(1983) 36 CTR 250 : (1984) 145 ITR 365 : (1983) 15 TAXMAN 121

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 263 of 1979

Shantimoy Ray		APPELLANT
	Vs	
Competent Authority, IAC of I.T. and Others		RESPONDENT

Date of Decision: Dec. 3, 1982

Acts Referred:

- Income Tax Act, 1961 - Section 269A, 269D(1), 269D(2), 269F(6), 269I(1)
- Income Tax Act, 1961 - Section 269A, 269D(1), 269D(2), 269F(6), 269I(1)
- Income Tax Act, 1961 - Section 269A, 269D(1), 269D(2), 269F(6), 269I(1)

Citation: (1983) 36 CTR 250 : (1984) 145 ITR 365 : (1983) 15 TAXMAN 121

Hon'ble Judges: H.N. Seth, J; B.N. Sapru, J

Bench: Division Bench

Advocate: D.C. Chaturvedi and B.C. Dey, for the Appellant; M. Katju, for the Respondent

Judgement

H.N. Seth, J.
By this petition under Article 226 of the Constitution petitioner, Shantimoy Ray, who is a tenant in one of the shops located in House No. 30 (old No. 16, Chowk, Allahabad, seeks the quashing of the order dated 16th January, 1976, passed by the IAC of Income Tax (Competent Authority) u/s 269F(6), I.T. Act, for acquisition of the aforementioned building as also that of the notice dated 19th May, 1979, issued by him u/s 269-I(1) of the Act requiring the petitioner to hand over possession of the shop in his tenancy. The petitioner seeks further relief by way of injuncting the first two respondents, namely, IAC of Income Tax and Executive Engineer, Central Public Works Department, Allahabad, from ejecting him form the said shop.

2. The building bearing House No. 30 (old No. 16), Chowk, Allahabad, is situated in a busy commercial area of Allahabad and it has a number of tenements which are being used for commercial purposes. Some time in the year 1947, the petitioner took on lease one such tenement on the ground floor (hereinafter indicated as the shop) from its owner,

Smt. Janak Kishori Devi, and has thereafter been carrying on the business of Chemists and Druggists therein under the name and style of Esray & Company.

3. On 5th April, 1977, Smt, Jana Kishori Devi executed a sale deed and sold the said building to respondents No. 4 to 6 of this writ petition. Being of opinion that the said property had been sold by Smt. Janaki Kishori Devi to respondents Nos. 4 to 6 for an apparent consideration which was less than its fair market value and that the consideration in the sale deed had not been truly stated, the IAC of Income Tax, who was the Competent Authority, initiated proceedings under Chap. XX-A of the I.T. Act, for acquisition of the said property by publishing a notice u/s 269D of the Act, in the Gazette of India, dated 11th January, 1975, Part III, Section 1, at page 306. In due course the Competent Authority passed the order dated 16th January, 1976, u/s 269F(6) of the Act for acquisition of the building and followed it by the notice u/s 269-I(1), dated 19th May, 1976, requiring the petitioner to hand over possession of the shop in his occupation to the Executive Engineer, Central Public Works Department, Allahabad, within 30 days of its receipt.

4. Petitioner claims that as prior to the service of notice dated 19th May, 1976, no other notice in connection with the impugned acquisition of the property was ever served upon him, he was not aware of the same. According to him, it was obligatory upon the Competent Authority -to, before passing orders for acquisition of the property u/s 269F(6), serve the petitioner with a notice u/s 269D(2)(a) of the Act and to afford him an opportunity to file his objections. Failure on the part of the Competent Authority in this regard has the effect of vitiating the order dated 16th January, 1976, passed by the Competent Authority u/s 269F(6) for acquisition of the property as also the notice dated 19th May, 1979, u/s 269-I of the Act issued by him to the petitioner.

5. The stand of the contesting respondents as disclosed by the counter-affidavit sworn by Sri A. S. Bisen, IAC of Income Tax, Lucknow, is that even though there was no individual service of notice u/s 269D(2)(a), I.T. Act, on the petitioner, the notice of proposed acquisition u/s 269(1) had been as provided in Rule 48E, I.T. Rules, publicly proclaimed and a copy of the same had been affixed on the front door of house No. 30, Chowk, Allahabad, to which petitioner''s son, Sri Sheomoy Raj, who looked after the petitioner''s business styled as M/s. Esray & Company, was a witness. Sri Sheomoy Ray had given the following certificate in the office copy of the proclamation :

"We certify that Hindi and English versions of acquisition notice u/s 269D(1), Income Tax Act, has been fixed on the main door of premises No. 30/16, Chowk, Allahabad, along with the copy of the proclamation. The proclamation had also been made with beat of drum."

6. The respondents contend that, in the circumstances, the petitioner can be deemed to have acquired knowledge of acquisition proceedings and it could be taken that he had received the requisite notice (notice contemplated by Section 269D(2)(a)). As despite

acquiring knowledge of acquisition proceedings the petitioner kept silent and as he did not care to file any objection, he could not, after the order for acquisition had become final, approach this court for any relief. They have further claimed that the object of the notice dated 19th May, 1979, issued to the petitioner u/s 269-I(1), I.T. Act, was not to physically evict the petitioner from the shop. The said notice was aimed at obtaining from the petitioner surrender or delivery of possession by his attorning to the Central Government in place of previous owner by accepting such terms and conditions as the Central Government may decide. Apart from the petitioner, all other tenants of House No. 30, Chowk, Allahabad, have executed agreements attorning to the Central Government in place of the previous owner. The respondents, therefore, claimed that, in the circumstances, the petitioner is not entitled to any relief.

7. The controversy between the parties in this case centres round the question as to whether the respondents have, while acquiring the building under Chap. XX-A, I.T. Act, observed the procedure laid down therein and whether in case it is found that the procedure followed by the respondents is defective as not being strictly in accordance with the provisions contained in Chap. XX-A of the Act, the said defect has rendered the order for acquisition of property illegal.

8. Briefly speaking, the procedure laid down in Chap. XX-A, I.T. Act, for enabling the Competent Authority to pass orders for acquisition of immovable property in case it is of opinion that the property has been transferred for an apparent consideration which is less than its fair market value, is as follows :

(1) The Competent Authority has to, for initiating the acquisition proceedings, publish a notice to the effect in the Official Gazette (See Section 269D(1).

(2) It has to cause a notice u/s 269D(1) to be served upon -

(a) the transferor ;

(b) the transferee ;

(c) where transferee is not in occupation of the property, the person in occupation thereof; and

(d) every person whom the competent authority knows to be interested in the property (which expression has been defined in Section 269A(g) as including all persons claiming or entitled to claim an interest in the compensation payable on account of acquisition of the property under Chap. XX-A of the Act (Section 269D(2)(a)).

(3) The Competent Authority has to cause such notice to be published-

(i) in his office by affixing a copy thereof to a conspicuous place;

(ii) in the locality in which the immovable property to which it relates is situated by affixing a copy thereof to a conspicuous part of the property and also by making known in such manner as may be prescribed, the substance of such notice at convenient places in the locality (Section 269D(3)(b)).

9. Section 269E thereafter confers a right on the following class of persons to object to the acquisition of the property-

(a) transferor,

(b) transferee,

(c) where transferee is not in occupation, the person who is in occupation of the property, and

(d) any other person interested in the property (as defined by Section 269A(g)) of the Act).

10. The section further lays down, that in so far as the persons falling in the first three categories are concerned, they can file their objections before the competent authority within 45 days from the date of publication of the notice u/s 269D(1) in the Official Gazette or within a period of 30 days from the date of service of notice upon them u/s 269D(2)(a). whichever is later. This provision implies that notwithstanding the fact that the notice of the proposed acquisition has been published in the Official Gazette and that the same has also been affixed and proclaimed in the locality as required by Section 269D(2)(b) of the Act as also the fact that such persons have become aware of the intended acquisition proceedings, their right to file an objection does not come to an end till such time as after service of notices u/s 269D(2)(a) upon them a period of 30 days has expired. So far as the persons falling in the fourth category mentioned above are concerned, they can, whether or not notice as required by Section 269D(2) was served upon them, file their objections only within 45 days of the date of publication of the notice u/s 269D(1) published in the Official Gazette.

11. Section 269F(1) obliges the competent authority to fix a date and place of hearing of the objections made u/s 269E against the proposed acquisition and to give notice thereof to every person, who has made such objection. In the context the section clearly implies that no such date of hearing can be fixed by the Competent Authority till such time as the time allowed for filing objections as specified in Section 269E has not expired. Sub-section (6) of this section enables the Competent Authority to, alter hearing objections and after obtaining the approval of the Commissioner, make an order for acquisition of the property if he feels satisfied that -

(a) the immovable property to which the proceedings relate is of a fair market value exceeding twenty-five thousand rupees;

(b) the fair market value of such property exceeds the apparent consideration therefore by more than fifteen per cent. of such apparent consideration ; and

(c) the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with such object as is referred to in Clause (a) or Clause (b) of Sub-section (1) of Section 269C.

12. It is thus obvious that the Act does not permit the Competent Authority to record its satisfaction in respect of the matters mentioned above and to pass orders for acquisition of property by curtailing in any manner the right of the person entitled to object and without considering his objections, if any, preferred by him.

13. In the instant case, it is not disputed that Smt. Janak Kishori Devi''s transferees (respondents Nos. 4 to 6) were not in occupation of the shop, which is a part of the building sought to be acquired under the Act and that it was the petitioner who was in its occupation. The petitioner was, accordingly, apart from the publication of the notice, u/s 269D(1) and its affixation and proclamation as required by Section 269D(2)(b), entitled to be served with the notice contemplated by Section 269D(2)(a) of the Act. Admittedly, such notice has not been served upon him and his right to file objections against the proposed acquisition never came to an end. In the circumstances, the Competent Authority did not acquire jurisdiction to pass the order for acquisition of the property u/s 269F(6) of the Act. As already explained, the fact that the petitioner had, for any reason, acquired knowledge of the intended acquisition proceedings is irrelevant.

14. We may also point out that the only material pointed out by the respondents for inferring that the petitioner had knowledge about the intended acquisition proceedings is that the petitioner''s son, who looked after his business carried on in the shop, was a witness to the notice which was in accordance with the requirements of Section 269D(2)(b) affixed and proclaimed in the locality. In our opinion, the respondents are not justified in inferring that the petitioner had knowledge of the acquisition proceedings merely because at some stage his son had become aware thereof. Of course, the fact that the son of the petitioner had knowledge of the intended acquisition proceedings could, in conjunction with some other material which tended to show the petitioner was aware of the acquisition proceedings, be considered to be relevant in this regard. Apart from this, what Section 269(2)(a) required is that the notice u/s 269D(1) is to be served upon the persons entitled to receive the same. We have perused the notice as published in Government of India Gazette, relevant portion whereof reads thus:

"Now, therefore, in pursuance of Section 269C, I hereby initiate proceedings for acquisition of the aforesaid property by issue of this notice under Sub-section (1) of Section 269D I.T. Act. 1961 (43 of 1961), to the following persons, namely, (1) Smt. Janak Kishori Devi (Transferor); (2) Sri Jagdish Prasad and others (Transferees). Objections, if any, to the acquisition of the said property may be made in writing to the undersigned :--(a) by any of the aforesaid persons within 45 days of the publication of the notice or a period of 30 days from the service of the notice on the respective persons whichever period expires later; (b) by any other person interested in the said immovable property within 45 days from the date of the publication of the notice in the Official Gazatte."

15. This notice on the face of it indicates that the Competent Authority merely called upon the transferor, the transferees and the persons interested in the property to prefer objections to intended acquisition and that it was going to consider any objection filed by such persons only. Affixation and proclamation of such notice in the locality u/s 269D(2)(d) of the Act can at best be treated as a notice to such persons described in the notice and to none other. Now, a person like the petitioner, who is in occupation of the shop as a tenant is neither the transferor nor the transferee. He is also not a person interested in the immovable property as defined in Section 269A(g) of the Act. It, therefore, follows that the petitioner, as a person in occupation of the property, has not even been called upon to file any objection to the intended acquisition proceedings. The Act, in our opinion, clearly contemplates that the Competent Authority must, before passing the order for acquisition, specifically call upon the person in occupation to file his objections if he so likes. Mere knowledge on the part of the person in occupation that some other persons have been called upon to file an objection will not mean that the person in occupation has also been called upon to file his objections. As a matter of fact, in such circumstances, the person in occupation who, is not a person interested in the immovable property as defined by Section 269A(g) of the Act, can be misled into belief that he has no say in the matter and thus be precluded from filing an objection. Viewed in this light, the fact that the petitioner might have acquired knowledge of the intended acquisition proceedings is not of any consequence.

16. In the case of Mohammed Mahboob Ali Saheb and Others Vs. Inspecting Assistant Commissioner of Income Tax, (headnote): a Division Bench of the Andhra Pradesh High Court has observed thus:

"Before initiating proceedings for acquisition of any immovable property u/s 269, Income Tax Act, the Competent Authority should cause service of notice u/s 269D(2)(a) on all the transferors, transferees, the person in occupation of the property if the transferee is not in possession and all other persons whom the Competent Authority knows to be interested in the property. Section 269D(2)(a) is a mandatory provision and any proceeding in violation of the same is void."

17. In the case of CIT v. Prem Narain Tandon [1983] 145 ITR 359 (supra) a Division Bench of this court has observed thus (p. 363--supra.)

"The provisions of Chap. XXII-A, I.T. Act, affect the property right of a citizen. These provisions are stringent which result in appropriation of property by the State. The authorities administering these laws should not lightly invoke these provisions. When proceedings for acquisition of properly of a citizen are initiated by the Competent

Authority the provisions of the Act should be strictly followed. "

18. In this view of the matter, it is clear that the order dated 16th January, 1976, passed by the Competent Authority for acquisition of the property in exercise of powers u/s 269F(6), I.T, Act, as also the notice dated 19th May, 1979, issued by it u/s 269-I(1), I.T. Act, cannot be sustained and they are liable to be quashed. However, as no defect in the publication of the notice of the intended acquisition of the property in the Official Gazette u/s 269D(1), I.T. Act, has been pointed out, it will be open to the respondents to pass appropriate orders u/s 269F(6) afresh after complying with the provisions of Section 269D(2)(a) afresh in accordance with law.

19. Subject to aforementioned observations, the writ petition succeeds and is allowed with costs and the order dated 16th January, 1976, passed by the Competent Authority in exercise of powers u/s 269F(6) as also the notice dated 19th May, 1979, issued by it u/s 269-I(1), I.T. Act, are quashed.