Smt. Vimla Devi G. Maheshwari and Another Vs D.D. Mohindra and Others

Court: Bombay High Court

Date of Decision: April 13, 2004

Acts Referred: Constitution of India, 1950 â€" Article 226
Income Tax Act, 1961 â€" Section 269UD

Citation: (2004) 3 ALLMR 317 : (2004) 5 BomCR 263 : (2004) 190 CTR 306 : (2004) 268 ITR 102 : (2004) 4 MhLj 58

Hon'ble Judges: R.M. Lodha, J; J.P. Devadhar, J

Bench: Division Bench

Advocate: J.D. Mistri, for the Appellant; M.I. Sethna and R. Ashokan and R. Murlidhar, for the Respondent

Final Decision: Dismissed

Judgement

R.M. Lodha J.

1. In respect of the immovable property being Flat No. 16, 4th Floor, ""D"" Road, Churchgate, Bombay, owned by respondent No. 3, Shri Nandlal

G. Kejriwal, the petitioners entered into an agreement on July 29, 1987, with the owner for purchase of 160 shares bearing Distinctive Nos.

12506 to 12665 under Share Certificate No. 114 of Shree Hanuman Co-operative Housing Society Limited together with loan stock and the

rights of use and occupancy for a consideration of Rs. 35,00,000.

2. Form No. 37-I was filed with the Department on July 31, 1987. The appropriate authority on September 23, 1987, passed an order u/s

269UD of the Income Tax Act for pre-emptive purchase of the said property at an amount equal to the amount of apparent consideration, i.e., Rs.

35,00,000, The petitioners being intending purchasers by means of this writ petition filed on October 6, 1987, seek to challenge the said order of

pre-emptive purchase passed on September 23, 1987, by the appropriate authority. Inter alia, the petitioners have challenged the constitutional

validity of Chapter XX-C of the Income Tax Act and alternatively it is prayed that Chapter XX-C may not be made applicable to the subject sale

agreement. The petitioners have also prayed that the first respondent be directed to issue no objection certificate for the purpose of the provisions

contained in Section 269UL(2) of the Income Tax Act, 1961. Rule was issued in the writ petition on October 7, 1987. The order of admission

and refusal to grant interim relief reads thus :

Respondent No. 3 states that he does not desire to challenge the acquisition and that he accepts the same and that he will return back the amounts

received from the petitioners the moment he receives the amounts from respondents Nos. 1 and 2.

In view of the fact that a number of other such petitions have been admitted in this petition also rule is issued.

However, in view of the above statements no interim relief.

3. It is not in dispute before us that possession of the subject property was taken by the Department on October 14, 1987. The owner was paid

compensation (the value of apparent consideration of Rs. 35,00,000) by the Department on October 29, 1987. The property was put to public

auction in the month of January, 1989, the auction was confirmed and thereafter possession was also given to the auction purchaser in the month of

January, 1989.

4. Mr. J.D. Mistry, learned counsel for the petitioners, strenuously urged that in the light of the law laid down by the Supreme Court in C.B.

Gautam v. Union of India [1993] 199 ITR 530, the impugned order of acquisition is illegal as no opportunity of being heard was given to the

petitioners before passing such order. Learned counsel submitted that as per the dictum of the Supreme Court in C.B. Gautam Vs. Union of India

and Others, , the impugned order of acquisition deserves to be set aside and opportunity of hearing being given to the petitioners. Learned counsel

submits that the exception carved out in C.B. Gautam Vs. Union of India and Others, in respect of completed transactions has no application in the

facts of the present case as the necessary steps for completion of transaction were taken during the pendency of the writ petition. Learned counsel

in support of his contentions relied upon the Division Bench judgments of this court in S. Krishnan Vs. U.V. Shahadadpuri and Others, ; Shrichand

Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others, and the Division Bench judgment of this court dated December 22,

1995, in Home Builders v. D. D. Mohindra.

5. Learned counsel also submitted that the Division Bench judgment of this court in Ruparel Bros. (Bombay) (P) Ltd. and Another Vs. Union of

India and Others, has no application and the said judgment has been distinguished by the Division Bench judgment of this court in the case of S.

Krishnan Vs. U.V. Shahadadpuri and Others, . Learned counsel submits that the facts of the present case are exactly identical to the facts in the

case of S. Krishnan Vs. U.V. Shahadadpuri and Others, and applying the ratio of S. Krishnan Vs. U.V. Shahadadpuri and Others, , the impugned

order of pre-emptive purchase deserves to be set aside and the appropriate authority be directed to hear the petitioners and then pass fresh order.

6. In answer to the query raised by our order dated April 2, 2004, about the locus of the present petitioners in challenging the order u/s 269UD of

the Income Tax Act, 1961, in a case where the vendor does not desire to challenge the compulsory acquisition, learned counsel submitted that in a

large number of cases where the vendor had not challenged the compulsory acquisition of the property under Chapter XX-C of the Income Tax

Act, 1961, or where the vendor has accepted the order of compulsory acquisition of the property, the view has been taken that the intending

purchaser has locus to challenge the legality and the correctness of the order of compulsory purchase.

7. Mr. M. I. Sethna, learned senior counsel for the Revenue, submitted that the Department does not intend to raise the issue of the petitioners''

locus in maintaining the writ petition. He, however, submitted that the transaction of compulsory acquisition having been completed in all respects

prior to the judgment of the Supreme Court in C.B. Gautam Vs. Union of India and Others, , the present case is covered by the exception carved

out in C.B. Gautam Vs. Union of India and Others, and even if it be held that the impugned order suffers from infirmity being in violation of the

principles of natural justice, the petitioners are not entitled to any relief in the extraordinary jurisdiction. Mr. Sethna, learned senior counsel for the

Revenue, placed reliance on the Division Bench judgment of this court in Ruparel Bros. (Bombay) (P) Ltd. and Another Vs. Union of India and

Others, .

8. Mr. R. Murlidhar, learned counsel for the auction purchaser, invited our attention to the judgment of the Supreme Court in Union of India and

Others Vs. M/s. Shatabadi Trading and Investment Pvt. Ltd. and Others, and submitted that the petitioners were only agreement-holders and they

cannot be said to have any interest in the property and, therefore, they cannot maintain the writ petition. Learned counsel for the auction purchaser

also submitted that the present case was included by the exception carved out by the Supreme Court in C.B. Gautam Vs. Union of India and

Others, and the transaction of pre-emptive purchase having been completed before the judgment of the Supreme Court in C.B. Gautam Vs. Union

of India and Others, , irrespective of any illegality in the order of pre-emptive purchase, the petitioners are not entitled to any relief. Learned

counsel would submit that the balance of convenience was in favour of the auction purchaser and grave prejudice would be caused to him if the

auction sale in his favour is set aside. He placed reliance on the judgment in the case of M.P. Lakshman Vs. Appropriate Authority and Others

(No. 1), .

9. The question that falls for our consideration is whether the exception carved out in C.B. Gautam Vs. Union of India and Others, is attracted and

if the answer is in the affirmative whether the petitioners are entitled to any relief. To put it differently, the question is whether on the date the

judgment was delivered by the Supreme Court in C.B. Gautam Vs. Union of India and Others, , the transaction of compulsory purchase was

completed in all respects inasmuch as after the order of compulsory purchase u/s 269UD was made, possession was taken over and compensation

was paid to the owner of the property and accepted.

10. In C.B. Gautam Vs. Union of India and Others, , the Supreme Court examined historical setting in which the provisions of Chapter XX-C

were enacted and it was observed that Chapter XX-C was intended to resort to the cases where there was an attempt of tax evasion by significant

under valuation of the immovable property agreed to be sold. 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 to which the provisions of that

Chapter apply, there is a significant under valuation 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

under valuation 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. The Supreme Court held that the reasons for such acquisition which are required by Section 269UD to be in writing must

be germane to the object for which the Chapter was introduced. The Supreme Court held that the provision of pre-emptive purchase for apparent

consideration by the Government of immovable property proposed to be transferred does not confer arbitrary or unfettered discretion on the

appropriate authority to compulsorily purchase immovable properties. The Supreme Court read into the relevant provisions the requirement of

giving reasonable opportunity of being heard before the order of compulsory acquisition is made. The Supreme Court thus upheld the constitutional

validity of the provisions of Chapter XX-C by reading down therein an opportunity of showing cause to the intending purchaser and the intending

seller against the order of compulsory purchase by the appropriate authority and the imperative necessity on the part of the appropriate authority to

record the reasons and convey the same to the party concerned so as to operate as deterrent against possible arbitrary action by the appropriate

authority. The Supreme Court held, thus (page 553) :

In the light of what we have observed above, we are clearly of the view that the requirement of a reasonable opportunity being given to the

concerned parties, particularly, the intending purchaser and the intending seller must be read into the provisions of Chapter XX-C. In our opinion,

before an order for compulsory purchase is made u/s 269UD, the intending purchaser and the intending seller must be given a reasonable

opportunity of showing cause against an order for compulsory purchase being made by the appropriate authority concerned. As we have already

pointed out, the provisions of Chapter XX-C can be resorted to only where there is a significant under valuation of property to the extent of 15 per

cent. or more in the agreement of sale, as evidenced by the apparent consideration being lower than the fair market value by 15 per cent. or more.

We have further pointed out that, although a presumption of an attempt to evade tax may be raised by the appropriate authority concerned in case

of the aforesaid circumstances being established, such a presumption is rebuttable and this would necessarily imply that the concerned parties must

have an opportunity to show cause as to why such a presumption should not be drawn. Moreover, in a given transaction of an agreement to sell,

there might be several bona fide considerations which might induce a seller to sell his immovable property at less than what might be considered to

be the fair market value. For example : he might be in immediate need of money and unable to wait till a buyer is found who is willing to pay the fair

market value for the property. There might be some dispute as to the title of the immovable property as a result of which it might have to be sold at

a price lower than the fair market value or a subsisting lease in favour of the intending purchaser. There might similarly be other genuine reasons

which might have led the seller to agree to sell the property to a particular purchaser at less than the market value even in cases where the

purchaser might not be his relative. Unless an intending purchaser or intending seller is given an opportunity to show cause against the proposed

order for compulsory purchase, he would not be in a position to rebut the presumption of tax evasion and to give an interpretation to the provisions

which would lead to such a result would be utterly unwarranted. The very fact that an imputation of tax evasion arises where an order for

compulsory purchase is made and such an imputation casts a slur on the parties to the agreement to sell leads to the conclusion that, before such an

imputation can be made against the parties concerned, they must be given an opportunity to show cause that the under valuation in the agreement

for sale was not with a view to evade tax. Although Chapter XX-C does not contain any express provision for the affected parties being given an

opportunity to be heard before an order for purchase is made u/s 269UD, not to read the requirement of such an opportunity would be to give too

literal and strict an interpretation to the provisions of Chapter XX-C and, in the words of judge Learned Hand of the United States of America "to

make a fortress out of the dictionary." Again, there is no express provision in Chapter XX-C barring the giving of a show cause notice or

reasonable opportunity to show cause nor is there anything in the language of Chapter XX-C which could lead to such an implication. The

observance of the principles of natural justice is the pragmatic requirement of fair play in action. In our view, therefore, the requirement of an

opportunity to show cause being given before an order for purchase by the Central Government is made by an appropriate authority u/s 269UD

must be read into the provisions of Chapter XX-C. There is nothing in the language of Section 269UD or any other provision in the said Chapter

which would negate such an opportunity being given. Moreover, if such a requirement were not read into the provisions of the said Chapter, they

would be seriously open to challenge on the ground of violation of the provisions of Article 14 on the ground of non-compliance with the principles

of natural justice. The provision that, when an order for purchase is made u/s 269UD, reasons must be recorded in writing is no substitute for a

provision requiring a reasonable opportunity of being heard before such an order is made.

In the facts of C.B. Gautam Vs. Union of India and Others, , the Supreme Court found that the order of pre-emptive purchase passed by the

appropriate authority was bad in law. However, with regard to the consequences that were to follow, the Supreme Court held thus (page 561) :

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 u/s 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 No. 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 u/s 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. We are fortified in giving a somewhat limited retrospective

operation of our judgment, in view of the decision by a Constitution Bench comprising seven learned judges of this court in India Cement Ltd. v.

State of Tamil Nadu . In that case, in spite of Section 115 of the Madras Panchayats Act being declared ultra vires, the State of Tamil Nadu was

held not liable to refund to the petitioners the cess collected by it under the provisions of the said section.

We realise that if an order for compulsory purchase of the property is made hereafter, the intending vendor will suffer to some extent by reason of

the fact that he will get the purchase amount several years after the time he would have got it had the impugned order been held to be valid. But, on

the other hand, however, he would have retained possession of the property in question. Taking into account these factors and taking note of the

fact that the immovable properties in urban areas have gone up steeply in value during the last few years, we direct that, in case an order for

compulsory purchase is made, the Central Government shall pay to the intending seller the amount of the apparent consideration plus interest at 9

per cent. per annum from the date the impugned order was made.

We may clarify that, as far as completed transactions are concerned, namely, where after the order for compulsory purchase u/s 269UD 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.

Be it noted at this stage that some clarification was sought by the Union of India from the Supreme Court by making an application. Considering

such application, the Supreme Court clarified the position thus (page 563) :

Our attention was drawn to two aspects : one in relation to the large number of similar petitions yet pending before this court and various High

Courts where, in view of the subsisting orders of stay operating therein, it would not be possible immediately to take steps and implement the

directions contained in the judgment within the time-frame stipulated therein. The second aspect relates to matters pending before the authorities

which, though not pending before courts, do not also admit of application of the principles'' consistent with the statutory limit. After hearing the

learned Solicitor-General, we are satisfied that the problems and difficulties envisaged, in practical terms, are real and require to be provided for.

The first aspect arises out of the limited retrospectivity imported by the judgment. The judgment provides that (at page 561 (supra)) :

''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 signing of this

judgment.''

The learned Solicitor-General points out that, in the cases where petitions are yet pending in this court as well as in the various High Courts, the

above direction becomes unworkable inasmuch as the interim orders subsisting in those petitions disable the authorities from carrying out the

directions contained in the judgment within the stipulated time frame and that, therefore, the directions as given in the judgment become impossible

of implementation. The learned Solicitor-General suggests that, in order that the principles laid down in the judgment become workable in all other

pending cases before the courts, a clarification be made to the effect that, in respect of all such cases pending before this court and various High

Courts, the time-frame for affording an opportunity of being heard shall be reckoned from the date of the actual disposal of those matters by this

court or the High Court, as the case may be.

We think that this clarification in the form of a further direction is necessary for a proper implementation of the principles laid down in this

judgment.

We, accordingly, clarify by this supplemental direction to be read as part of the judgment that, in respect of cases other than that of the petitioner,

C.B. Gautam, the period of two months referred to in Section 269UD(1) shall be reckoned with reference to the date of disposal of each of such

pending matters either before this court or before the High Courts, as the case may be. Where, however, the stay orders inhibiting the authorities

from taking further proceedings are vacated, the period referred to in the said Section 269UD(1) shall be reckoned with reference to the date of

such vacating of the stay orders. This clarification and further direction shall be supplemental to and be treated as parts of the main judgment.

The second clarification sought is in respect of matters pending before the authorities and which, though not agitated in courts of law, are pending

at various stages before the authorities in all such cases. We direct that Form No. 37-I shall be deemed to have been filed as on the date of the

judgment of this court dated November 17, 1992, for purposes of completion of proceedings in terms of Section 269UD(1). This further direction

shall also be a part of the main judgment.

11. In the backdrop of the law laid down by the Supreme Court in C.B. Gautam Vs. Union of India and Others, , let us now advert to the case in

hand. As already indicated above, the agreement for sale was entered into by the petitioners and respondent No. 3 in respect of the subject flat on

July 29, 1987. Form No. 37-I was filed with the concerned authority of the Income Tax Department on July 31, 1987. The order of pre-emptive

purchase was made by the appropriate authority in exercise of its powers u/s 269UD on September 23, 1987. The petitioners filed writ petition

before this court on October 6, 1987. The writ petition came up for admission on October 7, 1987. The statement was made by the vendor

(respondent No. 3) at that time that he was not desirous of challenging the acquisition and that he accepts the compulsory acquisition. He also

made a statement that as soon as he receives the consideration from the Department, he would return back the amount received from the

petitioners. On October 7, 1987, though the Division Bench issued rule, it refused interim relief, As a result of refusal to grant interim relief in

favour of the petitioners, there was no impediment for the Department in law in proceeding ahead under Chapter XXC and completing the

transaction of compulsory acquisition. As a result thereof, possession of the subject property was taken by the Department on October 14, 1987,

from the petitioners. The vendor was paid the amount of compensation (apparent consideration of Rs. 35,00,000) on October 29, 1987. Not only

that thereafter the Department put the subject property to public auction and the auction was finalized in favour of the auction purchaser in the

month of January, 1989. These facts are eloquent enough to conclude that the transaction of compulsory acquisition was completed in all respects

much before the judgment was given by the Supreme Court in C.B. Gautam Vs. Union of India and Others, . In C.B. Gautam Vs. Union of India

and Others, , the Supreme Court carved out the exception thus that where after the order of compulsory purchase u/s 269UD was made and

possession has been taken over, compensation has been paid to the owner of the property and accepted without protest those transactions are not

to be upset and the pre-emptive purchase will remain valid. As already noticed above, the pre-emptive purchase order was made on September

23, 1987, possession was taken over on October 14, 1987, and the compensation was paid to the owner on October 29,1987, and he accepted

the said amount without any demur and protest. To quote again what the Supreme Court said in C.B. Gautam Vs. Union of India and Others, :

We may clarify that, as far as completed transactions are concerned, namely, where, after the order for compulsory purchase u/s 269UD 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.

12. The submission of learned counsel for the petitioners that the present petition was filed on October 6, 1987; it was admitted on October 7,

1987, and thereafter the taking over of possession and payment of consideration would not be completed transaction within the meaning of

exception carved out in C.B. Gautam Vs. Union of India and Others, does not merit any acceptance. It is so because the Supreme Court judgment

does not make the exception inapplicable merely because the transaction was completed during the pendency of the writ petition. The fact of the

matter in the instant case is that though the writ petition was pending at that time the judgment was delivered by the Supreme Court in C.B. Gautam

Vs. Union of India and Others, no interim relief was granted to the petitioners. It appears from the available material and more so from the affidavit

of the first petitioner herself filed in Notice of Motion No. 43 of 1993 that the petitioners were alive to the situation that, in the matters of pre-

emptive purchase, this court was issuing rule and granting interim relief on terms and conditions that the person challenging the order of compulsory

acquisition was required to pay the entire amount of the sale consideration. The petitioners were not possessed of sufficient financial means to

deposit the consideration of the agreement as it is the petitioners'' own case that they were depending on raising the funds from the sale of other

flat, namely, Avanti, which was in their occupation and which they agreed to sell. The facts would, thus, show that, though the petitioners filed the

writ petition in challenging the acquisition order, as a matter of fact they were not desirous of any interim relief and they were satisfied when this

court refused to grant interim relief on the basis of the statement of the owner that he would return the consideration to the petitioners as soon as

the compensation was received by him from the Department. The ""present writ petition in fact was admitted because many other writ petitions

raising identical questions were admitted. The petitioners took chance by keeping the writ petition pending. We are afraid in a case like this where

the transaction is completed in all respects much before the judgment was delivered by the Supreme Court in C.B. Gautam Vs. Union of India and

Others, , the exception carved out by the Supreme Court in that case is fully attracted and the impugned order of acquisition does not deserve to

be rendered invalid merely because it was violative of the principles of natural justice.

13. Moreover, if the petitioners were in a position to deposit the purchase price and got interim relief, obviously, the Department would not have

been burdened in making the payment of compensation (the amount of apparent consideration) to the vendor and the transaction would not have

been completed. Though the writ petition remained pending factually, for want of any interim relief in favour of the petitioners, all steps for

completion of compulsory acquisition were taken by the Department and in fact the transaction was completed much before the judgment in C.B.

Gautam Vs. Union of India and Others, came.

14. The facts of the present case which we have indicated above obviously would show that the judgment of this court in S. Krishnan Vs. U.V.

Shahadadpuri and Others, strongly relied upon by learned counsel for the petitioners has no application, S. Krishnan Vs. U.V. Shahadadpuri and

Others, is a case where the agreement for sale was entered into between the concerned parties on October 19, 1994, i.e., much after the law was

laid down by the apex court in C.B. Gautam Vs. Union of India and Others, . The facts in S. Krishnan Vs. U.V. Shahadadpuri and Others, right

from the agreement for sale to the order of pre-emptive purchase are post C.B. Gautam Vs. Union of India and Others, and obviously the

exception carved out by the Supreme Court in C.B. Gautam Vs. Union of India and Others, was not applicable in S. Krishnan Vs. U.V.

Shahadadpuri and Others, . Whether the transaction of compulsory acquisition is completed or not before C.B. Gautam Vs. Union of India and

Others, is to be decided on the facts of each case and the reference to other decided cases may not be a safe guide to reach the conclusion in this

regard. The case of S. Krishnan Vs. U.V. Shahadadpuri and Others, , therefore, does not apply. Similarly, Shrichand Raheja and another Vs.

S.C. Prasad, (Appropriate Authority) and others, , Ruparel Bros. (Bombay) (P) Ltd. and Another Vs. Union of India and Others, and Home

Builders relied upon by learned counsel for the petitioners also have no application in the facts of the present case. As already indicated by us what

was necessary for completion of the transaction after the order of pre-emptive purchase was passed by the appropriate authority was (i) taking

over possession, and (ii) payment of compensation to the owner and receipt thereof by the owner without protest. All these things took place in the

year 1987 itself immediately after interim relief was refused to the petitioners. Not only that, thereafter the property was put to auction and the

auction sale has been confirmed in favour of respondent No. 4, though subject to the decision of the writ petition.

15. We have, though, held that the transaction was completed in the present case before the judgment of the Supreme Court in C.B. Gautam Vs.

Union of India and Others, and, therefore, the infraction of principles of natural justice cannot be said to invalidate the order of pre-emptive

purchase, yet, we would like to deal with the aspect of locus of the petitioners in challenging the impugned order. Learned counsel appearing for

the Revenue, of course, conceded that the Revenue does not intend to raise the issue of locus. Mr. Murlidhar, learned counsel for the auction

purchaser invited our attention to the judgment of the Supreme Court in Union of India and Others Vs. M/s. Shatabadi Trading and Investment

Pvt. Ltd. and Others, . We shall very briefly consider the said judgment.

16. In K. Basavarajappa Vs. Tax Recovery Commissioner, Bangalore and others, , the apex court dealt with the question whether the appellant

(original petitioner No. 2) had any locus standi to prefer an application under Rule 60 of the Second Schedule to the Income Tax Act, 1961, for

setting aside the sale of immovable property of the defaulter Income Tax assessee from whom he has alleged to have purchased the said property

and which property was sold in auction by the Income Tax Department in execution of the certificate of recovery for Income Tax issued against the

defaulter/owner of the property. The Supreme Court observed, thus (page 306) :

It is also to be noted that he had no legal interest in the said property on the date of the application. It is axiomatic that mere agreement to sell

creates no legal interest or right in the property which is the subject-matter of the agreement. In this connection, a Division Bench of the Karnataka

High Court in D.V. Satyanarayana and others Vs. Tax Recovery Officer and others, has taken the view that a person who had obtained an

agreement to sell which is hit by Rule 16 of the Second Schedule to the Income Tax Act cannot make an application under Rule 61 for setting

aside the sale as a person holding interest in the property. On the scheme of the Rules aforesaid this view represents the correct legal position. On

the same analogy such an agreement holder cannot equally apply under Rule 60 in his own right to get such auction sale set aside.

17. In Union of India and Others Vs. M/s. Shatabadi Trading and Investment Pvt. Ltd. and Others, , the apex court held that the principle of law

stated in the case of K. Basavarajappa Vs. Tax Recovery Commissioner, Bangalore and others, needs to be taken into consideration in the writ

petitions presented at the instance of the intending purchasers and not at the instance of owner of the subject property. The Supreme Court held

thus (page 99) :

The impact of such decision ought to have been taken note of by the High Court. Indeed in K. Basavarajappa Vs. Tax Recovery Commissioner,

Bangalore and others, , 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 authorised by the general power of attorney holder of the original owner of the property 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 Vs. Tax Recovery Commissioner, Bangalore and others, . In that view of the matter,

we do not think the High Court should have ignored the effect of the same.

18. Applying the aforesaid ratio of the Supreme Court as stated in Union of India and Others Vs. M/s. Shatabadi Trading and Investment Pvt. Ltd.

and Others, , we are of the view that the aspect that the petitioners are only agreement-holder and that they do not have any interest in the

property cannot be ignored, particularly in a case like this where the owner made a statement before this court that he does not desire to challenge

the acquisition and that he accepts the same and as a matter of fact the vendor did accept the compensation from the Income Tax Department

without any demur or protest. The petitioners were not in a position to deposit the price of the flat. No interim relief was granted to the petitioners.

They filed this writ petition as a chance litigation.

For all these reasons, we are satisfied that the petitioners are not entitled to any relief in extraordinary jurisdiction.

The writ petition is dismissed, with no order as to costs.