(1994) 09 BOM CK 0083

Bombay High Court

Case No: Writ Petitions No''s. 797 and 862 of 1994

Shrichand Raheja and another		APPELLANT
	Vs	
S.C. Prasad, (Appropriate Authority) and others Laila Hitchens and another Vs Union of India and others		RESPONDENT

Date of Decision: Sept. 28, 1994

Acts Referred:

- Income Tax Act, 1961 - Section 269(UA), 269(UC), 269(UD)(1), 269(UD)(2), 269(UE)

Citation: (1995) 2 BomCR 145 : (1994) 122 CTR 131 : (1995) 213 ITR 33

Hon'ble Judges: S.M. Jhunjhunwala, J; M.L. Pendse, J

Bench: Division Bench

Advocate: Deokinandan, for the Appellant; K. M. L. Majele, for the Respondent

Judgement

M.L. Pendse, J.

These two petitions filed under article 226 of the Constitution by the transferors and the transferees, respectively, challenge the legality of the order dated January 27, 1994, passed by the appropriate authority, Bombay, in exercise of the powers under sub-section (1) of section 269UD of the Income Tax Act, 1961. As both the petitions are directed against the common order, it is convenient to dispose of both the petitions by common judgment. The facts which gave rise to the passing of the impugned order are as follows :

Laila Hitchens and Burjor Hormusji Reporter are the executrix and executor of the last will and testament of Dinshah Jehangir Gazdar. The property in the hands of the executors is a bungalow called Modi Bungalow including outhouses situated at 89, Napean Sea Road, Malabar Hill, Bombay. By an agreement dated October 24, 1993, the executors-transferors agreed to sell the property which admeasures 1,823.55 sq. yards on "As is where is and as it is what it is" basis for a consideration of Rs. 19.25 crores to Rahejas. The agreement, inter alia, provides that on execution of the

agreement, a sum of Rs. 2 crores will be paid by the purchasers as part consideration. An amount of Rs. 7,62,50,000 was to be paid on issuance of the no objection certificate from the appropriate authority or on February 8, 1994, whichever is later. The balance amount of Rs. 9,62,50,000 was to be paid within three months of the grant of the no objection certificate and against execution of conveyance. The agreement provides that the stamp duty and registration charges were to be borne by the transferees. The property consists of the land together with a bungalow consisting of ground, first and part second floor with outhouses at the rear side of the property in occupation by seven employees. The agreement further provides by clause 10 that in case the transferors are not able to obtain vacant possession of the remaining servants'' quarters in the outhouses occupied, then the sale will be completed, but the purchasers will retain a sum as may be mutually agreed upon but not exceeding Rs. 50,00,000 out of the apparent consideration. The amount to be retained by the purchasers was to be paid over to the transferors after vacant possession was secured. On the date of the agreement, out of the seven outhouses which were occupied by the employees, all were still in the occupation of the employees.

2. Chapter XX-C of the Income Tax Act, deals with the immovable properties to be purchased by the Central Government in certain cases of transfer. Section 269UC, inter alia, provides that immovable property of such value exceeding Rs. 10,00,000 shall not be transferred unless after the agreement of transfer is entered into and an application by the transferor and the transferee is filed under Form No. 37-I before the appropriate authority and no objection certificate issued. Rule 48L of the Income Tax Rules, inter alia, provides that the statement to be furnished to the appropriate authority under sub-section (3) of section 269UC shall be in the Form No. 37-I and shall be furnished to the appropriate authority before the expiry of 15 days from the date on which the agreement for transfer is entered into. Section 269UD prescribes that the appropriate authority, on receipt of the statement in accordance with Form No. 37-I may make an order for the purchase by the Central Government of such immovable property for am amount equal to the amount of apparent consideration. The proviso sets out that no such order shall be made after the expiration of a period of three months from the end of the month in which the statement is received by the appropriate authority. The ambit in which of the enquiry before the appropriate authority came up for consideration before the Supreme Court and the principles to be followed are laid down in the decision in C.B. Gautam Vs. Union of India and Others, .

3. On October 25, 1993, the transferors and the transferees filed a statement before the appropriate authority in accordance with Form No. 37-I. The appropriate authority sought certain clarification from the parties. On November 16, 1993, the District Valuation Officer inspected the property to be transferred. After receipt of the requisite information, the appropriate authority served show-cause notices dated December 30, 1993, on both the transferors and the transferees. The

show-cause notice sets out that prima facie the appropriate authority was of the view that there is significant under valuation of the property. As the consideration to be paid under the agreement was deferred, the show-cause notice claims that the discounted value of the consideration works out to Rs. 18,68,54,154. The parties were called upon to show cause as to why the order should not be passed in accordance with the provisions of sub-section (1) of section 269UD of the Income Tax Act and why the adjustments in respect of the consideration should not be made. A list of comparable sale instances was annexed to the show-cause notice.

4. The parties appeared before the appropriate authority on January 18, 1994, in response to the show-cause notice and, inter alia, submitted that the working out of the rate by the Department was based on an incorrect area of the plot as the Department had overlooked that an area of 269.45 sq. yards was already acquired by the municipal corporation. The parties also claimed that the proposed sale transaction is at the rate of Rs. 1,05,563 per sq. yard of land and is the highest rate agreed to be paid in respect of any land in the entire city of Bombay. The parties also relied upon three specific instances of sale of comparable lands and claimed that in respect of case No. 1, the authority had issued a no objection certificate on October 1, 1993, i.e., few days prior to the date of the agreement of sale and where the property was agreed to be sold at the rate of Rs. 98,369 per sq. yard. The parties also claimed that the appropriate authority had sold a flat in the property facing the sea and close to the property in question for a price of Rs. 1,95,50,000 and which also establishes that the price under the agreement is not undervalued. The parties were permitted to advance oral submissions in addition to written objections by the appropriate authority.

5. The appropriate authority passed the impugned order on January 27, 1994, deciding to purchase the property at the discounted value of Rs. 18,68,54,154. The appropriate authority held that the property is highly undervalued and taking into consideration the fair market value of the property, it should be Rs. 24 crores, which is much more than the margin of 15 per cent. prescribed in C.B. Gautam Vs. Union of India and Others, . Indeed, the Central Board of Direct Taxes had issued instructions on September 16, 1991, that the right of pre-emptive purchase should be exercised only if the fair market value is found to be at least 15 per cent. more that the apparent consideration. The impugned order sets out that the transaction at serial No. 1 or case No. 1 relied upon by the parties is very close to the agreement in question but cannot be treated as a comparable instance because the property in dispute is far superior compared to property at serial No. 1. The impugned order further sets out that the agreement for purchase was with a view to raise high-rise buildings and the trend of fair market value in respect of ready flats indicates that the prices are rising almost every day. The maximum price that a flat in a good and modern building can fetch ranges between Rs. 15,000 to Rs. 17,000 per sq. ft. of built-up area.

6. Section 269UE of the Act sets out that where an order is made by the appropriate authority for purchase by the Central Government, then the property shall, on the date of such order, vest in the Central Government in terms of the agreement for transfer, referred to under sub-section (1) of section 269UC. Section 269UF provides that when an order of purchase is made, the Central Government shall pay by way of consideration for such purchase an amount equal to the amount of apparent consideration. Section 269UG provides that the amount of consideration shall be tendered to the person entitled thereto within a period of one month from the end of the month in which the immovable property vests in the Central Government. Section 269UH, inter alia, sets out that if the Central Government fails to tender the whole or part of the amount of consideration, then the order of purchase stands abrogated and the immovable property shall stand re-vested in the transferor. In such circumstances, the appropriate authority is required to make a declaration to that effect.

7. In accordance with the provisions aforestated, the property in dispute vested in the Central Government with effect from January 27, 1994. On January 31, 1994, the appropriate authority informed the parties to hand over possession within 15 days from the receipt of the letter, in accordance with the provisions of sub-sections (2) and (4) of section 269UE of the Act. The transferors in pursuance of the letter forwarded the documents of title to the appropriate authority on February 7, 1994. The appropriate authority fixed February 14, 1994, for securing actual possession and possession was accordingly secured by the appropriate authority on February 14, 1994, with two vacant servants'' quarters out of seven servants'' quarters.

8. The last date of tendering the consideration price was February 28, 1994, and by letter dated February 28, 1994, despatched by speed post, the Deputy Commissioner of Income Tax forwarded a cheque for the amount of Rs. 18,18,54,154 to the transferors. The appropriate withheld a sum of Rs. 50,00,000 out of the purchase price in accordance with the terms of the agreement which entitled the purchasers to withhold the said amount in case vacant possession of the remaining five servants'' quarters was not handed over. The cheque was received by the transferors on March 1, 1994. There was a small error in writing the name of Dinshah Jehangir Gazdar. Instead of Dinshah, the word "Dinesh" was written. On March 4, 1994, the transferors informed the appropriate authority that the amount of cheque is accepted without prejudice to the rights and contentions to challenge the order of the appropriate authority.

9. On February 11, 1994, the advocates of the transferors addressed a letter to the advocates for the transferees informing them that in view of the order of purchase made by the appropriate authority on January 27, 1994, the agreement has come to an end and the transferors in accordance with clause (4) of the agreement are liable to forthwith return the earnest amount paid by the transferees. The letter was accompanied by the cheque for Rs. 2 crores. It is not in dispute that the transferees

accepted the cheque and encashed the same.

10. On March 11, 1994, the transferors filled Writ Petition No. 797 of 1994. The transferors, inter alia, contended that the purchase order stands abrogated and the property stands re-vested in the transferors in view of the fact that the purchase amount required to be tendered was not paid within the stipulated period. Prayer (a) made by the transferors in the petition is for directing the appropriate authority to issue a declaration contemplated by section 269UH that the purchase order stands abrogated and the property stands re-vested in the transferors. The transferors also sought possession of the property which was handed over to the authority on February 14, 1994.

11. The transferees preferred Writ Petition No. 862 of 1994 on March 21, 1994. Both the petitions preferred by the transferors and transferees were placed for admission before the Division Bench of April 4, 1994. Both the petitions were admitted on that day and the consideration of the grant of interim relief was postponed to the next day. Before the petitions reached hearing for consideration of the grant of interim relief, the advocates for the transferees addressed a letter to the transferors'' advocates on April 5, 1994, forwarding a cheque for the sum of Rs. 2 crores being the earnest sum under the agreement for sale. The cheque was not accepted.

12. On April 6, 1994, in the petition filed by the transferors, the Division Bench passed an interim order in accordance with the minutes tendered by the parties. The order, inter alia, provides that the transferors agree to give up their challenge to the purchase order on the ground of abrogation and claim no relief in terms of prayer (a) on receipt of the sum of Rs. 50,00,000 from the Central Government. The order further provides that the issue relating to the quantum of discounting will be decided at the final hearing of the petition. The appropriate authority was given liberty to auction the property of which possession was secured on February 14, 1994. It is not in dispute that in pursuance of the order, the appropriate authority paid to the transferors Rs. 50,00,000 on April 8, 1994. It is equally not in dispute that the transferors handed over vacant possession of the servants'' quarters to the appropriate authority on April 18, 1994.

13. In the petition filed by the transferees, the Division Bench on April 6, 1994, refused to grant any interim relief and permitted the appropriate authority to auction the property. The transferees moved the Supreme Court to challenge the interim order passed in the petition filed by the transferors as well as transferees by preferring Civil Appeal No. 4169 of 1994. The Supreme Court, by order dated May 2, 1994, set aside the interim order passed by the Division Bench in the petition filed by the transferees. The Division Bench directed that the appropriate authority should not auction the property during the pendency of the petition subject to the condition that the transferees deposit before the High Court a sum of Rs. 2 crores within a period of two weeks and the further sum of Rs. 8 crores within three months from the date of the order. It is not in dispute that the directions of the

Supreme Court are complied with by the transferees. The Supreme Court also directed that the two petitions filed by the transferors and transferees should be heard and disposed of simultaneously and as early as possible. In deference to the directions issued by the Supreme Court, both the petitions are set down for hearing, out of turn.

14. Shri Doctor, learned counsel appearing on behalf of the transferees in Writ Petition No. 862 of 1994, raised three contentions to challenge the legality of the impugned order. The first contention urged by learned counsel is that the show-cause notice dated December 30, 1993, served by the appropriate authority suffers from several defects and proceeds on erroneous assumptions and nowhere mentions that the fair value of the property is Rs. 24 crores as recorded in the impugned order. The second contention urged by learned counsel is that the appropriate authority determined the fair market value at Rs. 24 crores without any basis by relying upon circumstances which have no nexus to the fair price prevalent at the relevant time. The third submission of learned counsel is that even assuming the purchase order is valid, still the order stands abrogated for failure of the Central Government to tender the purchase amount to the transferors within the stipulated period. Learned counsel urged that as the amount was not tendered within the prescribed period, the property re-vests in the transferors and the appropriate authority is bound to issue a declaration to that effect. Shri Sethna, learned counsel appearing on behalf of the Department, on the other hand, submitted that the defects relied upon by the transferees in the show-cause notice are not relevant and in any event have not caused any prejudice to the transferees in presenting the claim before the appropriate authority. Learned counsel submitted that it was totally unnecessary for the appropriate authority to set out in the show-cause notice what is the fair value of the property on the date of agreement. Shri Sethna submitted that the conclusion of the appropriate authority that the fair value is about Rs. 24 crores does not suffer from any infirmity and it is impossible to expect mathematical accuracy in ascertaining the fair value. Learned counsel submitted that the appropriate authority has not taken into consideration any extraneous circumstances to determine the value. As regards the challenge to the purchase order on the ground of abrogation or failure to pay the purchase amount within the stipulated period, Shri Sethna submitted that it is not open to the transferees to raise such contentions when the transferors have specifically given up the contention as recorded in the interim order passed in the petition filed by the transferors. Shri Sethna submitted that the transferees have no locus standi even to maintain the petition to challenge the purchase order when the transferors have accepted the impugned order and received the consideration including the amount of Rs. 50,00,000 which was initially withheld. Shri Sethna submitted that the transferees have acquiesced in the impugned order by accepting the refund of the sum of Rs. 2 crores which was paid to the transferors as part consideration.

15. Shri Dada, learned counsel appearing on behalf of the transferors in Writ Petition No. 797 of 1994, submitted that in view of the interim order passed in the petition filed by the transferors, the transferors will not challenge the purchase order, but restrict the submissions only to the issue of discounting. Shri Dada submitted that the quantum of discounting determined by the appropriate authority is not correct and the transferors are deprived of the substantial amount of more than Rs. 33,00,000 for no fault. Shri Sethna, learned counsel for the Department, on the other hand urged that the quantum of discounting determined by the appropriate authority does not suffer from any error.

16. The first contention urged on behalf of the transferees is that the show-cause notice dated December 30, 1993, suffers from serious infirmities and is invalid as the notice proceeds on erroneous assumptions. The first error pointed out by Shri Doctor is that the annexure to the show-cause notice sets out that the total area of the property admeasures 2,093 sq. yards. Learned counsel submits that the show-cause notice overlooks that the area of 269-45 sq. yards was acquired for road widening several years before. It was contended that the prima facie conclusion of the appropriate authority that the property is significantly undervalued is based on an erroneous assumption that the area of land proposed to be acquired was 2,093 sq. yards. It is undoubtedly true that the error had crept in the show-cause notice but when that was pointed out to the appropriate authority in response to the show-cause notice, the claim was accepted and the impugned order clearly reflects that fact. Shri Doctor also submitted that the calculation of discount made in the show-cause notice is not accurate. Even assuming it to be true, we are unable to appreciate how the impugned order can be quashed on that count. It is necessary to bear in mind that parties are required to file the statement in accordance with Form No. 37-I within a fortnight of the date of agreement and the appropriate authority is required to determine whether the purchase order should be passed within a period of three months from the date of receipt of Form No. 37-I. The failure to pass the order would automatically result in the parties'' securing the no objection certificate. The provisions of Chapter XX-C of the Act were made to prevent tax evasion by significant under valuation of immovable properties agreed to be sold. The object of the provisions is to check proliferation of black money in real estate transactions and to enforce declaration of the true value of immovable properties that are the subject of transfer between the parties. Parliament determined the time-limit in which the decision is to be taken by the appropriate authority and so subserve the requirement of the principles of natural justice, as held in C.B. Gautam Vs. Union of India and Others, , by the Supreme Court, it is incumbent upon the authority to serve show-cause notices upon the transferor and the transferee and to give ample opportunity to answer including the right to be heard in person. All this exercise is to be completed during the statutory limitation of three months from the receipt of Form No. 37-I. The appropriate authority issues the show-cause notice on the basis of whatever material is gathered within the short span of time and merely because

some errors have crept into the contents of the show-cause notice, that, in our judgment, does not invalidate the final order. It is not the case of the transferees that while passing the impugned order, the authority has proceeded on erroneous assumptions or the errors which crept into the show-cause notice. In the circumstances, it is not possible to accede to the submission of Shri Doctor that since the show-cause notice is defective, the impugned order must fail. It is not the case of the transferees that in view of the alleged errors in show-cause notice, any prejudice was caused in presenting the case before the authority. We are also not impressed by the submission that the appropriate authority has not mentioned in the show-cause notice that the fair value of the property would be to the tune of Rs. 24 crores. Indeed, it is not possible for the appropriate authority to ascertain and determine the fair price without giving an opportunity to the parties to produce material. The appropriate authority cannot be expected to determine the fair price at the time of issuance of show-cause notice. In our judgment, the first contention urged on behalf of the transferees is, therefore, required to rejected.

17. Before adverting to the other contentions raise on behalf of the transferees, it would be appropriate to examine the preliminary objection raised by Shri Sethna to the maintainability of the petition by the transferees on the ground that the transferees have no locus standi to maintain the petition. Learned counsel submitted that the impugned order cannot be challenged at the behest of the transferees as they had not interest in the property. In support of the submission, reliance was placed on the decision of the Division Bench of the Karnataka High Court in Rajata Trust v. Chief CIT [1992] 193 ITR 220. Shri Sethna further submitted that even assuming that the transferees cam challenge the impugned order, still it must be held that the transferees have given up the right to challenge the order by their order by their conduct in accepting the amount of Rs. 2 crores from the transferors which was paid as part consideration. It was urged that on receipt of the amount of Rs. 2 crores, the agreement automatically came to an end and, consequently, the transferees have no interest left in the property and the impugned order cannot be questioned. The third limb of the argument of Shri Sethna is that the transferors have given up the right to challenge the purchase order on the ground that the Central Government failed to tender the amount within the stipulated period. It was urged that as the transferors have given up the contention that the purchase order stands abrogated, it is not open to the transferees to agitate that contention. It is not possible to accede to the submission of learned counsel that the petition at the behest of the transferees is not maintainable.

18. It is undoubtedly true that the Division Bench of the Karnataka High Court in the case of Rajata Trust v. Chief CIT [1992] 193 ITR 220, held that neither by reason of section 269UD(2) nor section 269UL(3) could a transferee contend that he had secured an interest in the immovable property contrary to the settled law as adumbrated in section 54 of Transfer of Property Act and various rulings of the

Supreme Court. The Karnataka High Court then observed (at page 237) :

"Thus, we conclude that the appellant has no locus standi. We may also add that merely because section 269UD(2) says ''every other person whom the appropriate authority knows to be interested in the property'', it does not bring a transferee who has no interest in the property in whose favour no interest is created by reason of the contract for sale. In the result, we hold that a transferee had no locus standi to question the order of the appropriate authority made u/s 269UD(1)."

19. The decision of the Karnataka High Court is no longer good law in view of the decision of the Supreme Court in C.B. Gautam Vs. Union of India and Others, . In view of the decision of the Supreme Court, Shri Sethna did not press the contention that the transferees had no locus standi to question the order of appropriate authority. The decision of the Karnataka High Court was also not approved by the letter decision of the Division Bench of the Karnataka High Court in Appropriate Authority and others Vs. Mass Traders Pvt. Ltd. and others, in view of the judgment of the Supreme Court in C.B. Gautam Vs. Union of India and Others, .

20. Shri Sethna submitted that even though the transferees are entitled to challenge the legality of the purchase order passed by the appropriate authority, still on the facts and circumstances of the present case, it should be concluded that the transferees had given up all interests in the transaction and consequently are prohibited from challenging the validity of the order. As mentioned hereinabove, the impugned order was passed on January 27, 1994. The agreement dated October 24, 1993, between the parties, inter alia, provided that the transferors will refund the amount of Rs. 2 crores received as part consideration, in case the appropriate authority makes an order for purchase by the Central Government. After the purchase order was passed by the appropriate authority, the transferors by letter dated February 11, 1994, returned the amount of Rs. 2 crores to the transferees and the transferees received the said amount without demur. The transferees challenged the order passed by the authority only on March 21, 1994, that is after the transferors filed the petition on March 11, 1994. The transferees tried to forward the amount of Rs. 2 crores to the transferors by letter dated April 6, 1994, but the transferors refused to accept the same. Relying on these undisputed facts, Shri Sethna submitted that the transferees had acquiesced in the purchase order passed by the authority and had taken steps to receive back part consideration. Learned counsel submitted that the conduct of the transferees should lead to the conclusion that the transferees had no locus to challenge the purchase order because the agreement between the parties stands revoked on return of part consideration. Shri Doctor controverted the submission by urging that the mere fact that the amount of Rs. 2 crores sent by the transferors was received is not sufficient to conclude that the agreement comes to an end. Shri Doctor submitted that in case the purchase order is set aside in the present proceedings, then the agreement mist stand revived and the right of the transferees to challenge the purchase order cannot be

defeated by what transpired between the transferors and the transferees. In our judgment, the contention of Shri Doctor deserves acceptance. The right of the transferees to challenge the purchase order cannot be denied on the ground that the transferees have received back the part consideration. The transferees were entitled to receive back the part consideration as soon as the appropriate authority passes the purchase order, but in case the purchase order is set aside, then it may be open to the transferees to claim that the agreement for sale stands revived and can be enforced. The question as to whether the agreement comes to an end in view of the purchase order or whether it can be revived in case the purchase order is set aside is not required to be determined in the present proceedings because those issues are between the transferors and the transferees and have no bearing on the issue as to whether the purchase order is in accordance what law or otherwise.

21. The next lib of the argument of Shri Sethna is that the contention that the purchase order stands abrogated due to failure of the Central Government to tender the purchase price within the stipulated time, is not open to challenge in view of the fact that the transferors have specifically given up that contention and which is recorded in the interim order passed in the petition filed by the transferors. It is undoubtedly true that on April 6, 1994, the Division Bench of this court observed that the transferors had agreed to give up the challenge to the impugned order on the ground of abrogation on receipt of Rs. 50,00,000 from the Central Government. Shri Dada on behalf of the transferors did not dispute that the amount of Rs. 50,00,000 was received and the transferors have given up the contention as regards the abrogated the abrogation of the impugned order. Shri Sethna submits that the issue whether the purchase order stands abrogated for failure to tender the amount within stipulated period is between the transferors and the Central Government and the transferees cannot challenge the purchase order on that ground. It is not possible to accede to the submission of learned counsel because the failure to tender the amount within the stipulated period leads to consequences prescribed under the statute and the consequences do not depend upon the action or concession of either the transferor or the transferee. A plain reading of the provisions Chapter XX-C of the Act makes it clear that the purchase order stands revoked in case the amount is not tendered within the stipulated period and the issue of such abrogation cannot be settled by the transferor conceding that the claim in regard to abrogation will not be pressed. In these circumstances, the preliminary objection of Shri Sethna that the transferees have no locus standi to maintain the petition, in view of what transpired during the pendency of this petition, cannot be accepted.

22. The second contention urged by Shri Doctor to challenge the impugned purchase order is that the finding recorded by the appropriate authority that the property was highly undervalued and the fair market value of the property is Rs. 24 crores which is mush more than the margin of 15 per cent. as prescribed in C.B.

Gautam Vs. Union of India and Others, , is not correct. Learned counsel submitted that the show-cause notice served on the transferees indicates that the authority was placing reliance on the price of the readymade flats in the constructed buildings as comparable price in respect of the land which the transferee had agreed to purchase. Learned course urged that sex sale instances of ready ownership flats to which reference is made by the authority in the show-cause notice can by no stretch of imagination be treated as comparable instances to determine the adequacy of the consideration agreed to between the parties. Shri Doctor further submitted that though the authority came to the conclusion that instance No. 1 on which reliance was placed by the transferees was close to the date on which the agreement between the parties in the present case was arrived at, still the authority by a curious method bypassed the said instance and arbitrarily held that the fair market value of the property is Rs. 24 crores. Shri Sethna, learned counsel for the Department, on the other hand, submitted that the assumption of Shri Doctor that the authority had relied upon six sale instances of ready ownership flats to deduce a fair market value of the property in question, is not accurate. Learned counsel submitted that the six sale instances of ready flats were taken into consideration only to ascertain what was the price range prevalent on the date of the agreement in the area. Shri Sethna submitted that it is not in dispute that the transferees had agreed to purchases the property for the purpose of development and construction of high-rise buildings. It was submitted that while ascertaining the fair market value of the property, the fact that the property will be used for development is a relevant consideration. Shri Sethna then submitted that instance No. 1 relied upon by the transferees though it was not separated by long distance (in time) from the date or the agreement in question, still the authority was justified in holding that the said sale instance does not reflect the fair market value of the property in question because of servile other circumstances.

23. The principles to determine the fair market value of property are well-settled by a catena of decisions of the Supreme Court. The principles are adopted while determining the compensation payable in respect of property acquired under the Land Acquisition Act, 1894. The determination is to be made on the basis of what a hypothetical purchaser willing to purchase land from the open market and prepared to pay a reasonable price would offer. It has to be assumed that the vendor is willing to sell the land at a reasonable price. While determining the price, normally the authority has to take into account the genuine instances. The most comparable instances out of the genuine instances have to the identified on the considerations of proximity from the time angle and proximity from the situation angle. After identifying the instances which provide the index of market value, the price reflected therein may be taken as a norm and the value of the land in question may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis the land under consideration by placing the two in juxtaposition. The plus factors are proximity to a road, frontage on a road, regular, shape etc., while minus factors are

situation in the interior at a distance from the road, narrow strip of land with small frontage, compared to depth and some special disadvantageous factor which would deter the purchaser. It is not possible to lay down any hard and fast rule to ascertain the fair value by adopting instance method but the authority should determine the fair value after taking an overall view of the situation. A reference can be made in this connection to the decision of the Supreme Court in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, .

24. Bearing these principles in mind, it is now necessary to examine whether the authority has taken into consideration the relevant factors or as claimed by counsel for transferees, relied upon extraneous factors which have no nexus to the ascertainment of the fair value of the property. As mentioned hereinabove, the property in dispute is situated on Napean Sea Road at Malabar Hill which is a posh and developed locality in the city. Indeed, the property is situated in a prime locality. The property admeasures, 1,823.55 sq. yards and the transferees claim that the rate of Rs. 1,05,563 per sq. yard is the highest rate quoted recently in the city. The transferees relied upon three sale instances in support of the contention that the price agreed to be paid under the agreement is a fair market value. The price agreed is Rs. 19.25 crores and the property is agreed to be purchased on as is where is and as it is what it is basis. Learned counsel for the transferees submitted that instance No. 1 is a comparable instance and the authority should have relied on that instance and concluded that the price offered by the transferees was the fair price. Instance No. 1 refers to the agreement dated July 26, 1993, and is in respect of the property situated at Harkness Road. The property admeasures 1,042 sq. yards and was agreed to sold for Rs. 10,25,00,000 and the rate comes to Rs. 98,369 per sq. yard. The authority found that the instance is the nearest in time and can be examined. The two other instances referred to by the transferees were old transactions and not comparable. As regards instance No. 1, Shri Doctor submitted that the price offered by the transferees in the present case is 7.13 per cent. higher than the price in respect of instance No. 1. The authority observed in the impugned order that the property at instance No. 1 and the property in question were inspected. The authority noted that the plot of sale instance relied on by the transferees is surrounded from all four sides with high-rising buildings and is away from the main road and is having a very narrow approach road. The subject property is on the main road Napean Sea Road and if the difference of the location alone is considered, then the fair market price of the property in question would be much higher than the value of the sale instance relied upon. The authority further noticed that the sale instance relied upon is separated from the agreement in issue by distance of time of three months and the prices are rising almost day-to-day. The authority further noticed that the title of the property in dispute was free from any encumbrances and the transferors had agreed to give vacant possession except some servants'' quarters. The authority further noticed that the transferees could have very well developed the property even though the servants'' quarters were not

made immediately available because the quarters were situated at the boundary of the plot and would not have impeded the proposed development. Relying upon these facts, the authority came to the consolation that fair market value of the property in issue will be at least Rs. 24 crores and the rate payable should be Rs. 1,31,950 per sq. yard.

25. We have closely scrutinised the impugned order and in our judgment, the authority has reached the conclusion by taking into consideration all relevant factors. The contention of Shri Doctor that the authority has drawn upon six sale instances referred to in the show-cause notice and all of ready ownership flats is not accurate. Shri Doctor submitted that the flat in Tahnee Heights, Jai Bhawani and Purab Apartments had an advantage of sea view and the flats in Jai Bhawani and Purab Apartments are occupied by wealthy Jain community because the societies proscribe that the flats should be occupied by people who are purely vegetarians. Learned counsel submitted that the Jai Bhawani and Purab Apartments had the advantage of temple close by and which is special attraction for Jains and that is why the value of the flats is more than normal. Learned counsel submitted that the flats situated in Shantinagar, Shahnaz and Shivner are in buildings which are very close to the subject property but the flats in these buildings are not comparable instances because the flats are situated in high-rise buildings and the flats are well decorated. It was claimed that the flats in these buildings are on the elevated position and it would not be possible in respect of the flats which can be constructed in the building to the erected on the subject property. Shri Doctor submitted that in the first insurance, the instances in respect of ready flats cannot be considered as comparable instances to determine they fair market value of open land. Secondly, the instances referred to by the authority are not comparable because of various other factors. The assumption of learned counsel that the authority has relied upon the sale instances quoted in the show-cause notice for arriving at fair value of the property in question is not correct. The authority has pointed our in paragraph 6 of the order that the purpose of quoting sale instances in the show-cause notice is just to show the trend of the fair market value in the vicinity of the subject property. The authority made it clear that the subject property is not identical with the properties given in the instances. The authority further observed that the transferees after bound to put the property to maximum exploitation by building a most modern and good building to fetch the maximum price. The authority took into consideration the price range of Rs. 15,000 to Rs. 17,000 per sq. ft. of build-up area in the locality. A perusal of the order of the authority leaves no manner of doubt that the authority has not relied upon the sale instances filed in the show-cause notice in respect of ready flats to arrive at the price of the property in question. Reference was made to those instances only to indicate the potentiality of the property. In our judgment, the conclusion reached by the appropriate authority in the facts and circumstances of the case, cannot be faulted. It must be borne in mind that while exercising writ jurisdiction, we are not sitting in appeal over the order passed by the appropriate

authority. We are conscious that the exercise is only to ascertain whether the order is passed by relying upon extraneous or irrelevant material. It is not permissible releases the material and the order cannot be disturbed unless it is found that the order suffers from serious infirmity, bordering on perversity. In our judgment, the order does not suffer from any infirmity and the conclusion does not require to be disturbed in exercise of writ jurisdiction.

26. The last contention urged by Shri Doctor is that even assuming that the purchase order passed by the authority was in accordance with law, still the order stands abrogated in view of the failure of the Central Government to tender the purchase price within the stipulated period. Learned counsel submitted that section 269UG(1) prescribes that the amount of consideration payable shall be tendered within a period of one month from the end of the month in which the immovable property vests in the Central Government. The property vests in the Central Government on the date when the authority passes the purchase order and in the present case, the property vested in the Central Government on January 27, 1994. Shri Doctor submitted that it was incumbent upon the Central Government to tender the amount to the transferors on or before February 28, 1994. The consequences of failure to tender the amount are set out u/s 269UH of the Act. Sub-section (1) provides that if the Central Government fails to tender the amount, then the order of purchase shall stand abrogated and the property shall stand re-vested in the name of the transferors. Relying on these provisions, Shri Doctor submitted that the purchase of the property stands abrogated and the property stands re-vested in the transferors. In support of the contention that the amount was not tendered within the stipulated period, counsel relied upon three circumstances. The first circumstance is that the Deputy Commissioner of Income Tax by letter dated February 28, 1994, addressed to the transferors, forwarded a cheque for Rs. 18,18,54,154. The letter along with cheque was forwarded to the transferors by speed post and was received only on March 1, 1994. Shri Doctor submitted that if the amount was not received by the transferors before the expiry of February 28, 1994, the consequences prescribed u/s 269UH of the Act must flow. The second circumstance relied upon by learned counsel is that the cheque which was tendered did not correctly set out the name of the payee and, therefore, the tender was not valid. The cheque was made payable to Smt. Laila Hitchens/B. H. Reporter, executrix and executor of Dinesh Jehangir Gazdar. "Dinesh" was wrongly written instead of "Dinshah". The cheque was corrected on March 2, 1994, and consequently Shri Doctor submits that valid tender was made only on March 2, 1994, and that is, beyond the stipulated period. The third circumstances relied upon by learned counsel is that the amount tendered to the transferors was not the amount as per the agreement between the parties but only the discounted amount and that is not a valid tender. One more contention advanced was that the authority withheld the sum of Rs. 50,00,000 in view of the transferors'' failure to hand over vacant possession of the property and, therefore, the tender was not of sufficient

amount. Shri Doctor submits that for all these reasons, it should be concluded that the purchase order stands abrogated and the property stands re-vested in the transferors. It is not possible to accede to the submission of learned counsel.

27. As mentioned hereinabove, the transferors had specifically given up the contention that the purchase price was not paid within the stipulated period. The contention of Shri Doctor that the amount was not paid before the stipulated period is not accurate. What section 269UG demands is that the amount of consideration shall be tendered within a period of one month from the end of the month in which the immovable property becomes vested in the Central Government. The return filed on behalf of the authority makes it clear that the letter dated February 28, 1994, was forwarded in pursuance of the telephonic conversation and when the transferors advised to forward the cheque by post. The letter was sent by speed post and in our judgment, the claim that the amount was not tendered within the stipulated period is not correct. Shri Doctor submitted that the post office is not the agent of the authority and posting of a letter along with cheque within time is not sufficient. It was urged that the amount must be actually paid and not merely forwarded by cheque, within the stipulated period. The submission overlooks that what is required is tendering of the amount and that was complied with. It is therefore not possible to accede to the submission. The second contention of learned counsel that there was a mistake in writing the word "Dinesh" instead of "Dinshah" on the cheque and, therefore, the tender was invalid, also cannot be accepted. The clerical error cannot lead to the defeat the purchase order. Even if the correction was carried out after the stipulated period, that would not nullify the validity of the tender made. The submission that withholding of the amount of Rs. 50,00,000 by the authority should lead to the conclusion that the amount was not tendered, cannot be accepted. Section 269UE(1) after amendment with effect from November 17, 1992, prescribes that the property shall stand vested in the Central Government "in terms of the agreement for transfer referred to in sub-section (1) of section 269UC." The words in quotation were substituted for the words "free from all encumbrances". In view of the amendment, the Central Government is entitled to claim the rights available in the agreement for transfer. The agreement specifically permitted the transferees to withhold an amount to be mutually agreed, not in excess of Rs. 50,00,000 in case the transferors are unable to hand over vacant possession of the five servants'' quarters. It is not in dispute that on February 28, 1994, the transferors were not in a position to hand over vacant possession of the five servants'' quarters and possession of those quarters was handed over only on April 18, 1994, after the amount of Rs. 50,00,000 was paid to the transferors. As the Central Government was entitled to take advantage of the terms of the agreement for withholding the amount of Rs. 50,00,000 from the purchase price, in our judgment, the contention of Shri Doctor that the tender was invalid on that count cannot be accepted. The submission of Shri Doctor that the amount tendered was after discounting and, therefore, it was not a fully tender is not correct because the

purchase order itself provides that the consideration paid by the Central Government, after discounting, works out to Rs. 18,18,54,154. In our judgment, the challenge to the impugned order at the behest of the transferees is without any merit and the petition filed by the transferees must fail.

28. Turning to Writ petition No. 797 of 1994 filed by the transferors, Shri Dada, learned counsel appearing on behalf of the petitioners, at the outset, stated that the transferors are not challenging the validity of the impugned order save and except the action of the authority in arriving at the discounted figure of consideration payable to the transferors. The agreement dated October 24, 1993, provides that the consideration of Rs. 19,25,00,000 was payable as under :

	Rs.	
(i)	2,00,00,000	Paid as earnest money
(ii)	7,62,50,000	Payable within 21 days of the receipt of NOC from the appropriate authority, Bombay
(iii)	9,62,50,000	Payable against the execution of conveyance within three months of NOC.

29. The authority made adjustments in accordance with the provisions of section 269UF(1) read with section 269UA(b). The authority held that out of the total consideration, payment of Rs. 17,25,00,000 is deferred as under :

(i) Rs. 7,62,50,000 for 120 days

(ii) Rs. 9,62,50,000 for 180 days

30. The authority then worked out the value of Rs. 17,25,00,000 as discounted to Rs. 16,68,54,154.

31. Shri Dada did not dispute that the authority is entitled to apply the principle of discounting as the payment was to be made not on the date of the agreement but on a future date. Learned counsel submitted that the doctrine of discounting is applicable only with reference to the date of actual payment and the deduction is permissible with reference to the period commencing from the date of the payment and ending with the date of payment prescribed under the agreement. Learned counsel urged that the agreement is required to be lodged before the appropriate authority within a period of 15 days from the date of its entering into under rule 48L and on such tender, the appropriate authority is required to determine whether the no objection certificate should be granted or purchase order should be passed before the expiry of three months from the date of receipt of From No. 37-I. In case the appropriate authority decides to pass the purchase order, then the payment of purchase price is permissible within a period of one month from the end of the month in which the property vests in the transferor and that is the date of the order of purchase. Shri Dada submitted that where the payment of purchase price under the agreement is deferred, the principle of discounting would certainly apply but it

is not open to the authority to discount the value from the date of the agreement. It was urged that the authority should discount the value for the period commencing from the date of payment and ending with the date of payment prescribed under the agreement. Shri Sethna, on the other hand, urged that the authority is entitled to determine the discounted value with reference to the date of the agreement and the contention of the transferors that the relevant date is the date of payment cannot be accepted. Shri Sethna also submitted that the issue stands concluded by the decisions of the Gujarat High Court in Pradip Ramanlal Sheth Vs. Union of India and Others, and of this court in Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, . The contention of Shri Sethna is not correct.

32. Sub-section (1) of section 269UF of the Act provides that where an order of purchase is made, the Central Government shall pay, by way of consideration for such purchase, an amount equal to the amount of apparent consideration. The expression "apparent consideration" is defined u/s 269UA(b) of the Act and the relevant portion reads as follows :

"(b) ''apparent consideration'', -

(1) in relation to any immovable property in respect of which an agreement for transfer is made, being immovable property of the nature referred to in sub-clause (i) of clause (d), means, -

(i) if the immovable property is to be transferred by way of sale, the consideration for such transfer as specified in the agreement for transfer;..... and where the whole or any part of the consideration for such transfer is payable on any date or dates falling after the date of such agreement for transfer, the value of the consideration payable after such date shall be deemed to be the discounted value of such consideration, as on the date of such agreement for transfer, determined by adopting such rate of interest as may be prescribed in this behalf;"

33. The entire controversy revolves round the proper reading of the expression as set out hereinabove. For the sake of convenience, it would be advantageous to dissect the latter part of the expression and then it will read as follows :

"(a) and where the whole or any part of the consideration for such transfer is payable on any date or dates falling after the date of such agreement;

(b) the value of the consideration payable after such date shall be deemed to be the discounted value of such consideration;

(c) as on the date of such agreement for transfer, determined by adopting such rate of interest as may be prescribed in this behalf;"

34. The plain reading of the definition of "apparent consideration" makes it clear that where the consideration for transfer is payable subsequent to the date of the agreement, then the value of the consideration payable after the date of the

agreement is to be discounted. There is no dispute that as the agreement between the transferors and the transferees clearly provided that the purchase price was to be partly paid within 21 days of the receipt of the no objection certificate and balance against the execution of the conveyance, it is necessary to determine the value of such consideration payable after the date of the agreement by ascertaining the discounted value. The claim of Shri Sethna is that though the purchase price is paid by the Central Government within the stipulated period of one month from the date of purchase order, still for the purpose of discounting the relevant date is the date of the agreement and not the date of the payment and in support of the submission learned counsel relied upon the expression "as on the date of such agreement for transfer". We cannot accede to the submission because the plain reading of the definition makes it clear that the value of the consideration payable after the date of agreement is the discounted value and the definition nowhere prescribes that the discounted value should be ascertained with reference to the date of agreement. The expression "as on the date of the agreement for transfer" refers to the consideration payable on that date and is not indicative of the commencement of the period to ascertain discounted value. The words "as on the date of the agreement for transfer" relate only to earlier words "such consideration".

35. Rule 48-I provides that the rate of interest for determination of the discounted value of consideration shall be eight per cent. per annum. The provisions of Chapter XX-C and the rules set out the rate of discounting and the claim of Shri Sethna that the discounting should be made without reference to the date on which the payment is tendered by the Government cannot be accepted.

36. The principle of discounting is well-known and regularly applied in accounting. In plain words, discount means present value of payment due in future. The word "discount" in the Oxford English Dictionary means an abatement or deduction from the amount or from the gross reckoning or value of anything and is used in commerce to mean a deduction made for payment before it is due. Discount is primarily a rebate and such allowance in reduction of the total sum payable. It is subtracted from the amount in consideration of pre-payment before the due date. Stroud''s Judicial Dictionary, 4th edition, sets out that the discount has no technical or universal meaning, and perhaps its most common meaning is that it is equivalent to the payment of interest in advance. The principle of discounting is prescribed under Chapter XX-C of the Act. Even though the agreement between the parties provides for deferred payment of consideration for transfer, the Central Government is required to pay the entire consideration within the stipulated period from the date of purchase. Broadly, the order of purchase is to be made within a period of three months from the date of receipt of Form No. 37-I by the appropriate authority and in case the purchase order is passed, then the Central Government has to tender the purchase price within a period of one month therefrom. In other words, though the agreement provides for deferred payment, the transferors

receive payment within the stipulated period and that is not necessary in consonance with the terms of the agreement. As the transferors get an advantage of payment which was due in future, the transferors cannot complain if the payment is made with discount. Indeed, Shri Dada on behalf of the transferors did not complain that the principle of discount is to be applied. The grievance of learned counsel is that it is not open to the authority to discount the amount for 120 days in respect of payment of Rs. 7,62,50,000. The period of 120 days is calculated with reference to the date of agreement which was arrived at on October 24, 1993. The authority has taken into consideration 7 days of October, 1993, 30 days of November, 1993, 31 days of December, 1993, 31 days of January, 1994, and 21 days of February, 1994, while determining the period for discount.

37. As regards the payment of Rs. 9,62,50,000 which was payable against the execution of the conveyance within three months of the no objection certificate, the appropriate authority has discounted the value for 180 days by calculating a period of three months from the date of the purchase order. Shri Dada complains that the method of discounting adopted by the appropriate authority by discounting value for 120 days in respect of payment of Rs. 7,62,50,000 so not correct. Learned counsel urged that the statute demands that the transferees cannot enter into conveyance without entering into an agreement of transfer and securing a no objection certificate from the appropriate authority. The appropriate authority is entitled to wait for a duration of three months before making up his mind as to whether the purchase order should be passed and thereafter one month is provided to tender the purchase price. Shri Dada submits, and in our judgment with considerable merit, that there is no reasonable or logic why the discounting should be made with effect from the date of the agreement when the payment is made only at the expiry of period of one month from the date of purchase order. Shri Dada submits that the authority is entitled to ascertain the discounting value, but calculation should be only for the period between the date when the payment was tendered and the date of the payment which was due under the agreement. In our judgment, the plain reading of the definition of "apparent consideration" u/s 269UA of the Act makes it clear that the date of the agreement for transfer is relevant only for the purpose of ascertaining the fair market value by the appropriate authority and has no relation to the date of determination of the discounted value. The discounted value is to be determined with reference to the date of the payment and not with reference to the date of the agreement. Though the appropriate authority is required to determine the fair value with reference to the date of the agreement and for that purpose is certainly entitled to determine what was the actual value which the transferors would have received because of the deferred payment, that cannot entitle the authority to determine the discounted value of the consideration to be paid with reference to the date of the agreement. The period for which the value can be discounted commences from the date of tender of the payment and ends with the date on which the payment was due in accordance with the

agreement of transfer. This construction, in our judgment, would subserve the purpose of legislation and would not prejudice the interest of the transferor. The construction adopted by the appropriate authority would lead to hardship and prejudice to the transferor for no fault. It is a well-settled principle of jurisprudence that no party should be penalised for something which is not in the control of the party. The transferor has no control as to when the appropriate authority should determine whether to grant a no objection certificate or pass purchase order and the statute permits the authority to wait for a duration of three months from the date of submission of the agreement. There is no rationale why though the transferor has not received the payment till the authority determines to pass order of purchase and tenders the amount one month from the date of the order, still the discounted value should be ascertained with reference to the date of the agreement.

38. It was urged by Shri Sethna that at the most, the discounted value should be ascertained from the date of the purchase order and not from the date of tender of the purchase amount. It is not possible to accede to the submission of learned counsel. As soon as the authority passes the purchase order, the property vests in the Central Government and the transferor loses all interest in the property. Even if the appropriate authority passes the purchase order, the Central Government is not bound to tender the purchase price and in case such price is not tendered within a period of one month, then the purchase order stands abrogated. In case the purchase price is tendered, then the purchase order becomes final. It is undoubtedly true that the entitlement of the transferor to receive purchase price is on the date when the purchase order is passed but there is no rationale why the purchase price should be discounted from the date of the purchase order when there is no compulsion on the Central Government to tender the amount. The transferor loses the interest in the property due to the vesting in the Central Government on the date of the purchase order and in spite of the fact that the purchase price is not received till the end of the month. On the other hand, the transferor is required to surrender possession within a fortnight from the date of the purchase. We are unable to find any rationale as to why the transferor who is deprived of title as well as possession should also be penalised by discounting the value of the purchase price with reference to the date of purchase. The principle of discounting is based on the doctrine of payment in present of what is due in future. The principle of discounting is not attracted unless the payment is tendered and, consequently, the contention that the discounting should be permitted if not from the date of the agreement, at least from the date of the order of purchase, cannot be accepted.

39. Shri Sethna placed strong reliance upon the decision of the Division bench of the Gujarat High Court in Pradip Ramanlal Sheth Vs. Union of India and Others, in support of the submission that the authority is entitled to ascertain the discounted value from the date of the agreement. The Division bench felt that in the expressed

language of the latter part of the definition of "apparent consideration", it is not possible to accept the contention that the discounting of value should be made from the date on which the order is passed and for a further period of one month. The Division Bench felt that the Legislature would have used the words : "The value of the consideration payable after such date shall be deemed to be the discounted value of such consideration as mentioned in such agreement" if the claim advanced was to be accepted.

40. The Division Bench felt that the deduction is contemplated by the statutory scheme and the mandatory legislation provides that the computing is to be done from the date of the agreement and not from the date of tender of payment. The Division Bench held that the mandate of the Legislature must be strictly followed and it is not permissible to rewrite the relevant provision. With respect, we are unable to share the view of the Division Bench. As mentioned hereinabove, the plain reading of the later part of the expression "apparent consideration" makes it clear that the expression nowhere prescribes that the discounted value is to be calculated with reference to the date of the agreement. The expression "as on the date of such agreement for transfer" refers only to the expression of "such consideration" appearing earlier and not to the discounted value. The discounted value is to be determined with reference to the date of tender of the payment. Shri Sethna also submitted that the issue is no longer open for consideration in view of the decision of the Division Bench of this court in Smt. Vimla Devi G. Maheshwari Vs. S.K. Laul and Others, . The agreement before the Division Bench provided that the balance amount of Rs. 21,00,000 was to be paid within 30 days from the receipt of the no objection certificate from the appropriate authority. The Division Bench held that the date for payment of balance was subsequent to the date of agreement and consequently it was necessary to ascertain the discounted value. There cannot be any debate about the observations of the Division Bench. The question as to which should be the relevant date for determining the discounted value was neither agitated nor considered or decided by the Division Bench and, consequently, the contention of Shri Sethna that the issue stands concluded cannot be accepted. Shri Sethna also submitted that the decision of the Division Bench was carried to the Supreme Court and the Supreme Court while refusing special leave observed that the Supreme Court is in agreement with the view of the Division Bench. We are unable to appreciate as to how the observations of the Supreme Court carry the case further when the issue under consideration was not even examined by the Division Bench.

41. In our judgment, the appropriate authority is entitled to determine the discounted value of consideration payable to the transferors but the discounted value is to be determined for the period commencing from the date on which the payment was tendered to the transferors and ending with the date on which the balance consideration was payable under the agreement between the parties. It is not open to the appropriate authority to ascertain the discounted value from the

date of the agreement, but the discounted value shall be determined only from the date of tender of the purchase price to the transferors. It is, therefore, necessary to give a direction to the appropriate authority to recalculate the discounted value of the consideration payable to the transferors in accordance with law. The appropriate authority has committed a mistake in ascertaining the discounted value and it is necessary to rectify that mistake in accordance with the provisions of section 269UJ of the Act and in the petition filed by the transferors, it is necessary to give a direction to the appropriate authority price.

42. Accordingly, Writ Petition No. 797 of 1994 filed by the transferors, partly succeeds and while upholding the impugned order, the appropriate authority is directed to recompute the discounted value and the Central Government is directed to tender the amount so recomputed within a period of one month from the date of recomputation. The appropriate authority shall pass the appropriate order by rectifying the mistake within a period of four weeks from the date of receipt of the writ. In the circumstances of the case, there will be no order as to costs.

43. Writ Petition No. 862 of 1994 filed by the transferees fails and rule is discharged with costs. The transferees are entitled to withdraw the amount of Rs. 10 crores deposited with the prothonotary and senior master along with the interest accrued, if any. At this stage, learned counsel for the transferees applies for a direction to the appropriate authority and the Central Government not to hold auction of the property for a period of six weeks from today. We are not inclined to grant a blanket order as claimed by learned counsel and we permit the authorities to proceed with the preliminary work to hold auction but not to hold the auction for a period of six weeks from today.