

(1988) 08 BOM CK 0054

Bombay High Court

Case No: Appeal No. 1009 of 1988 in Writ Petition No. 2195 of 1988

Rusi Jehangir Jeejeebhoy and
another

APPELLANT

Vs

O.D. Mohindra and others

RESPONDENT

Date of Decision: Aug. 15, 1988

Acts Referred:

- Income Tax Act, 1961 - Section 269UD(1), 269UG

Citation: (1990) 185 ITR 636

Hon'ble Judges: Sujata V. Manohar, J; Sawant, J

Bench: Division Bench

Judgement

1. What is under challenge in this appeal is an order passed by the learned single judge in a writ petition under article 226 of the Constitution of India. The petitioners were allowed to occupy the suit premises during the pendency of the construction of a new building in which they were allotted two flats. They were supposed to take possession of the new flats after the occupation certificate was issued by the Municipal Corporation. There is no dispute that such a certificate has been issued by the Municipal Corporation and the petitioner/appellants have taken possession of the flats. They had, therefore, no right either as tenants or otherwise in the suit premises. This is also clear from the letter of May 28, 1980, which is exhibit-6 to the petition addressed by them to the secretary of the society, in which they have stated in clear terms as under :

"In the circumstances, this is to put on record that except as and by way of temporary alternate accomodation, we have no right, title or interest in the said flats in Samudra Mahal and Tenerife."

2. When an order is made under sub-section (1) of section 269UD of the Income Tax Act, 1961, the property vests in the Central Government free from all encumbrances. Reliance was placed by Mr. Dwarkadas on the fact that some petitions challenging

the aforesaid provisions are at present pending in the Supreme Court. Since we have come to the conclusion that the petitioners, on their own showing, have no rights in the suit premises, the pendency of the petitions in the Supreme Court on the question of the validity of the said provisions of the Act have no bearing on the facts of the present case. We, therefore, agree with the learned judge and dismiss the appeal.

3. Operation of this order is stayed for a period of two weeks at the request of Mr. Dwarkadas appearing for the appellants.

4. In view of the stay of the operation of the impugned order, the time to make the payment of the consideration amount u/s 269UG of the Act is extended up to and inclusive of September 15, 1988.

5. The appellants to give to the respondents advance intimation of at least four days in case they prefer any proceedings against the present order in the higher court.