

CASE NO.:
Appeal (civil) 1415-1416 of 2000

PETITIONER:
SRI K.V. SHIVAKUMAR AND ANR.

RESPONDENT:
APPROPRIATE AUTHORITY AND ORS.

DATE OF JUDGMENT: 17/02/2000

BENCH:
S.B. MAJMUDAR & D.P. MOHAPATRA & R.P. SETHI

JUDGMENT:
JUDGMENT

2000 (1) SCR 991

The Judgment of the Court was delivered by

D.P. MOHAPATRA, J. Leave granted in Special Leave Petition (Civil) Nos. 13085-86/1996.

All the cases were heard together with the consent of the parties and are being disposed of by this judgment.

The controversy raised in these cases relate to the validity of the pre-emptive purchase of a building in the city of Bangalore under Section 269-UE of the Income Tax Act, 1961 (for short 'the Act') and its sale by the Central Government. This is the second round of this litigation to this Court. The exercise which started towards the end of 1990 is yet to reach finality.

The property in controversy is a double storied building bearing Nos. 775 to 809 situated at Old Taluk Cutchery Road, Bangalore. It consists of shops presently in occupation of tenants. M/s. Vidyavati Kapoor Trust represented by Mohan Lal Kapoor entered into an agreement with M/s. Rajatha Trust represented by Shiv Kumar on 28.11.1990 for sale of the said property for a consideration of Rs. 1,55,00,000. When transferor and the transferee jointly submitted application in the prescribed form to the Appropriate Authority under Section 269-UC of the Act, action for pre-emptive purchase of the property was taken by the Appropriate Authority. The Authority being prima facie satisfied that the property has been under valued with a view to evade tax initiated action for pre-emptive purchase of the property by the Central Government by the Order dated 24th June, 1991. The Appropriate Authority directed that the property be purchased by the Central Government at a discounted value of Rs. 1,50,17,084. The proposed transferor and transferee challenged the said order in Writ Petition Nos. 5614 and 6516 of 1991 before Karnataka High Court. Both the writ petitions were dismissed by the single Judge by the Order dated April 19, 1991. The writ petitioners preferred Writ Appeal Nos, 1297 and 1318 of 1991 before Division Bench of the High Court. The appeals were dismissed by the Division Bench by judgment dated August 23, 1991. A Certificate of fitness for filing appeal before the Supreme Court was however, granted by the Division Bench. The transferor preferred Civil Appeal No. 3849 of 1991 before this Court. By order dated 13th March, 1996, a Bench of three learned judges of this Court allowed the appeal relying on the decision of the Constitution Bench in C.B. Gautam v. Union of India & Others, [93] 1 SCC 78. Since it will be necessary to refer to the said order later in this judgment, the order is quoted in extenso :

"Order

This appeal by Certificate is against the decision of the Karnataka High

Court reported in 194 ITR 584 (Vidyavati Kapoor Trust v. Chief Commissioner of Income Tax and Ors.) which was affirmed by the Division Bench of that Court in 194 ITR 593. During the pending of this appeal, the Constitution Bench of this Court in C.B. Gautam v. Union of India and Ors., [1993] 1 SCC 78 has overruled the impugned judgment of the Karnataka High Court stating clearly that the view taken in the impugned judgment of the Karnataka High Court does not lay down the correct law. This being so, the impugned judgment has to be reversed following the decision of the Constitution Bench in C.B. Gautam's case.

Learned counsel for D.P. Sharma, the 4th respondent, who is stated to be one of the three joint purchasers during the interregnum and who claimed that the sale has been confirmed in their favour during the pending of this appeal, submitted that the transaction in their favour being complete, in view of clarification made in para 43 of the decision in C.B. Gautam's case, no interference should be made in this appeal for this reason. We are unable to accept this submission. The other alleged joint purchasers are not before us and all the necessary facts to enable us to take the view that transaction in the present case falls within the category specified in para 43 of the decision in C.B. Gautam's case are not before us. We are, therefore, unable to hold that notwithstanding the overruling of the impugned judgment by the Constitution Bench in C.B. Gautam's case, this appeal should not be allowed and the transaction should remain unaffected.

We may, however, observe that whatever remedy is available to the alleged purchaser for recovery of the amount, if any, paid by him, would remain unaffected by this decision.

Accordingly, the appeal is allowed. No costs."

After the two writ petitions filed by the transferor and the transferee were dismissed by the single Judge of the High Court, the Central Government, in whom the property vested in pursuance of the order passed by the Appropriate Authority under Section 269-JD read with Section 269-UE of the Act, put up the property for auction sale. In the sale notice it was recited, inter alia that the property which is to be sold under Lot No. 6 is free from encumbrances except that it is occupied by tenants. In the auction held on 28th June, 1991 K.V. Shivakumar who is one of the trustees of M/s. Rajatha Trust gave the highest bid of Rs. 2,77,00,000. The bid was accepted. The auction purchaser deposited 25% of the bid amount, i.e. Rs. 47,01,000. The balance amount was to be paid by 22nd September, 1991. Though the auction purchaser was repeatedly reminded to deposit the balance amount of about Rs, 2,30,00,000 he failed to pay the said amount.

On September 19, 1991, the auction purchaser filed Writ Petition No. 20686 of 1991 in the High Court of Karnataka seeking a direction to the Appropriate Authority and the Chief Commissioner of Income Tax to evict the tenants from the property in question by taking recourse to the provisions of Section 269-UE of the Act and for a direction to the Authority to deliver vacant possession of the property to him within a reasonable period; alternatively the writ petitioner prayed that in case the Central Government cannot comply with the demand of the auction purchaser then it should refund the amount of Rs. 47,00,000 with interest @ 15 per cent per annum. One T.N. Omesh claiming to be nominee of the auction purchaser instituted Writ Petition No. 20687 of 1991 seeking identical reliefs. Both the writ petitions were disposed of by the judgment dated 26th March, 1992, rendered by a single Judge, holding, inter alia, that the writ petitioners were not entitled to any relief in exercise of jurisdiction under Article 226 of the Constitution, The learned single Judge held that the auction purchaser was fully conscious that the property was in occupation of tenants and it would not be possible for the Authority to deliver vacant possession of the property. The learned Judge further held that the auction purchaser having committed default in payment of the balance bid amount is not entitled to seek the relief sought in the writ petitions. The judgment of the learned single Judge was subject matter of Writ Appeal Nos. 696 and

697 of 1992 filed by K.V. Shivakumar and T.N. Umesh. The appeals were dismissed by the Division Bench of the High Court by the judgment dated 15.2.1996. The said judgment was challenged before this Court in Special Leave Petition (C) Nos. 13085-13086 of 1996. In these cases this Court by Order dated 22.7.1996 issued notice to the respondents indicating that the matter would be disposed of finally at the notice stage itself.

During pendency of these cases in this Court M/s., Vidyavathi Kapoor Trust represented by Kamal K. Kapoor filed Writ Petition No. 33470 of 1996 in the High Court of Karnataka seeking a writ of certiorari quashing the order dated 28.11.1996 passed by the Appropriate Authority under Section 269-UD(1) of the Act and seeking a writ of mandamus to the Chief Commissioner of income Tax, Bangalore to issue 'No Objection' to the petitioner and the proposed transferee since the property in question has reverted with the transferor. The proposed transferee, M/s. Rajatha Trust, represented by its trustee K.V. Shiva Kumar also filed Writ Petition No. 34820 of 1996 in the Karnataka High Court seeking similar reliefs. On the petitions filed by the writ petitioners for transfer of the writ petitions, this Court by Order dated 24th July, 1998, transferred the two writ petitions to this Court. The cases are numbered as Transfer Case Nos. 22 and 23 of 1998. The appeals arising from the two SLPs and the two Transfer Cases have been tagged together for hearing.

Chapter XX-C comprising of Sections 269-U to 269-UO deals with purchase made by the Central Government of immovable property in certain cases of transfer. While Chapter XX-A applies to transfers made upto 30th September, 1986; this Chapter applies to transfers made after that date. Under the provisions power is conferred on the Central Government to purchase any property covered by the Chapter for the same consideration for which it is proposed to be transferred. These provisions were introduced for securing the twin objective of curbing generation of black money and evasion of tax by under-stating the value of the property in the instrument of transfer. The scheme under Chapter XX-A and XX-C is essentially to penalise the tax-dodgers who seek to evade payment of tax by resorting to the dubious method of undervaluing the property transferred under the instrument of transfer.

In C.B. Gautam's case (supra) the Constitution Bench upheld the validity of the provisions of Chapter XX-C of the Act holding inter alia that the said chapter providing for pre-emptive purchase of immovable property proposed to be transferred does not confer arbitrary or unfettered discretion on the Appropriate Authority to compulsorily purchase immovable property and does not violate Article 14 of the Constitution of India. This Court observed :

"The powers of compulsory purchase conferred under the provisions of Chapter XX-C are intended to be (and are being) used only in cases where, in an agreement to sell an immovable property in an urban area to which the provisions of that Chapter apply, there is a significant undervaluation of the property by 15 per cent, or more. If the Appropriate Authority is satisfied that the apparent consideration shown in the agreement for sale is less than the market value by 15 per cent, or more, it may draw a presumption that this undervaluation has been done with a view to evading tax. Such a presumption, however, is rebuttable and the intending seller or purchaser can lead evidence to rebut it. Moreover, the reasons for such acquisition which are required by Section 269-UD to be in writing must be germane to the object for which the chapter was introduced, namely to counter attempts to evade tax."

Considering the meaning and import of "free from all encumbrances" under Section 269-UE this Court observed :

"Section 269-UE must be read without the expression "free from all encumbrances" with the result that the property in question would vest in the Central Government subject to such encumbrances and leasehold interests as are subsisting thereon except for such of them as are agreed

to be discharged by the vendor before the sale is completed. If under the relevant agreement to sell the property is agreed to be sold free of all encumbrances or certain encumbrances, it would vest in the Central Government free of such encumbrances. Similarly, sub-section (2) of Section 269-UE will be read down so that if the holder of an encumbrance or an lessee is in possession of the property and under the agreement to sell the property, it is not provided that the sale would be free of such encumbrances or leasehold interests, the encumbrance holder or the lessee who is in possession will not be obliged to deliver possession of the property to the appropriate authority or any person authorised by it and the provisions of sub-section (3) also would not apply to such persons."

Summing up its conclusion this Court gave certain directions in relation to completed transactions as well as matters pending before the Courts or other authorities. The relevant portion of the Judgment reads :

"This brings us to the question of relief. We find that the order for compulsory purchase under Section 269-UD(1) of the Income Tax Act which was served on the petitioner on the night of December 15, 1986, has been made without any show-cause notice being served on the petitioner and without the petitioner or other affected parties having been given any opportunity to show cause against an order for compulsory purchase nor were the reasons for the said order set out in the order or communication to the petitioner or other concerned parties with the order. In view of what we have stated earlier, the order is clearly bad in law and it is set aside.

The next question is as to the consequence to follow. 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 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 269-UD(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 Ho. 37-1 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 269-UD and give a reasonable opportunity to the petitioner and such other concerned parties to show cause against such an order being made.

We may clarify that, as far as completed transactions are concerned, namely, where, after the order for compulsory purchase under Section 269-UD of the Income-tax Act was made and possession has been taken over, compensation was 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 held of the properties concerned and they are purchased by third parties. In those cases also, nothing which we have stated in this judgment will invalidate the purchases.

In the result, the writ petition transferred is allowed to the extent aforesaid. Considering the facts and circumstances of the case, there will be no order as to costs."

This Court overruled the decision of Karnataka High Court in Vidyawathi Kapoor case (supra) and affirmed the decision of the Madras High Court in GOI v. Maxim Alobo, (1991) 190 ITR 101 (Mad).

Subsequently on an application filed by the Union of India for certain clarifications and directions this Court passed an order of clarification in the form of a further direction which is reported in [1993] 1 SCC 78 (Paragraphs 45-52).

After disposal of the appeal by this Court setting aside the judgment of the High Court relying on C.B. Gautam case (supra) the Appropriate Authority gave an opportunity of hearing to the parties and disposed of the matter afresh by the order dated 28.11.96. From the order it appears that the Appropriate Authority has complied with the direction in the order passed by this Court and has dealt with the matter in the light of the principles decided in C.B. Gautam case (supra). From the discussions in the order it is also clear that the contention which had been raised by the transferor and the transferee and the interested party (D.P. Sharma) at the earlier stages of the proceeding were with some modifications reiterated before the Authority. On behalf of the transferor challenge was raised to the notice dated 5.6.96 as being barred by time; objection was also raised against the valuation of the property determined by the Appropriate Authority and satisfaction of the Appropriate Authority regarding under-valuation. The question was also raised whether the transferee was entitled to deliver vacant possession of the building after getting the tenants evicted. In the order these contentions have been dealt with in detail and cogent reasons have been given for their rejection by the Authority. After a thorough discussion of the entire case the Appropriate Authority recorded its conclusions in these words :

"The reasons recorded by the learned Members of the Appropriate Authority as on 24.1.1991 already communicated to all the parties concerned, are still valid and have not been rebutted. We therefore estimate the market value of Mohan Building in its tenanted state is Rs. 2,00,00,000 as on 28.11.1990. Thus, there is an under-valuation of namely 33% in the agreement dated 28.11.1990 between M/s. Vidyavathi Kapoor Trust and M/s. Rajatha Trust.

In view of the above conclusion, the Appropriate Authority is convinced that there is under-valuation of the apparent consideration in this case. They have no doubt that this under valuation has been resorted to with an intention to evade tax."

The Appropriate Authority in exercise of the powers vested in it under Section 269-UD(1) of the Act ordered pre-emptive purchase of the immovable property in question and further ordered that in view of the fact that the property has already been handed over to the Central Government by the transferor on 26.2.1991 no separate order under Section 269-UD(2) was passed. Reiterating the statutory provisions the Appropriate Authority ordered :

"It is hereby declared that nothing in this order shall operate to discharge the Transferors/Transferees or any other person (not being the Central Government) from liability may be enforced against the transferors/transferees or such other persons. Notwithstanding anything contained in any other law or any instrument or agreement for the time being in force as the Appropriate Authority has ordered the purchase of the Schedule property, no claim by the transferees shall lie against the transferors for the reason of such transfer being not in accordance with the agreement for the transfer of the impugned property entered into between the transferors and the transferees."

Shri S. Ganesh, learned counsel appearing for the appellant raised the contention that in view of the order of this Court setting aside the judgment of the High Court the property in question reverted in the transferors and therefore the entire proceeding should have been started de novo instead of merely giving a notice of hearing to the parties.

Referring to the transfer cases the learned counsel appearing for the

petitioner contended that the Appropriate Authority committed an error in adopting a discounted value of the property and fixing its apparent consideration at Rs. 1,50,17,084 as against the consideration of Rs. 1,55,00,000 specified in the agreement between the parties. He further contended that from the discounted value a sum of Rs, 2,49,851 stated to be due towards arrears of income-tax and wealth-tax in the case of Mohan-lal Kapoor was illegally deducted. According to the learned counsel since the apparent consideration as prescribed in Section 269- UA(b)(i) was not tendered by the Central Government the order of purchase of the building by the Central Government under sub-section (1) of Section 269-UD stood abrogated and the property stood revested in the transferor.

Shri G.L. Sanghi, learned senior counsel appearing for the purchaser DP. Sharma supported the order of the Appropriate Authority and further contended that the purchaser has been seriously prejudiced on account of the delay in delivery of possession of the property.

We have perused the relevant records and carefully considered the entire matter. We are not satisfied that the order dated 28.11.1996 passed by the Appropriate Authority suffers from any serious illegality or infirmity which warrants interference. The relevant points of law arising in the case have been dealt with by the Constitution Bench in C.B. Gautam (supra) and the validity of the Act has been upheld. We are in respectful agreement with the said decision. The contention raised by the learned counsel for the appellant that since the order of the Appropriate Authority was set aside by this Court the property stood revested in the transferor, is in the circumstances of this case unacceptable and is rejected. It was expressly stated in the order of the Appropriate Authority and it was not disputed before us that after the order of the Appropriate Authority for compulsory purchase the transferee received the full consideration as determined therein and delivered possession of the building to the Central Government. Thereafter, they challenged the order in the Writ Petitions filed in the High Court which were rejected and the matter was carried to this Court in the appeal which was allowed relying on the C.B. Gautam case (supra). This Court, in its order neither directed de novo proceeding nor issued any direction to start the proceeding from any anterior stage. In the circumstances no exception can be taken to the procedure followed by the Appropriate Authority in issuing a fresh notice of hearing to the proposed transferor, transferee and the interested person and disposing of the matter in the manner discussed earlier. The property had already vested in the Central Government and that position remained unaltered subject to the fresh order to be passed by the Appropriate Authority.

In the order passed by the Appropriate Authority the working of the discounted value of the apparent consideration of Rs. 1,55,00,000 and the deductions made towards advance received by the transferor from the transferee and the amount outstanding against Mohanlal Kapoor were set out. From the discussions in the orders passed by the Appropriate Authority it is clear that notice of the discounted value and the deductions proposed to be made were given to the transferor. The transferor raised no objection against the discounted value or the deduction made. Indeed the transferor expressed its willingness to accept the balance amount of consideration. Accordingly, a sum of Rs. 97,67,233 was paid to M/s. Vidyavathi Kapoor Trust by cheque. On receipt of the amount the transferor delivered possession of the property. From the record it appears that the respondents stated before the Authority that the alleged mistake in adjusting the tax arrears of Mohanlal Kapoor from the consideration payable to M/s. Vidyavathi Trust could be sorted out between the department and the transferor. It also appears from the record that Mohanlal Kapoor is one of the trustees of M/s. Vidyavathi Trust and also one of the persons entitled to dispose of 'Mohan building'. In these circumstances, it cannot be said that the Central Government has failed to tender or deposit the whole or any part of the amount of consideration required to be tendered or deposited under Section 269-UG of the Act which entails the consequence of abrogation of the purchase order and revestment of the property in the

transferor. The use of the expression 'fails to tender' in section 269-UH, considered in the context of the scheme of the Act in chapter XX-C, connotes that the Central Government shall pay to the transferor the apparent consideration as determined by the Appropriate Authority u/s 269-UD read with section 269-UF, within one month from the end of the month in which the immovable property concerned becomes vested in the Central Government under sub-section (1) or as the case may be, under sub-section (6) of section 269-UE. Section 269-UE clearly provides that where an order under sub-section (1) of section. 269-UD is made by the Appropriate Authority in respect of an immovable property referred to in sub-clause (1) of clause(d) of section 269-UA, such property shall on the date of such order, vest in the Central Government. Indeed, in this case the Appropriate Authority clearly stated in the order passed on 24.1.91 that the property stood vested in the Central Government and the said position was reiterated in the order passed by the Authority on 26.11.1996. Even assuming that certain deductions made were not permissible the vesting order in favour of the Central Government cannot be said to be vitiated on that count. The contention raised by the learned counsel for the petitioner is rejected.

On the discussions in the foregoing paragraphs and for the reasons Stated therein the appeals and the transfer cases are dismissed. No costs.

