

(1996) 03 CAL CK 0005

Calcutta High Court

Case No: CO No. 7850 of 1995

MADHUSUDHAN DAS and Others

APPELLANT

Vs

APPROPRIATE AUTHORITY and
Others

RESPONDENT

Date of Decision: March 27, 1996

Acts Referred:

- Income Tax Act, 1961 - Section 269UE, 269UG(2), 269UG(3), 269UH, 269UH(1)
- Land Acquisition Act, 1894 - Section 30

Citation: (1997) 143 CTR 342 : (1997) 95 TAXMAN 180

Hon'ble Judges: Shyamal Kumar Sen, J

Bench: Division Bench

Judgement

SHYAMAL KUMAR SEN, J. :

The facts, inter alia, involved in this writ petition are that the petitioners are joint trustees under a registered deed of trust dt. 4th June, 1988. Under the said trust, the petitioners as joint trustees hold premises No. 18, Dent Mission Road, Watganj, Calcutta-23, in possession of monthly tenants for long (hereinafter referred to as "the said property") as trust property. Under the deed of trust, the trustees have been given power to sell the said property. The said property comprised of 16 Cott. 5 Ch. 15 sq. ft. of land together with a two-storied old structure in occupation of tenants as aforesaid, for nearly 40 years, fetching a total monthly rent of Rs. 1,100.

With a view to arrange funds for the trust, the trustees decided to sell the said property. Respondent No. 5 agreed to purchase the said property at a total consideration of Rs. 93.50 lakhs on the terms and conditions agreed in an agreement dt. 8th December, 1994.

An advance of Rs. 50,000 as earnest money was received by the trustees from respondent No. 5. The trustees agreed to take steps to get the property vacated by

the tenants and give vacant possession to the purchaser within one year, in which the purchaser agreed to co-operate.

In view of the provisions of Chapter XX-C, IT Act, 1961, Form No. 37-I was filed in respect of the aforesaid agreement on 26th December, 1994.

Form No. 37-I clearly stated that the vendors (transferors) were the trustees as aforesaid and the property was in occupation of tenants, as per details annexed, and the petitioners were interested in the property as trustees.

The Superintendent Engineer of the respondent Department by his valuation report dt. 2nd February, 1995, found that the property was tenanted with 100 years old structures and was not in a peaceful area having mainly muslim middle class locality with mosque adjacent to the property.

On the basis of a single sale instance of a better located and vacant property, he estimated the market value of the aforesaid property, as if vacant, at Rs. 3.29 lakhs per cottah.

By an order dt. 31st March, 1995, served on the petitioners in April, 1995 - the said property was ordered to be purchased under S. 269UD(1) of the IT Act for a consideration of Rs. 31.96 lakhs (discounted value). The transferors were required to hand over possession of the property.

By the writ petition read with supplementary affidavit dt. 15th May, 1995, the petitioner-trustees challenged the said pre-emptive purchase under Chapter XX-C, on, inter alia, the grounds that :

(a) There was no allegation of evasion of tax - hence, Chapter XX-C has no application.

(b) The consideration payable could not be reduced from Rs. 33,50 lakhs to 31.06 lakhs.

(c) The consideration payable pursuant to order under S. 269UD(1) r/w S. 269UF - not having been tendered to the petitioners within one month from the end of the month in which the property vested in the Central Government (S. 269UE), i.e., by 30th April, 1995, as required under S. 269UG - and no deposits could be made under Ss. 269UG(2) and 269UG(3) - In view of S. 269UH the order dt. 31st March, 1995, stood abrogated and the property has revested in the petitioners - the respondent should issue declaration under S. 269UH(2).

It has been specifically alleged in the supplementary affidavit on behalf of the writ petitioners that consideration money was not tendered as required by S. 269UG and accordingly order for vesting the property should be abrogated.

It has been contended by the respondents, on the other hand, that the respondents did not tender the money since possession of the property was not given by the

petitioners. The petitioners also did not accept the order passed under S. 269UG and shares of the petitioners was not specified. In that view of the matter, the respondents deposited the amount under S. 269UG(2)/(3). Admittedly, the consideration amount was not tendered. What is the effect of failure to tender the amount ?

2. The relevant provisions of the statute have been set out hereinbelow :

"269UC. (1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), or in any other law for the time being in force, no transfer of any immovable property in such area and of such value exceeding five lakh rupees, as may be prescribed shall be effected except after an agreement for transfer is entered into between the person who intends transferring the immovable property (hereinafter referred to as the transferor) and the person to whom it is proposed to be transferred (hereinafter referred to as the transferee) in accordance with the provisions of sub-s. (2) at least four months before the intended date of transfer.

(2) The agreement referred to in sub-s. (1) shall be reduced to writing in the form of a statement by each of the parties to such transfer or by any of the parties to such transfer acting on behalf of himself and on behalf of the other parties.

(3) Every statement referred to in sub-s. (2) shall, -

(i) be in the prescribed form;

(ii) set forth such particulars as may be prescribed; and

(iii) be verified in the prescribed manner,

and shall be furnished to the Appropriate Authority in such manner and within such time as may be prescribed, by each of the parties to such transaction or by any of the parties to such transaction acting on behalf of himself and on behalf of the other parties.

(4) Where it is found that the statement referred to in sub-s. (2) is defective, the Appropriate Authority may intimate the defect to the parties concerned and give them an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the Appropriate Authority may, in its discretion, allow and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Chapter, the statement shall be deemed never to have been furnished.

269UD. (1) Subject to the provisions of sub-ss. (1A) and (1B), the Appropriate Authority, after the receipt of the statement under sub-s. (3) of s. 269UC in respect of the statement under sub-s. (3) of S. 269UC in respect of any immovable property, may, notwithstanding anything contained in any other law or any instrument or any

agreement for the time being in force, make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration :

Provided that no such order shall be made in respect of any immovable property after the expiration of a period of two months from the end of the month in which the statement referred to in S. 269UC in respect of such property is received by the Appropriate Authority :

Provided further that where the statement referred to in S. 269UC in respect of any immovable property is received by the Appropriate Authority on or after the 1st day of June, 1993, the provisions of the first proviso shall have effect as if for the words two months, the words three months had been substituted :

Provided also that the period of limitation referred to in the second proviso shall be reckoned, where any defect as referred to in sub-s. (4) of S. 269UC has been intimated, with reference to the date of receipt of the rectified statement by the Appropriate Authority :

Provided also that in a case where the statement referred to in S. 269UC in respect of the immovable property concerned is given to an Appropriate Authority, other than the Appropriate Authority having jurisdiction in accordance with the provisions of S. 269UB to make the order referred to in this sub-section in relation to the immovable property concerned, the period of limitation referred to in the first and second provisos shall be reckoned with reference to the date of receipt of the statement by the Appropriate Authority having jurisdiction to make the order under this sub-section :

Provided also that the period of limitation referred to in the second proviso shall be reckoned, where any stay has been granted by any Court against the passing of an order for the purchase of the immovable property under this Chapter, with reference to the date of vacation of the said stay.

(1A) Before making an order under sub-s. (1), the Appropriate Authority shall give a reasonable opportunity of being heard to the transferor, the person in occupation of the immovable property if the transferor is not in occupation of the property, the transferee and to every other person whom the Appropriate Authority knows to be interested in the property

269UE : (1) Where an order under sub-s. (1) of S. 269UD is made by the Appropriate Authority in respect of an immovable property referred to in sub-cl. (i) of cl. (d) of S. 269UA, such property shall, on the date of such order, vest in the Central Government in terms of the agreement for transfer referred to in sub-s. (1) of S. 269UC :

Provided that where the Appropriate Authority, after giving an opportunity of being heard to the transferee or other persons interested in the said property, under

sub-s. (1A) of S. 269UD, is of the opinion that any encumbrance on the property or leasehold interest specified in the aforesaid agreement for transfer is so specified with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or leasehold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrance or leasehold interest.

(2) The transferor or any other person who may be in possession of the immovable property in respect of which an order under sub-s. (1) of S. 269UD is made, shall surrender or deliver possession thereof to the Appropriate Authority or any other person duly authorised by the Appropriate Authority in this behalf within fifteen days of the service of such order on him :

Provided that the provisions of this sub-section and sub-Ss. (3) and (4) shall not apply where the person in possession of the immovable property, in respect of which an order under sub-s. (1) of S. 269UD is made, is a bona fide holder of any encumbrance on such property or a bona fide lessee of such property, if the said encumbrance or lease has not been declared void under the proviso to sub-s. (1) and such person is eligible to continue in possession of such property even after the transfer in terms of the aforesaid agreement for transfer.

(3) If any person refuses or fails to comply with the provisions of sub-s. (2), the Appropriate Authority or other person duly authorised by it under the sub-section may take possession of the immovable property and may, for that purpose, use such force as may be necessary.

(4) Notwithstanding anything contained in sub-s. (2), the Appropriate Authority may, for the purpose of taking possession of any property referred to in sub-s. (1), requisition the services of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

(5) For the removal of doubts, it is hereby declared that nothing in this section shall operate to discharge the transferor or any other person (not being the Central Government) from liability in respect of any encumbrances on the property and, notwithstanding anything contained in any other law for the time being in force, such liability may be enforced against the transferor or such other person.

(6) Where an order under sub-s. (1) of S. 269UD is made in respect of an immovable property, being rights of the nature referred to in sub-cl. (ii) of cl. (d) of S. 269UA, such order shall have the effect of -

(a) vesting such right in the Central Government : and

(b) placing the Central Government in the same position in relation to such rights as the person in whom such a right would have continued to vest if such order had not been made.

(7) Where any rights in respect of any immovable property, being rights in, or with respect to, any land or any building or part of a building which has been constructed or which is to be constructed, have been vested in the Central Government under sub-s. (6), the provisions of sub-ss. (1), (2), (3) and (4) shall, so far as may be, have effect as if the references to immovable property therein were references to such land or building or part thereof, as the case may be.

269UF. (1) Where an order for the purchase of any immovable property by the Central Government is made under sub-s. (1) of S. 269UD, the Central Government shall pay, by way of consideration for such purchase, an amount equal to the amount of the apparent consideration.

(2) Notwithstanding anything contained in sub-s. (1), where, after the agreement for the transfer of the immovable property referred to in that sub-section has been made but before the property vests in the Central Government under S. 269UE, the property has been damaged (otherwise than as a result of normal wear and tear), the amount of the consideration payable under that sub-section shall be reduced by such sum as the Appropriate Authority for reasons to be recorded in writing, may by order determine.

269UG. (1). The amount of consideration payable in accordance with the provisions of S. 269UF shall be tendered to the person or persons entitled thereto, within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government under sub-s. (1), or, as the case may be, sub-s. (6) of S. 269UE :

Provided that if any liability for any tax or any other sum remaining payable under this Act, the WT Act, 1957 (27 of 1957), the GT Act, 1958 (18 of 1958), the Estate Duty Act, 1953 (34 of 1953), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), by any person entitled to the consideration payable under S. 269UF, the Appropriate Authority may, in lieu of the payment of the amount of consideration, set off the amount of consideration or any part thereof against such liability or sum, after giving an intimation in this behalf to the person entitled to the consideration.

(2) Notwithstanding anything contained in sub-s. (1), if any dispute arises as to the apportionment of the amount of consideration amongst persons claiming to be entitled thereto, the Central Government shall deposit with the Appropriate Authority the amount of consideration required to be tendered under sub-s. (1) within the period specified therein.

(3) Notwithstanding anything contained in sub-s. (1), if the person entitled to the amount of consideration does not consent to receive it, or if there is any dispute as to the title to receive the amount of consideration, the Central Government shall deposit with the Appropriate Authority the amount of consideration required to be tendered under sub-s. (1) within the period specified therein :

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of the amount of consideration for any immovable property vested in the Central Government under this Chapter to pay the same to the person lawfully entitled thereto.

(4) Where any amount of consideration has been deposited with the Appropriate Authority under this section, the Appropriate Authority may, either of its own motion or on an application made by or on behalf of any person interested or claiming to be interested in such amount, order the same to be invested in such Government or other securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefits therefrom as they might have had from the immovable property in respect whereof such amount has been deposited or as near thereto as may be.

269UH. (1) If the Central Government fails to tender under sub-s. (1) of S. 269UG or deposit under sub-s. (2) or sub-s. (3) of the said section, the whole or any part of the amount of consideration required to be tendered or deposited thereunder within the period specified therein in respect of any immovable property which has vested in the Central Government under sub-s. (1) or, as the case may be, sub-s. (6) of S. 269UE, the order to purchase the immovable property by the Central Government made under sub-s. (1) of S. 269UD shall stand abrogated and the immovable property shall stand revested in the transferor after the expiry of the aforesaid period :

Provided that where any dispute referred to in sub-s. (2) or sub-s. (3) of S. 269UG is pending in any Court for decision, the time taken by the Court to pass a final order under the said sub-sections shall be excluded in computing the said period.

(2) Where an order made under sub-s. (1) of S. 269UD is abrogated and the immovable property revested in the transferor under sub-s. (1), the Appropriate Authority shall make, as soon as may be, a declaration in writing to this effect and shall -

(a) deliver a copy of the declaration to the persons mentioned in sub-s. (2) of S. 269UD; and

(b) deliver or cause to be delivered possession of the immovable property back to the transferor, or, as the case may be, to such other person as was in possession of the property at the time of its vesting in the Central Government under S. 269UE."

3. It has been submitted on behalf of the petitioners that sub-ss. (2) and (3) of S. 269UG have no application as there was no dispute between the petitioners as to the apportionment of consideration payable. There was no question of apportionment. The petitioners never claimed any portion of consideration payable separately and individually. It was declared by the petitioners that they held the

property as joint trustees - therefore, shares were not specified - This was clearly known to the respondents. Hence, condition necessary for application of S. 269UG(2) - did not exist and were not fulfilled and satisfied.

It has also been suggested on behalf of the petitioners that there was ever any refusal to receive the consideration by the petitioner nor was there any title dispute as regards the right to receive the consideration. Accordingly, sub-s. (3) of S. 269UG did not apply.

It has further been submitted on behalf of the petitioners that provision of S. 269UG not having been complied with within the specified time - S. 269UH has come into operation.

It has been submitted on behalf of the petitioners that the respondents under Chapter XX-C of the IT Act, exercise statutory power - as per powers and duties prescribed therein. The respondents do not exercise any contractual right. Chapter XX-C do not create any contract or contractual right between the Appropriate Authority, Central Government and the transferors. It only creates statutory powers and duties.

The learned advocate for the petitioners has submitted that on the language of Ss. 269UD and 269UE, the purchase of the property and vesting of the same in the Government is not contractual but takes effect by operation of law.

It has also been contended that by virtue of an order made under S. 269UD(1), the property vests immediately on passing of the said order in the Central Government without any consent or acceptance of any act to be done by the transferor, and the transferor is divested of any right, title, interest and ownership in the said property and the same gets vested in the Central Government.

It has accordingly been submitted that the alleged non-acceptance of the order or non-compliance with the order under S. 269UD(1) by the transferor, if any, which is disputed in law, cannot suspend the operation thereof and the duties imposed by the said order on the Central Government and the Appropriate Authority.

The contention of the learned advocate for the petitioner is that as soon as the order is passed under S. 269UD(1), the other sections, namely, 269UE, 269UF and 269UH, come into operation, the said provisions and rights and duties cast thereby start operating by the mere making of the said order and no consent or acceptance by the transferor is required.

It has also been contended on behalf of the petitioners that delivery of possession by the transferor to the Central Government although required by S. 269UG(2) is not a condition precedent or otherwise for operation of Ss. 269UE(1), 269UF and 269UH. They operate even if the transferor fails to deliver possession, such failure, if any, it has been contended is an offence punishable under S. 269AB and authorised the Government to take forcible possession under S. 269UE(3). Voluntarily giving

possession under S. 269UE, according to the petitioners is only a provision which would enable the transfer to save himself from punishment and harassment by forcible occupation, and the same does not create any contractual operation under S. 269UE(2).

It has accordingly been contended by the learned advocate for the petitioners that property having vested in the Central Government by reason of the provisions of the statute S. 269UF casts an obligation on the Central Government, a duty to pay (tender) the consideration amount within the specified time.

The further contention of the learned advocate for the petitioners is that sub-ss. (2) and (3) of S. 269UG are dependent on the conditions specified therein existing and being satisfied. If the said conditions do not exist, no deposit under S. 269UG(2) or (3) could be made.

It has also been contended that the deposit, if any, made by the Central Government, in the instant case, is illegal and cannot defer or prevent operation of S. 269UF(1).

It has also been submitted that since the respondent failed to comply with the provisions of S. 269UF, the provisions contained in S. 269UH have come into force.

In support of his contention the learned advocate for the petitioners has relied upon the judgment and decision in the case of [Shrichand Raheja and another Vs. S.C. Prasad, \(Appropriate Authority\) and others, .](#)

It has also been contended on behalf of the petitioners that as per the provisions of S. 269UD(1) the order has to be made within three months from the end of the month in which the statement referred to in S. 269UC in respect of such property is received by the Appropriate Authority. Not only has the order to be passed within the statutory period but the same should also be communicated within the statutory period and if this is not done, the order will become invalid. In this case the order was passed on the last day (31st March, 1995) but the same was communicated to the petitioners after the expiry of the statutory period. This fact was not denied by the respondents in their affidavit-in-opposition.

In support of his contention the learned advocate has relied upon the judgment and decision in the case of [Commissioner of Income Tax Vs. Sree Narayana Chandrika Trust,](#)

4. It has been contended by Mr. Pal, the learned advocate on behalf of the Union of India, respondent on the other hand, that the writ petitioners have suppressed the fact that they received the order under S. 269UD(1) of the Act dt. 31st March, 1995, on 3rd April, 1995, and under S. 269UE(2) of the Act they were duty bound to hand over vacant and peaceful possession of the property to the Appropriate Authority, IT Department, by 18th April, 1995, but they failed and neglected to do so. In the said writ petition, the writ petitioners also did not make any averments that the Central

Government did not tender the consideration money to the writ petitioners. There are also no pleadings and/or grounds and/or prayers that the order under S. 269UD(1) of the Act has abated under S. 269UH(1) of the Act and the property has reverted under S. 269UH(2) of the Act. In the said writ petition there is also no prayer for issuance of a certificate of no objection under S. 269UL(3) of the Act.

It has further been submitted on behalf of the respondents that in the supplementary affidavit which was filed on the day when the writ application appeared in the list as a listed motion a point has been taken in paragraph 4 of the said supplementary affidavit that the property vested on 31st March, 1995, and till date the respondent -Appropriate Authority has neither tendered, offered nor paid the amount of consideration as payable under S. 269UG of the Act and the order dt. 31st March, 1995, under S. 269UD(1) of the Act stands abrogated.

5. It has also been contended on behalf of the said respondent that the writ petition should be dismissed for the following reasons :

(a) The writ petitioners are praying for a writ of mandamus. The mandamus being a discretionary writ the writ petitioners must not only come with clean hands but they must not also make any suppression of any material fact which may have some bearing.

(b) The order under S. 269UD(1) of the Act was passed on 31st March, 1995, and, therefore, under S. 269UE(1) of the Act property in question vests in the Central Government "in terms of the agreement for transfer referred to in sub-s. (1) of S. 269UC". From clauses 1 and 4 of the agreement for the sale dt. 8th December, 1994, it will be apparent that the vendors agree to sell and the purchaser agrees to purchase the property in question free from all encumbrances, attachments and charges and other claims and demands subject to a good and a marketable title being made and the vendors will hand over vacant possession of the said premises. Under S. 269UE(2) of the Act, it is the duty of the vendors to deliver possession within 15 days of the service of the order on them. The order was served on them on 3rd April, 1995, and the writ petitioners were required to hand over vacant and peaceful possession by 18th April, 1995, which admittedly they have failed and neglected to do. In [C.B. Gautam Vs. Union of India and Others](#), the Supreme Court described the time-frame under Chapter XX-C of the Act as a tight one. Referring to the said decision, this Court has held that the need for urgency is not only upon the authority but is placed on the affected parties also and under S. 269UE possession has to be given within 15 days from the service of the order as the Central Government has to put up the property for sale. Accordingly, it has been submitted that in view of the conduct of the writ petitioner in not complying with the obligation discretionary relief should not be granted in favour of the writ petitioner.

(c) The contention of the respondent is that even under the ordinary law no vendor can ask for payment of the consideration without first fulfilling his part of the

obligation under the agreement, namely, without first making out a good and a marketable title free from all encumbrances, charge and liens and by handing over vacant possession which the vendors agreed also in the present case to do.

(d) It has been submitted that the aforesaid facts are vital which the writ petitioners should have mentioned in the writ petition and/or in the supplementary affidavit which they have deliberately suppressed and on this ground alone the writ petition should be dismissed.

(e) It is the contention of the respondents that under S. 269UC(1) r/w S. 269UC(2) of the Act, the writ petitioners and the respondent No. 5 are required to file the statement. Sec. 269UC(3) of the Act provides what their statement is which is as prescribed and which must set forth particulars as may be prescribed. Rule 48L of the IT Rules, 1962, prescribes the statement which is to be filed in Form No. 37-I. Clause 4 of the Form No. 37-I requires the parties therein to state "Persons interested in the property and in the consideration specifying their shares and basis thereof". Therefore, this is a statutory requirement which is required to be fulfilled by the parties In cl. 4 of Form No. 37-I, it was stated as per Annexure "B" Annexure "B" to Form No. 37-I gives the names of three parties but no shares have been specified. In Form No. 37-I, the transferors are the three writ petitioners in their individual capacity As per the agreement, the property although tenanted is to be sold free from all encumbrances with vacant possession and both the writ petitioners as also respondent No. 5 confirmed by two letters that the writ petitioners will pay compensation to the existing tenants and not the purchaser and they will give vacant possession. Until now the writ petitioners have not stated how much compensation is to be paid to each of the tenants and whether the said compensation is to be paid out of the consideration. They have also not given vacant possession and they are themselves in default by not fulfilling their obligation under S. 269UE(2) of the Act.

6. The learned advocate for the respondents has further submitted that the above facts will go to show that there is a dispute as to the apportionment of the amount of consideration amongst persons entitled thereto and/or there is dispute as to the title to receive the consideration. Sec. 269UG(2) and (3) of the Act has now been judicially construed. Similar provisions as S. 269UG(2) and (3) of the Act are there of the Land Acquisition Act. Mr. Pal has argued that several High Courts have construed the said provisions and held that the word "dispute" as used in Ss. 30 and 31(2) of the Land Acquisition Act does not require that there should be two parties to raise a dispute. He has further submitted that merely because there is no rival claimant to the consideration, Sec. 269UG(3) of the Act does not necessarily compel the authority to tender the apparent consideration under S. 269UG(1) of the Act. If the authorities have a bona fide or genuine doubt as to the title of the apparent vendor, it is open to them not to tender the consideration under S. 269UG(1) of the Act but make a deposit of the same under S. 269UG(3) of the Act.

The learned advocate for the respondent has relied upon the judgment and decision in the case of [Sooni Rustam Mehta and Others Vs. Appropriate Authority, Income Tax Department](#), in this connection.

It has been also been submitted on behalf of the respondents that the writ petitioners by not complying with the provisions of S. 269UE(2) of the Act have not accepted the order under S. 269UD(1) of the Act. Further they have also not stated their respective shares in the consideration. They have also not specified how much compensation is to be paid to each of the six tenants. Under these circumstances, it has been contended that the authorities under the Act were entitled to hold that there was a bona fide dispute as to the title to receive the consideration money. This bona fide belief and/or apprehension of the authorities under the Act has been justified by the fact that the writ petitioners have challenged the order under S. 269UD(1) of the Act by filing the writ petition and they are still pursuing the said writ petition. Under the circumstances, there was no obligation on the part of the Central Government to tender the consideration under S. 269UG(1) of the Act and they were fully justified in depositing the consideration under S. 269UG(2) and/or (3) of the Act which the Central Government has duly done in accordance with law.

It has further been submitted on behalf of the respondents that S. 269UH(1) of the Act has no application in the facts and circumstance of the present case inasmuch as the said provision can be attracted only if there is a failure not only to tender under S. 269UG(1) of the Act but there is also failure to make deposit either under S. 269UG(2) or S. 269UG(3) of the Act. It has been stated in paragraph 26 of the affidavit of Statish Chandra Saxena affirmed on 25th July, 1995, being affidavit-in-opposition while on behalf of the respondent, Union of India, that the Central Government has duly deposited the apparent consideration with respondent No. 1 in accordance with law in view of the facts and circumstances stated in various sub-paragraphs of paragraph 26 of the said affidavit-in-opposition.

In fact, it has been submitted on behalf of the respondent that the record of respondent No. 1 will go to show that the deposit was made by the Central Government to the Appropriate Authority which the Appropriate Authority duly forwarded to the Reserve Bank of India. In view of the aforesaid S. 269UH of the Act has no manner of application in the facts and circumstances of the present case.

It has further been submitted on behalf of the respondent, Union of India, that in any event in view of the amended S. 269UE(1) of the Act which is applicable in our case the property in question has vested in the Central Government under S. 269UE(1) of the Act in terms of the agreement for transfer entered into by and between the writ petition and respondent No. 5 dt. 8th December, 1994. In paragraph 11 of the writ petition, the petitioners themselves admitted that they will remove the tenants after payment of compensation and the purchaser is not liable to pay any compensation to the tenants. In paragraph 10 of their affidavit-in-reply, it is the case of the petitioners that in the event the petitioners fail to remove the

tenants the property in question will not be purchased by respondent No. 5.
In view of the provisions contained in S. 269UK(1) of the Act, the writ petitioners cannot resile from the said agreement and the order passed by respondent No. 1 under S. 269UD(1) of the Act dt. 31st March, 1995, has now become final and conclusive under S. 269UN.

It has been submitted on behalf of the respondent that in view of the petitioners own case as made out in paragraph 10 of their affidavit-in-reply that in the events the petitioners fail to remove the tenants, the property in question will not be purchased by respondent No. 5, the principles laid down by the Bombay High Court in the case of Shrichand Raheja vs. S. C. Prasad (supra) will be applicable and there cannot be any question of payment of any consideration money and consequently, there cannot be any question of any abrogation of the order for non-payment of consideration money and as such the petitioners cannot ask for any writ of mandamus for issuance of "No objection certificate" under S. 269UL(3) of the Act inasmuch as according to the writ petitioners themselves the agreement is not enforceable as they have failed and neglected to fulfil the conditions laid down in the agreement for sale which gives the vendor a right not to perform its part of the obligation under the agreement and as such they are estopped from contending otherwise.

7. I have considered the submissions and decisions cited on behalf of the parties. The arguments advanced by the learned advocate for the respondent for non-payment of the consideration money by the respondent and consequential deposit on the ground that S. 269UH(1) is not applicable because (i) the petitioners did not give possession of the property, and (ii) the shares of the three petitioners in the consideration payable was not known and as such there was a dispute, cannot be accepted. It appears on perusal of the relevant provisions of the statute on the other hand that a deposit of consideration payable could be made only in circumstances prescribed by S. 269UG(2) or (3) as follows :

(a) If there is dispute as to apportionment of the consideration payable amongst the persons entitled thereto. [Sec. 269UG(2)]

(b) If the persons entitled to the consideration do not consent to receive it. [Sec. 269UG(3)]

(c) If there is dispute as to the title to receive the consideration. [Sec. 269UG(3)]

Only in the aforesaid three circumstances, a deposit under S. 269UG(2) or (3) could be made :

(i) The circumstances authorising deposit are prescribed and limited as aforesaid.

(ii) Unless the aforesaid circumstances exist or are reasonably shown to exist a deposit under S. 269UG(2) or (3) could not be made :

(iii) Any deposit in the absence of the aforesaid circumstances or contrary thereto is invalid, unlawful and not a deposit under S. 269UG.

None of the aforesaid circumstances exist in this case.

(i) The three sellers admittedly on record are joint trustees - selling the property as joint trustees - not individually, personally or separately.

(ii) The consideration is admittedly payable to the joint trustees as sellers. Hence, the question of apportionment or any dispute in that regard does not arise.

(iii) The assumption as to alleged dispute is entirely imaginary and baseless.

(iv) Admittedly, the consideration payable was never tendered to the sellers. Hence, there was no refusal.

(v) There is no dispute of any title to receive the consideration amongst the sellers. The sellers never raised any dispute.

(vi) Hence, there is no dispute whatsoever within the meaning of and for the purpose of S. 269UG(2) or (3).

(vii) In the premises, the condition precedent necessary to authorise the Central Government to deposit under S. 269UG do not exist and are not fulfilled and satisfied. The alleged deposit is wholly without authority of law, ultra vires S. 269UG and invalid.

(viii) The alleged deposit therefore cannot avoid or circumvent S. 269UG(1).

8. In my view, the scope of S. 269UG(2) or (3) does not include within its scope alleged failure of the sellers to give possession of property under S. 269UE.

Alleged failure to give possession, if any, is not a ground or prescribed circumstance authorising deposit under S. 269UG(2) or (3).

The alleged grounds mentioned on behalf of the respondent for non-delivery of possession do not authorise the respondents to deposit under S. 269UG(2) or (3).

In the instant case, S. 269UH(1) becomes operative in the event on failure to tender the consideration amount. The other contention of the learned advocate for the respondent that conditions of the agreement could not be fulfilled by the vendor also cannot be a ground for non-payment of the consideration money. It may be noted that the right of the Government to get possession of property which has vested in it is not dependent upon performance of any agreement by the seller. The right of the Government to get possession is conferred by law and S. 269UE and there is also provision in the Act enabling the Government to take possession by force. Hence, getting possession is not contractual.

The vesting of property in the Central Government "in terms of the agreement for transfer" under S. 269UE(1), really means that if the agreement so provides, the

property would not vest in the Government free from encumbrances. The said expression does not, however, make the vesting of the property in the Government contractual. The said expression does not cast on the seller any duty or impose any condition for getting payment of the consideration from the Government - the giving of possession of the property by the seller to the Government unless there is specific provision to that effect in the agreement.

The vesting is by operation of law, automatic on the passing of an order under S. 269UD. The vesting is not contractual. The seller has no choice to accept or refuse the order. The Government, consequent upon vesting, takes possession by operation of law and not due to any contractual performance of the seller.

In my view, it is obligatory on the Government to pay the consideration amount to the seller except in the three specified conditions mentioned above wherein the deposit can be made. The said conditions, however, do not exist in the present case.

9. The judgment and decision in the case of Shrichand Raheja vs. S. C. Prasad (supra) relied upon by the learned advocate for the respondent is distinguishable in the facts and circumstances in the instant case. In the aforesaid decision, there was a specific clause in the agreement for sale permitting the transferee to withhold an amount mutually agreed upon and not in excess of Rs. 50,00,000 in case the transferors failed to hand over vacant possession of five servants quarters and accordingly the transferors withheld the said amount. It was in the facts of the said case, the Bombay High Court held that the Central Government was entitled to take advantage of the terms of the agreement for withholding of Rs. 50,00,000 and the tender in respect of the balance amount is not involved.

In the instant case, there is no such clause in the agreement on which the respondent could rely so as to take advantage of the same. In fact, there is no such clause in the agreement.

After the hearing was concluded, the matter was mentioned again and further hearing took place on 21st March, 1996. It has been submitted on behalf of the writ petitioner that the order of purchase by the Appropriate Authority under S. 269UD(1) was made on 31st March, 1995, and as such the due date for tender of consideration to persons entitled thereto under S. 269UG(1) or deposit under S. 269UG(2) or (3) was to be made on 1st May, 1995. On 12th May, 1995, the writ petition was affirmed and moved on 18th May, 1995.

At the time when the writ petition was moved, the petitioner was not aware of the fact that the said deposit was made under s. 269UG which fact was disclosed by the respondents on 18th May, 1995. It appears from the written submission of the respondents that deposit was made with the Appropriate Authority on 28th April, 1995.

10. It has been submitted on behalf of the writ petitioners that since the writ petition was moved on 12th May, 1995, and the deposit was made prior to 1st May, 1995, i.e., on 28th April, 1995, the contention of the respondents that the challenge by way of writ petition should be taken to be disputes for which tender could not be made as held in the case of *Mrs. Sooni Rustam Mehta vs. Appropriate Authority* (supra) cannot be said to be correct in the facts and circumstances of the case. The said submission of the petitioner cannot be said to be without any basis. It is on record that the deposit was made with the Appropriate Authority on 26th April, 1995, and the writ petition was moved on 12th May, 1995, much later in point of fact and as such the filing of the writ petition cannot be a ground for not tendering the amount and cannot be treated to be a dispute on the basis of which the deposit could be made to the Appropriate Authority instead of tendering the amount. The point has been taken on behalf of the writ petitioners at the time of further hearing that no affidavit, in fact, has been filed by the Central Government disputing the allegations contained in the petition. The affidavit-in-opposition in the instant case has been affirmed by S. C. Saxena who is one of the Appropriate Authority with whom deposit is to be made.

It is the contention of the petitioners that the Appropriate Authority cannot decide the question of deposit. The said decision under S. 269UG has to be taken by an authority other than the Appropriate Authority.

It has been further contended on behalf of the petitioner that the said deposit was made by letter dt. 28th April, 1995, which, however, does not disclose any reason for such deposit nor the said letter contained any reason or grounds for such deposit. Nothing has been disclosed to show who directed the deposit to be made. The learned advocate for the petitioners has relied upon the judgment and decision in the case of *Sudhansu Kumar Ghose vs. Land Acquisition Officer* AIR 1961 Pat 150.

In the aforesaid case, on 9th November, 1957, the petitioners filed a claim in the said case before the Land Acquisition Officer for compensation for the acquisition of the land in question. The claim petition was heard and on 20th October, 1958, the Land Acquisition Officer made an award under S. 11 of the Land Acquisition Act and the compensation payable to the petitioner was determined to be Rs. 3,586.28.

A notice of the award was given to the petitioner on 1st May, 1959, but the Land Acquisition Officer instead of making the payment of the compensation to the petitioners made a reference to the District Judge under S. 30 of the Land Acquisition Act and directed that the amount of compensation may be kept as deposit in the Court of the District Judge. The order of reference made by the Land Acquisition Officer is Annexure "H" to the supplementary affidavit of the petitioner dt. 27th June, 1960. In this reference it is said that there was a dispute between the petitioner on the one hand and Shri Dwarka Prasad Gupta, Shri Mahendra Prasad Lall and Bibi Uma Salma on the other with regard to the title to the property acquired and the apportionment or compensation.

11. The case of the petitioner is that there was no dispute with regard to title or with regard to apportionment of compensation as between the petitioner and the three persons named, and so the Land Acquisition Officer had no jurisdiction to make a reference to the Court under S. 30 of the Land Acquisition Act. He has obtained a rule from the High Court asking the respondents to show cause why the order of reference made by the Land Acquisition Officer under S. 30 of the Land Acquisition Act should not be quashed by a writ in the nature of certiorari under Art. 226 of the Constitution.

12. In the aforesaid decision while interpreting S. 30 of the Land Acquisition Act, 1894, the Division Bench of the Patna High Court held as follows :

"The existence of a dispute as regards apportionment of compensation is a question of jurisdictional fact, and unless there is such a dispute existing, the Land Acquisition Officer has no authority or jurisdiction to make a reference to the civil Court under S. 30. Where the jurisdiction of an administrative authority depends upon a preliminary finding of fact, the High Court is entitled, in a proceeding for a writ of certiorari, to determine by its independent judgment whether or not that finding of fact is correct."

Sec. 30 of the Land Acquisition Act is quoted hereinbelow :

"30. Dispute as to apportionment. - When the amount of compensation has been settled under S. 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of Court."

Relying upon the previous decision of the same High Court in [Chandreshwari Prasad Narain Deo and Others Vs. State of Bihar and Another](#), , the Division Bench of the High Court further held that where the jurisdiction of an administrative authority depends upon a preliminary finding of fact, the High Court is entitled, in a proceeding for a writ of certiorari, to determine by its independent judgment whether or not that finding of fact is correct. A similar view has been expressed in two English authorities *Rex vs. Shore ditch Assessment Committee* (1910) 2 KB 859 and *White & Collins vs. Minister of Health* (1939) 2 KB 838.

So far as the judgment and decision in the case of *Mrs. Sooni Rustam Mehta vs. Appropriate Authority* (supra) is concerned, the order of deposit was communicated to the petitioner and the reasons were disclosed. Accordingly, the Court decided the validity of the reasons and rejected three out of totally four reasons. Only one reason was upheld, namely, that the petitioner has challenged the vires of Chapter XX-C and, therefore, the order under S. 269UD was a dispute as to title. In the said case, the writ petition was moved much before the deposit was made, and the order was passed under S. 269UD. On 8th March, 1990, the petition was admitted and on 30th March, 1990, deposit was made.

Therefore, it was open to the writ petitioner in the case to urge that a valid dispute exists since the writ petition was filed challenging the order. In the instant case, however, the order under S. 269UD was passed on 31st March, 1995, and deposit was made on 28th April, 1995. Therefore, there was no scope for holding that at the time when the deposit was made, there really existed dispute, since there was no challenge to the order of deposit. At the time when the deposit was made, there was no scope for the respondent to deposit the said amount on the basis that a writ petition challenging the vires of the order and thereby raising dispute as to title has been made.

13. The argument made on behalf of the respondent relying upon the said decision in the case of *Mrs. Sooni Rustam Mehta vs. Appropriate Authority (supra)* that the writ petition itself raises a dispute as to title cannot be accepted since the same does not apply to the facts of the instant case. Accordingly, it appears to me that on the date of deposit or within the specified time, the respondent could not have reasonably believed that a "dispute" within the meaning of S. 269UG existed which required deposit to be made thereunder.

14. In my view S. 269UG presupposes a valid and lawful tender and valid and lawful deposit and only by either valid and lawful tender or "deposit", it is open to the respondent to avoid application of the provisions of S. 269UH(1). The mere fact of "deposit" if unlawful and invalid is not a "deposit" under S. 269UG and in the event of unlawful and invalid deposit the provision contained in S. 269UH(2) will apply.

In my view in order to authorise and warrant "deposit", the conditions as specified in S. 269UG(2) or S. 269UG(3) have to be shown to exist and be satisfied. Unless the said conditions exist and are fulfilled - the alleged deposit, if any, will be invalid and attract S. 269UH(1). In this connection, the provisions relating to the Land Acquisition Act and the judgment and decision in the case of *Sudhansu Kumar Ghose vs. Land Acquisition Officer (supra)*, which has already been taken note of appear to be relevant.

The other decision relied upon by the learned advocate for the petitioner, namely, [S. Duraiswami Nadar Vs. Additional Special Deputy Collector \(Land Acquisition\) Railways, Nagarcoil and Others](#), wherein it was held that before a reference could be made it must be found whether a prima facie case for reference is made out, may also be taken note of in this connection. In the aforesaid decision, it was held that it should not be made mechanically or in a wooden fashion -if there is no disputed question, reference does not arise and the reference is illegal.

In this connection, in the judgment and decision in the case of *Rajeswar Lal Chaudhury vs. Ram Niranjana Mour (1995) (Suppl) 3 SCC 44*, it was held that deposit of rent without tender to the landlord is invalid.

The following decisions of this Court also appear to be relevant in this connection -
(1) The judgment and decision in the case of [Kabiraj Srinarayan Sarma Vs. Baijnath](#)

Bhartia, (2) the judgment and decision in the case of Shree Nursing Timber Works and Another Vs. Sm. Amala Bala Dassi,

In the aforesaid decisions, it was held that unless the deposits are valid, the deposit cannot cure the defaults. All deposits made in contravention of the provisions of the statute are invalid and the tenant is not entitled to protection.

In the judgment and decision in the case of Provatati Das vs. R. R. Joneja (1978) 1 CLJ 589, it was held that the defendant defaulted in the payment of rent. However, as the deposits made by him were invalid in law, there was no equitable consideration even though all amounts of arrear of rent were deposited and the defendant could not get any benefit of protection against eviction.

The judgment and decision in the case of Jagat Prasad vs. District Judge (1995) (Suppl.) SCC 318 may also be taken note of. It was held in the aforesaid decision of the Supreme Court that the defence of the appellant that he had deposited bona fide rent in the civil proceeding that would ensure to the benefit of rent control proceeding is unacceptable. The Supreme Court held that : "law prescribes the procedure as to the deposit under the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Such procedure if complied with alone will be a valid defence to a petition for eviction on the ground of arrears of rent. Therefore, even accepting the defence the ultimate order of eviction passed against the tenant will have to be upheld. This means the order of eviction is sustained. Civil appeal stands dismissed. No costs."

15. Accordingly, in my view, the Central Government has failed to carry out the obligations imposed upon it by the statute and the deposit made was not in compliance with the statute and as such the said deposit not being in compliance with the statute is invalid and the respondent cannot claim any benefit on the basis of such invalid deposit.

The petitioners accordingly succeed in this writ petition.

16. On consideration of the relevant provisions of the statute and the decisions cited by the parties as already noted, it appears to me that the said order of vesting dt. 31st March, 1995, should stand abrogated in view of the specific provision contained in S. 269UH(1) of the IT Act and the property in respect of which the said order was passed, should stand revested in the petitioner and the Appropriate Authority is directed to issue necessary declaration and to take all steps as may be necessary in terms of S. 269UH(2) within six weeks from the date.

17. The writ petition is accordingly disposed of with the observations as above.

There will be no order as to costs.

In view of the above, the interim order stands vacated so far as investment is concerned, the Appropriate Authority will be at liberty to refund the amount

invested to the Central Government.

In view of the final disposal of the matter, the other interim order need not be continued and the said interim order stands vacated.

It has been brought to my notice that during the pendency of this proceeding, a notice/order was issued to the petitioner. Since the petitioner has succeeded, the said respondents are directed to withdraw the said order.

In view of the fact that six week time has already been granted to the respondents, the stay of operation of the order, as prayed for, need not be granted.