
**K.T. Venkatesan and K.T. Srinivasa Raja Vs The Appropriate Authority
(Income tax Department), Union of India (UOI) and Vandana
Venkatachalam**

W.A. No. 3661 of 2002

Court: Madras High Court

Date of Decision: March 13, 2007

Acts Referred:

Constitution of India, 1950 " Article 226#Income Tax Act, 1961 " Section 269UC,
269UC(1), 269UD, 269UD(1)

Citation: (2008) 217 CTR 373 : (2008) 298 ITR 47

Hon'ble Judges: P.D. Dinakaran, J; Chitra Venkataraman, J

Bench: Division Bench

Advocate: A.K. Lakshmi Narayanan, for the Appellant; Naresh Kumar, Junior Standing
Counsel for Income Tax and Chitra Sampath, for 4th Respondent, for the Respondent

Final Decision: Dismissed

Judgement

Chitra Venkataraman, J.

This writ appeal is against the order of the learned single Judge dated 31.10.2002, dismissing the writ petition

preferred against the order of the appropriate authority the first respondent herein. The writ appellants herein are the transferees
who had entered

into an agreement to purchase the property. By order dated 23.5.1999, the first respondent herein, in exercise of its powers of
preemptive

purchase, u/s 269UD(1) of the Income Tax Act, ordered purchase of a property for a consideration of Rs. 27,60,670/-.

2. It is seen that the transferor C.R. Venkatachalam, petitioner in W.P. No. 9793 of 1999, was the owner of the premises at No. 3,

Krishnamachari Avenue, Adyar, Chennai. The transferees are the writ petitioners in W.P. No. 9956 of 1999. The transferor and
transferees

entered into an agreement to sell and purchase the property for an apparent consideration of Rs. 28 lakhs on 10.2.1999. The
parties filed their

statement in Form 37-I in respect of the agreement dated 10.2.1999. A show cause notice u/s 269UD(1A) dated 23.4.1999 was issued along

with the valuation report citing two comparable sale instances calling upon them to show cause as to why the property should not be purchased by

the Department u/s 269UD of the Income Tax Act. After the receipt of objections, the first respondent passed an order u/s 269UD(1) on

28.5.1999 exercising its pre-emptive right to purchase the property for a consideration of Rs. 27,60,670/-. The appropriate authority, the first

respondent herein, concluded that the value of the subject matter of the property was 38.6% lower compared to the land rate as per the sale

instances.

3. Challenging the said order, writ petitions were filed before this Court contending that the property was a tenanted property; the property had no

commercial value and that there was no under-valuation of the property. It was also contended that the properties, which were taken as

comparative sales, were subject of the proceedings under chapter XX-C and that the same should not have been taken into consideration.

4. The claim of the writ petitioners was countered by the respondent that the appropriate Authority had exercised its powers after due deliberation

and that there was no ground for interfering with the reasoning of the appropriate authority. Considering the scope of Article 226 of the

Constitution of India, the remedial judicial review could not be equated to a remedy of appeal. The respondents placed reliance on the decisions

reported in Devesh Behari Saxena Vs. Dy. Commissioner of Income Tax and Another, ; In the Matter of the Appropriate Authority and Another

Vs. Smt. Sudha Patil and Another, ; Ramesh Bhai J. Patel Vs. Union of India, and Union of India and Others Vs. M/s. Shatabadi Trading and

Investment Pvt. Ltd. and Others, .

5. In the course of the proceedings before this Court, the wife and the daughter of the transferor impleaded themselves seeking a direction to

deposit the money due to them in respect of the decree passed at the instance of the wife and daughter against the transferor.

6. This Court referring to the decision of the Supreme Court reported in Appropriate Authority and Another Vs. Kailash Suneja and Another, ,

followed in Appropriate Authority and Another Vs. R.C. Chawla and Others, , Union of India and Others Vs. M/s. Shatabadi Trading and

Investment Pvt. Ltd. and Others, and In the Matter of the Appropriate Authority and Another Vs. Smt. Sudha Patil and Another, took the view

that in the light of the guidelines given by the Apex Court, this Court's jurisdiction to examine the contentions is very limited in that the jurisdiction is

not that of an appellate forum. Learned single judge also pointed out that admittedly there was no complaint of procedural violation or violation of

principles of natural justice while passing the impugned proceedings. On the question of comparable instances, the learned Single Judge also found

the reasoning as correct and was not disputed. It was also seen that the subject property and the comparable sale instances were similar and could

not be questioned as incomparables. Hence, the learned Judge held that the contention did not deserve any further consideration. As regards the

downward trend in the real estate market, the learned single Judge pointed out that the competent authority had taken note of the fall in the real

estate market. Referring to the compelling circumstances which necessitated the sale of the property, this Court found that the suit was of the year

1997. The decree was of the year 1998 and the agreement was entered in 1999. Learned Judge pointed out that the wife and the daughter were

not paid as per the decree, but then the contention that it was a distress sale could not be accepted and rightly so, the respondent had taken the

view that the sale was not a distress sale. Learned Judge also rejected the plea that there was a tenancy in the premises.

7. On the question of jurisdiction raised by the transferee, learned single Judge held that the same could not be sustained that merely because the

agreement stipulated a lesser time, it could not be said that Chapter XX-C could not be invoked when the transactions attracted Chapter XX-C.

In the circumstances, taking the view that there were relevant materials before the competent authority to order the preemptive purchase, the writ

petitions were dismissed. As regards the claim made by the wife and the daughter of the transferor, ordering the impleading petitions, this Court

ordered in the direction petitions that the appropriate authority would pay a sum of Rs. 17 lakhs with proportionate interest on the said sum earned

by virtue of the deposit till the date of the order of this Court.

8. The writ appeal is preferred by the transferees. There is no appeal from the transferor. The grievance of the writ appellants is that Section

269UC, as it then stood, required that the agreement would be not less than three months before the intended transfer, but the agreement entered

into between the appellants and the transferor provided only fourteen weeks. Hence, when the agreement was not in accordance with Section

269UC(1), the first respondent had no jurisdiction to act on the circumstances, and the order in the writ petition amounts to conferring legality on

an agreement that contravene Section 269UC(1). The appellants also questioned that the first respondent had not furnished the documents relied

upon. In the circumstances, he prayed for setting aside the order of the learned single Judge and thereby, the order of the appropriate authority.

Although the appellants had raised other grounds in the writ appeal, except for the contention on the jurisdiction as stated above, the appellant has

not raised any other objection in the course of arguments before this Court.

9. The contentions of the appellants were countered by the learned standing counsel, contending that the transferee, as such, has no locus standi to

maintain the writ appeal when the vendor had not preferred any appeal challenging the order of the learned single Judge upholding the order of the

appropriate authority. Quite apart, he referred to the jurisdiction of this Court under Article 226 of the Constitution of India and submitted that the

learned single Judge, on a consideration of the entire case, had rightly come to the conclusion on every aspect of the matter now projected and

consequently prayed that the appeal be dismissed.

10. We agree with the submission made by the respondents. A perusal of Section 269UC(1), no doubt, states that no transfer of any immovable

property shall be effected after an agreement for transfer is entered into between the transferor and the proposed transferee in accordance with the

provisions of Sub-section (2) at least three months before the intended date of transfer. Conscious of the provisions u/s 269UC, yet, the parties

herein had entered into an agreement of sale on 10.2.1999 fixing a shorter time limit of fourteen weeks for the validity of the agreement and that the

time might be extended further by mutual consent. Accordingly the parties had filed Form 37-I in accordance with the provisions of the Act. A

perusal of the provisions as stated above shows that the emphasis in the Section is to the time factor prescribed for filing Form 37-I. The date of

entering into the agreement must have proximity of time with the proposed transfer of property as defined in Clause (f) of Section 269UA. It is

clear, hence, that whatever be the private agreement entered into between the parties, it is a proforma agreement signed by the parties which must

be filed before the appropriate authority within fifteen days of signing thereof. The limitation has to be with reference to the date of signing of the

agreement and not with reference to the intended period in the agreement. Consequently, we do not find any ground to accept the plea of the

appellant herein that the competent authority had no jurisdiction in this matter. Quite apart from this, as rightly contended by the learned Counsel

appearing for the respondents, if at all there could be any grievance, it could be only from the vendor who had not raised a dispute. In the

circumstances, we do not find any justification in the contention of the appellant transferee.

11. Considering the parameters of the jurisdiction under Article 226 of the Constitution of India, and there being no irrationality in the view of the

appropriate authority, as rightly found by the learned single Judge, we do not find any justification to accept the submissions of the appellants

herein. In the circumstances, the appeals are dismissed, thereby confirming the order of the learned single Judge.

12. In W.A.M.P. No. 1963 of 2003, one Vandana Venkatachalam, had prayed for impleading herself as fourth respondent in the writ appeal. She

had stated that in view of the decree obtained for maintenance and the charge given over the property, they impleaded themselves in the course of

the writ proceedings. The deponent had stated that in spite of favourable orders, they had not received the amount payable under the decree. The

deponent's mother, who was also the beneficiary therein, died on 4.12.2002 without receiving the money. The deponent states that she is pursuing

her studies with great difficulty. In the circumstances, she has prayed for impleading herself as respondent No. 4 and also prayed for vacating the

order of stay granted in the writ appeal. In view of the dismissal of the writ appeal, the order passed earlier in the writ proceedings directing

payment of the amount to this petitioner stands affirmed. The respondents are hereby directed to release the fund payable to the fourth respondent

at the earliest without any delay.

In the result, the writ appeal is dismissed. No costs. Connected W.A.M.P. No. 6135 of 2002 is closed. W.A.M.P. No. 1963 of 2003 is hereby

ordered.