dated 16/7/1987 may be refunded.

It is open to the writ petitioners to seek refund of the same from the transferor namely, respondent-4."

In view of the vacating of the interim stay, the title-deeds relating to the property were delivered by the owner to the Income-Tax Department on 27.8.1991. The entire sale consideration paid by the Department was accepted by the owner before 15.9.1991. The acquired property was auctioned by the Department on 26.3.1992. The 7th respondent herein was the highest bidder and his bid of Rs.46 lacs was accepted and on payment of the said price, he was put in possession on 25.5.1992. A sale-deed was executed in favour of 7th respondent by the Department on 20.7.1994. The auction purchaser was impleaded as 7th respondent in the writ petition on 25.8.1997.

During the pendency of the said writ petitions, a Constitution Bench of this Court by its judgment rendered on 17.11.1992, upheld the constitutional validity of Chapter XX-C of the Act in C.B. Gautam v. Union of India & Ors. [1993 (1) SCC 78]. While so doing, this Court, however, held that before an order for compulsory purchase is made under Section 269-UD, the intending purchaser and the intending seller must be given a reasonable opportunity of showing cause against the order for compulsory purchase being made by the appropriate authority. This Court further held that the provisions of Chapter XX-C are to be resorted to only where there is significant undervaluation of the immovable property to be sold in the agreement of sale with a view to evading tax and that an order for compulsory purchase under Section 269-UD is required to be supported by reasons in writing and such reasons must be germane to the object for which Chapter XX-C was introduced in the Income Tax Act, namely, to counter attempts to evade tax. Reading down of section 269-UD in the above manner, to uphold its validity, necessitated issue of certain consequential directions. We extract below the relevant portions thereof :

"In view of the fact that the object of the provisions of Chapter XX-C is a laudable object, namely, to counter evasion of tax in transactions of a sale of immovable property, we consider it necessary to limit the retrospective operation of our judgment in such a manner as not to defeat the acquisitions altogether. We find that if the original time frame prescribed in Chapter XX-C is rigidly applied it would not be possible for the appropriate authority concerned to pass an order under Section 269UD(1) at all in respect of the property in question. In order to avoid that situation and, yet to ensure that no injustice is caused to the petitioner, we order, in the facts and circumstances of the case, that the statement in Form 37-I submitted by the

petitioner as set out earlier shall be treated as if it were submitted on the date of the signing of this judgment. Thereafter if the appropriate authority considers it fit, it may issue a show cause notice calling upon the petitioner and other concerned parties to show cause why an order for compulsory purchase of the property in question should not be made under the provisions of Sub-section (1) of Section 269UD and give a reasonable opportunity to the petitioner and such other concerned parties to show cause against such an order being made. In view of the limited time-frame this will have to be done with a sense of urgency. If after such an opportunity is given the appropriate authority so considers it fit, it may hold an inquiry, even though summary in nature, and may pass an order for compulsory purchase by the Central Government of the property in question under Section 269UD(1). The appropriate authority will have to decide whether an inquiry is called for in the facts and circumstances of the case after the show cause notice is issued\005\005\005\005\005.
43. We may clarify that as far as completed transactions are concerned, namely, where after the order for compulsory purchase under Section 269UD of the Income Tax Act was made and possession has been taken over, compensation paid to the owner of the property and accepted without protest, we see no reason to upset those transactions and hence, nothing we have said in the judgment will invalidate such purchases. The same will be the position where public auctions have been hold of the properties concerned and they are purchased by third parties. In those cases also nothing which we have stated in the judgment will invalidate the purchases."
[Emphasis supplied]

Subsequently, on 27.11.1992, this Court issued certain clarifications in regard to the directions in C. B. Gautam's case (supra), in regard to pending matters. As cases where public auctions had already been held were excluded from the directions relating to pending matters, the clarifications did not apply to such cases.

The writ petitions filed by the appellants were taken up for hearing by the Karnataka High Court after the decision in C. B. Gautam's case (supra). The only point urged by the Appellants at the hearing of the writ petitions was that in the impugned order no reasons were stated, as to on what basis the valuation of the property was arrived at and since the order was non-reasoned without giving opportunities to the appellants the same was liable to be quashed.

Stand of the appropriate authority on the other hand was that decision of this Court in C. B. Gautam's case (supra), was squarely applicable to the facts of the case. It was pointed out that instead of declaring the provision unconstitutional, as it did not provide for grant of an opportunity to the affected persons, the provision was read down and it was held that such a requirement was inbuilt as a part of the principles of natural justice. It was, however, noted in the clarificatory order that whenever the transactions were completed, the property was purchased under pre-emptive right to purchase by the Central Government, and the amount was returned back to the vendor or the purchaser and the possession of the property was taken without protest,

there is no necessity of again giving a notice and extending an opportunity which was binding in case of others. It was pointed out that in the case at hand, the authority had already exercised its powers and the amount was returned to the vendor and the possession was taken.

The High Court held that the crucial question to be determined was whether the impugned order was liable to the quashed on the ground that no reasons were given and reasons stated to be separately recorded were not supplied to the appellants and it amounted to denial of principles of natural justice. The High Court noted that the impugned order of the appropriate authority reads as follows:

"In view of the rival contentions, the question of law that arises for consideration is whether the impugned order is liable to be quashed on the ground that no reasons are given nor reasons separately recorded are supplied to the petitioners as it amounts to denial of principles of natural justice to the petitioners."

After examining the facts it was noted that separately recorded reasons were not supplied to the appellants and the appellants were thus not provided with an opportunity before arriving at the conclusions. But it was held that because of the clarificatory order of this Court the appellants were not entitled to any relief in the instant case. With reference to the interim order it was held that the fact situation was clearly covered by the clarificatory order of this Court in C. B. Gautam's case (supra). It was noted that though the interim order is always subject to the final order the fact situation was different as the transaction had already been completed, possession of the property had been given and the amount had been returned back and the same was received without protest. Merely because the writ petitions were pending it cannot be said that the transaction was not completed.

In support of the appeals, Mr. TLV Iyer, learned senior counsel has submitted that the order dated 1.8.1991 on which the High Court placed reliance itself made it clear that the same was subject to the result of the writ petitions. No prejudice should be caused to a party by an order of the Court. Therefore, the ratio in C. B. Gautam's case (supra),, more particularly, the clarificatory order was not applicable to the facts of the case. If any act is done pursuant to the order of the Court the same is subject to the result of the writ petitions and it cannot be affected. Reference was made to paragraphs 41, 42, 43 and 46 of C. B. Gautam's case (supra), in this context. Even if there was any auction sale by the Income Tax Department the principle of lis pendens was clearly applicable. The position would have been the same if there would not have been any interim order, and the final order in the writ petitions would have covered the matter.

In response, learned counsel for the auction purchaser submitted that interestingly the prospective vendor had not questioned either the legality of the order dated 18.12.1987 or the judgment of the High Court. In the auction sale the amount that had been paid is Rs.46 lakhs which was almost triple of the amount which was purportedly agreed to be paid originally. The protection given by the interim order that the actions indicated which determined would be subject to the result of the writ petitions were restricted to delivery of the property, which involved the prospective vendor and the department. The second condition was the payment of the amount by the department to the proposed vendor. In this transaction also the proposed purchaser was not involved. So far as the auction sale is concerned that was not subject to the final outcome.

It was, however, pointed out by learned counsel for the appellants that the third situation was clearly linked with the first two and the doctrine of lis pendens clearly applied to such a purchase.

There is no quarrel with the proposition as advanced by learned counsel for the appellants that an act of a Court cannot affect a party. In South Eastern Coalfields Ltd. v. State of M.P. and Ors. (2003 (8) SCC 648), it was noted as follows:

"28. That no one shall suffer by an act of the Court is not a rule confined to an erroneous act of the court; the 'act of the court' embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the Court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the Court not intervened by its interim order when at the end of the proceedings the Court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the Court would act in conjunction with what is the real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the Courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the Court withholding the release of money had remained in operation.

29. Once the doctrine of restitution is attracted, the interest is often a normal relief given in restitution. Such interest is not controlled by the provisions of the Interest Act of 1839 or 1978."

But the crucial question is whether the appellants were protected

by the order of the Court by which earlier interim order was vacated. As noted in Eastern Coalfields's case (supra) while adjudicating the question as to any relief can be granted, the same can be modified to do real and substantial justice. It is not a case where a right has been created and another party is impoverished because of the order dated 1.8.1991 passed by the High Court.

The maxim 'actus curiae neminem gravabit' i.e. an act of Court shall prejudice no man is an important one. The maxim "is founded upon justice and good sense, and affords a safe and certain guide for the administration of the law", said Cresswell J. in Freeman v. Tranah (12 C.B. 406). An unintentional mistake of the Court which may prejudice the cause of any party must and alone could be rectified.

The maxim of equity, namely, actus curiae neminem gravabit \026 an act of court shall prejudice no man, is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other relevant maxim is, lex non cogit ad impossibilia \026 the law does not compel a man to do what he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. (See: M/s U.P.S.R.T.C. v. Imtiaz Hussain (2006 (1) SCC 380), Shaikh Salim Haji Abdul Khayumsab v. Kumar and Ors. (2006 (1) SCC 46), Mohammod Gazi v. State of M.P. and others (2000(4) SCC 342) and Gursharan Singh v. New Delhi Municipal Committee (1996 (2) SCC 459).

One thing is crystal clear from the order dated 1.8.1991 that the appellants wanted to take back the money that had been paid to the prospective vendor. Submission was made on behalf of the appellant that a sum of Rs.6 lakhs paid by way of advance may be refunded. By seeking the return of the advance, the appellants have acquiesced to the property being sold in auction. In the order it was clearly mentioned that it was open to the writ petitioners (the present appellants) to seek refund of the same from the transferor namely, respondent No.4.

The controversy can be looked at from another angle. This Court in Union of India and Ors. v. Shatabadi Trading & Investment Pvt. Ltd. and Ors. (2001 (6) SCC 748) dealt with a somewhat similar issue. In paragraphs 3 and 9 of the judgment it was noted as follows:

"3. The High Court admitted the writ petition and granted interim order of stay restraining the Department from proceeding further in the matter. Against the said interim order, a special leave petition was preferred before this Court. During the pendency of the proceedings before this Court, an order was made on 25-4-1994 directing that the property be auctioned subject to bid confirmation by this Court. Auction was held and Smt. Anju Jain, Mr. Vineet Jain and Mr. Manish Jain as the highest bidders of the property offered their bid at Rs. 4.01 crores and permission was sought for confirmation of the same. Various pleadings were raised in those proceedings to the effect that the auction itself was a farce and stage-managed by the appropriate authority in collusion with Mr. Vinod Jain and the property was purchased by him in the name of his wife and two sons for Rs. 4.01 crores and that if the said bid was allowed, it would be a fraud on the Government and public exchequer and the writ petition filed before the High Court challenging the validity of the proceedings initiated under Chapter XX-C was yet to be considered. However, this Court after hearing the matter at length rejected the said objections of the

intending purchasers and confirmed the same on 19-9-1994. A sale deed has been executed by the appropriate authority in favour of the highest bidders and it is significant to note that the original owner of the property Arjun Anand, Respondent 9 herein has not challenged the aforesaid impugned order of the Department and in fact without any protest received a sum of Rs. 1.75 crores from the Department and a further amount of Rs. 14,03,500 by way of interest. He had accepted the amount without any protest and has not contested the matter either in the High Court or in this Court and thereafter the said SLP (C) No. 6040 of 1994 filed by the appropriate authority along with other connected matters was disposed of as having become infructuous in view of the auction-sale held and confirmation thereof by this Court.

xxx xxx xxx

9. There is one other factor which is very significant, namely, that this Court having allowed the auction of the property in question ending confirmation of the same and that order having become final, now to allow the order made by the appropriate authority to be set aside and to permit the parties to work out in appropriate proceedings for restitution of the property would lead to a serious anomalous position. When the transferor without demur allowed the property to be sold pursuant to the orders of this Court and that sale having taken place and this Court having affirmed the same and the proceedings by way of SLP filed under Article 136 of the Constitution coming to an end as having become infructuous, the High Court could not have brushed aside that sale in the manner it has been done. The impact of such decision ought to have been taken note of by the High Court. Indeed in K. Basavarajappa v. Tax Recovery Commr. ((1996) 11 SCC 632) this Court has held that an agreement to sell creates no interest in the property and in the absence of a decree of specific performance of an agreement even though authorized by the general power-of-attorney holder of the original owner of the property (sic the purchaser, the appellant therein) had no locus standi to move an application for setting aside the auction-sale on offer to deposit full tax dues. If we extend the said principle to the present facts, we find it hardly possible to come to the conclusion the High Court has arrived at. It is possible that the writ proceedings were still pending before the High Court but those writ proceedings were not at the instance of the owner of the subject property and the agreement-holder did not have any interest other than what was indicated in K. Basavarajappa case ((1996) 11 SCC 632). In that view of the matter, we do not think the High Court should have ignored the effect of the same".

It is thus clear that the requirement relating to hearing read into the provisions of Section 269D by this Court will not apply to transactions which have become final or transactions where the department has already auctioned the acquired property.

In view of the factual position noted above, tested in the background of legal principles set out in C.B. Gautam's and Shatabadi Trading Cases (supra) it is clear that there can be no interference as the property which is the subject matter of the compulsory purchase under Section 269UD had already been sold by public auction before the decision in C. B. Gautam's case (supra), and as there was no challenge

by the owner of the property. As a consequence, the inevitable result is dismissal of the appeals which we direct. No costs.