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Bombay High Court

Case No: Writ Petition No. 779 of 1995

S. Krishnan	APPELLANT
Vs	
U.V. Shahadadpuri and Others	RESPONDENT

Date of Decision: April 2, 1997

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 269UD, 269UD(1), 269UD(1A), 269UD(3)

Citation: (2000) 158 CTR 233 : (1999) 240 ITR 274 : (1997) 3 MhLj 870

Hon'ble Judges: M.B. Shah, J; F.I. Rebello, J

Bench: Division Bench

Advocate: J.D. Mistry and G.A. Tambe, for the Appellant; M.I. Sethna, R. Ashokan and D.V. Merchant, instructed by Humranwalla and Co., for the Respondent

Judgement

F.I. Rebello, J.
By an agreement dt. 19th October, 1994, the petitioner herein agreed to purchase from respondent No. 5, Flat No. 13 in Supriya Building of Homely Co-operative Housing Society situated at Chembur, Mumbai, for a consideration of Rs. 19,50,000. The agreement discloses that the petitioner paid to the transferor, i.e., respondent No. 5, an amount of Rs. 10 lakhs on 7th October, 1994, i.e., prior to the execution of the agreement dt. 19th October, 1994. The balance amount of Rs. 9,50,000 was to be paid within 30 days of obtaining the certificate under s. 269UL(3) of the IT Act, 1961, from respondents Nos. 1 to 3. The transferee, i.e., the petitioner, and the transferor, i.e., respondent No. 5, submitted the agreement to the Appropriate Authority under s. 269UC of the IT Act, on 28th October, 1994.

2. The Appropriate Authority by notice dt. 11th November, 1994, called upon respondent No. 5 to furnish information/documents referred to therein on or before 21st November, 1994. The Homely Co-operative Housing Society Ltd., respondent No. 7, furnished the

information in their possession to the Appropriate Authority by letter dt. 1st December, 1994.

3. The Appropriate Authority on 5th January, 1995, issued notice under sub-s. (1A) of s. 269UD of the IT Act, 1961, to the petitioner and respondent No. 5 setting out therein that the built up area of the flat was 751 sq. ft. and the rate per sq. ft. of built up area as per the agreement works out to Rs. 2,545. Considering the said facts and after an inspection, the Appropriate Authority had found the rate of the property to be low. Taking those facts into consideration the Appropriate Authority was of the view that there is significant undervaluation of the subject property. The Appropriate Authority as such was pleased to issue show-cause notice as to why an order should not be made in accordance with the provisions of s. 269UD(1) of the IT Act, 1961. The notices were requested to attend before the Appropriate Authority on 13th January, 1995, or to make written submissions. Along with the notice sale instances were given which showed the date of the agreement the built up area and rate per sq. ft.

4. The petitioner showed cause by his representation dt. 11th January, 1995. The petitioner, in respect of all three sale instances referred to by the Appropriate Authority, represented to the Appropriate Authority that Bezzola Commercial Complex was one of the most prestigious commercial complex in the suburbs of Bombay; Kaumudi Building was also a commercial building and Ganga Estate was a posh residential complex. The petitioner also forwarded the photographs of the three buildings. The petitioner also relied on two sale instances, one in respect of a building situated at Maitri Park and another situated at Nellai, Swastic Park. The photographs in respect of the two buildings were also filed. The petitioner also relied upon the Accommodation Times of the relevant period when the agreement to purchase the flat had been entered into to show that at Chembur residential properties were valued between Rs. 1,200-3,000. The petitioner also relied on the report of the Government Valuer and some other documents. The petitioner also disclosed the reasons for sale; the relationship of the transferor and the transferee; details of the sale including conditions of the building and its location and an additional fact that he had paid a further sum of Rs. 1,10,000 to be adjusted against the balance due and payable. The petitioner also sought some additional time from the authorised officer as the time given by him to file reply was not sufficient.

5. By order dt. 17th January, 1995, the Appropriate Authority was pleased to pass an order of purchase by the Central Government under s. 269UD(1) of the IT Act, 1961, after coming to the conclusion that the fair market value of the subject flat as on the date of agreement will be at least Rs. 30,00,000 (751 sq. ft. BUA at Rs. 4,000 per sq. ft.). The consideration payable by the Central Government was fixed at Rs. 19,50,000 and discounted value of apparent consideration of Rs. 19,23,534 under s. 269UA(b). Reliance was placed on cl. 10 of the agreement whereby the transferor was required to pay 50 per cent of transfer charges payable to the society. A sum of Rs. 12,500 was retained for the said purpose out of the consideration payable to the transferor and a condition was put that if the said amount was directly paid to the society, the said amount was to be

transferred to the transferor.

The petitioner has approached this Court to impugn the said order of purchase.

6. Subsequent to the said order, by letter dt. 18th January, 1995, the Appropriate Authority called on the petitioner and the transferor, respondent No. 5, to hand over the possession of the property within 15 days from the receipt of the letter. By letter dt. 28th February 1995, an amount of Rs. 11,25,000 was forwarded to the petitioner. By another letter of the same date an amount of Rs. 8,12,500 was forwarded to the transferor, respondent No. 5. This petition was filed on 6th April, 1995. The petitioner moved the Court on 19th April, 1995. On 25th April, 1995, pending admission ad interim relief was granted in terms of prayer(e) of the petition, i.e., pending admission ad interim relief not to act on the impugned order dt. 17th January, 1995. The petitioner was also directed to return the cheque given by the Department within three days from the said date. The petitioner returned the cheque. The petition thereafter came up for admission on several dates when it was adjourned. On 20th June, 1995, rule was issued and the roznama records that the petition is not seeking any interim relief. After admission of the petition, the petitioner through his advocate requested that he be paid the sum of Rs. 11,25,000. A cheque for the same amount was received by the petitioner on 4th October, 1995. The property was, thereafter put up for auction. Subsequent to the auction held on 28th May, 1996, the auction purchaser has been joined as a respondent to the petition so also the Homely Co-operative Housing Society. It may be also mentioned that the petitioner approached the Court by a notice of motion at the time the auction notice was first published as the notice did not disclose that a writ petition was pending. An oral statement was made on behalf of respondents Nos. 1 to 4 that at the time of auction this would be informed to the bidders and this was in fact so informed.

7. Learned counsel for the petitioner has raised various contentions. The main grievance which has been canvassed is that the order suffers from non-application of mind inasmuch as the Appropriate Authority relied on patently dissimilar cases and comparable cases relied on by the petitioner have not been considered or have been brushed aside on unsustainable grounds. The Appropriate Authority further has compared property used for commercial purposes with the property in question which is meant only for residential purposes. The Appropriate Authority has also not considered other materials led by the petitioner such as evidence of rates, stamp duty table, the actual date of reaching the agreement on the price, the condition of the property and the amenities available to the owner. It is the contention of the petitioner that, therefore, for all the aforesaid reasons the impugned order should be set aside. Grievance is also made that sufficient opportunity was not given to make an effective representation and the opportunity given was a mere pretext or empty formality. It was also contended that the deduction by the Appropriate Authority from the apparent consideration on account of transfer fees is contrary to the statute and as a result the impugned order is abrogated and of no legal effect.

8. Learned counsel for respondents Nos. 1 to 4, on the other hand, contended that there is no equity in favour of the petitioner and on that count itself the petitioner should be rejected. It is pointed out that the property was allowed to be auctioned on 28th May, 1996, and possession was given to the auction purchaser on 27th June, 1996. The auction purchaser paid totally an amount of Rs. 25,50,000. Learned counsel relied on the unreported judgments of this Court dt. 19th/20th June, 1996, in the case of Ruparel Brothers (Bombay) (P) Ltd. vs. Union of India [reported at TC S3.308], in Writ Petition No. 1056 of 1995 in the case of A. N. Properties and Investment Co. (P) Ltd. vs. W. Hasan, decided on 26th June, 1995, and the Division Bench judgment of this Court in the case of Primetime Media Services Pvt. Ltd. Vs. U.V. Shahadadpuri and others, .

It is the further contended that the present case is a completed transaction which calls for no indulgence and further the transferee would have no locus standi to maintain the petition. In support of this proposition learned counsel relied on the judgment in the case of C.B. Gautam Vs. Union of India and Others, and the judgment of the Karnataka High Court in the case of Rajata Trust vs. Chief CIT (1992) 193 ITR 220 (Kar) : TC 3R.995. At any rate, it is contended that the order does not suffer from any vice of arbitrariness and/or non-application of mind and on that count also the petition should be dismissed.

9. On behalf of the auction purchaser, i.e., respondent No. 6, it is contended that he had paid the full purchase price and is in possession of the property. It is his contention that the petitioner took no steps to stay the auction. He has further relied on the judgment of this Court in the case of Shrichand Raheja and another Vs. S.C. Prasad, (Appropriate Authority) and others, , to contend that the sale instances considered by the Appropriate Authority were to consider the potentiality of the property. It is contended by learned counsel for respondent No. 6 that the Appropriate Authority while considering the sale instances had considered the sale instances to find the potentiality and as such the contention made by counsel for the petitioner that by considering the sale deeds in respect of commercial premises in comparison with sale deeds for residential premises, discloses non-application of mind by the Appropriate Authority will not be correct. Counsel for respondent No. 6, therefore, contends that the petition should be dismissed.

10. The petitioner herein is the transferee. The transferor has accepted the money and has not chosen to challenge the purchase. That, however, does not mean that the transferee will have no right to challenge the purchase on the ground that the transaction has been completed and/or that the petitioner has no locus standi to challenge the transfer. The right of a transferee to challenge the purchase order cannot be denied on the ground that the transferees have received back the part consideration. The transferee was required to receive back the part consideration as soon as the appropriate authority passed the purchase order. It is, however, always open to the transferee in the event the order for purchase is set aside to contend that the agreement for sale stands revived and can be enforced.

11. The petitioner in reply to the notice of the Appropriate Authority appeared before the authority, filed his representation, produced the materials and in fact also prayed for further time. Thereafter he has approached this Court at the earliest available opportunity. The Court admitted the petition. The auction was held after the petition was admitted. Potential buyers were informed about the pendency of the petition subsequent to the assurance given by respondents Nos. 1 to 4 on a notice of motion taken out by the petitioner. We are unable to agree with the submissions of learned counsel on behalf of respondents Nos. 1 to 4, that as there is a completed transaction", this Court should not interfere in the exercise of its writ jurisdiction on the ground that the petitioner has no locus standi. Further the judgment of the Karnataka High Court in the case of Rajata Trust (supra) was considered by this Court in Shrichand Raheja (supra), A Division Bench of this Court has held that after the judgment of the apex Court in C. B. Gautam vs. Union of India (supra) the said judgment of the Karnataka High Court is no longer good law and further that the said decision was also not approved by the same High Court in Appropriate Authority and others Vs. Mass Traders Pvt. Ltd. and others, . In view of the judgment in C. B. Gautam''s case (supra) this Court has upheld the right of the transferee to challenge the order of purchase. The contention of respondents Nos. 1 to 4 on that count has to be rejected.

12. The next point contended on behalf of respondents Nos. 1 to 4 was that in equity the petitioner having chosen not to deposit the amounts, should not, in law, be heard when the auction has been completed and the purchaser has purchased the property for an amount of Rs. 25,50,000 against the consideration of Rs. 19,50,000 which the petitioner had entered into with respondent No. 5. It was also contended that though earlier interim relief was granted in favour of the petitioner subject to the petitioner returning the cheque of Rs. 11,25,000 there was no equitable consideration in favour of the petitioner. We are not impressed with the said argument. As earlier pointed out the petitioner in the instant case has taken all necessary steps to contest the proceedings both before the Appropriate Authority and before this Court. In spite of not praying for interim relief this Court admitted the petition and further did not impose any condition. In the case of Ruparel Brothers (Bombay) P. Ltd. (supra), the Division Bench of this Court, to which the learned Chief Justice (M. B. Shah, C.J.) was a party, the relief was refused on the ground that the opportunity was given by the Court to the petitioners to deposit the amount so that interim relief could be continued. The petitioners therein, however, refused to abide by the usual terms and conditions and consequently the Court vacated the ad interim relief by its order dt. 31st January, 1997. The petitioners also withdrew the consideration of Rs. 50 lakhs from the advocates of respondent No. 6 in the said petition with whom the consideration had been deposited. A chamber summons was taken out by the petitioner for amending the petition. It was partly allowed. The Court refused part of the amendment on the ground that the auction purchasers should not be subjected to additional challenge on the new grounds raised in the petition. The SLP preferred against the said order was rejected by the apex Court. On a notice of motion being taken out, the petitioners were directed to deposit a sum of Rs. 1,42,50,000 as a condition precedent for grant of interim

stay. Even though time was granted to deposit the said amount, the amount was not deposited and the interim order was vacated. From the facts of the said judgment, it is further revealed that the portion of the said property had already been fully developed by the construction of a building consisting of basement, ground and five upper floors consuming the F.S.I. of 16,000 sq. ft. and that the units therein had already been disposed of to third parties on ownership basis. In respect of the remaining part of the plot respondents Nos. 7 to 13 therein had invested large amount for erecting a hotel building. It was under those circumstances that the Court held that the purpose of continuing the petition was only to take a chance without any stake and without complying with the directions. It is in that context that the said petition was dismissed.

13. In the case of A. N. Properties and Investments Co. (P) Ltd., the petition was filed by the transferor. The amount had already been paid to the transferor. On behalf of the Union of India, it was contended that if the auction had to be withheld then the amount should be returned forthwith. On behalf of the petitioners, the Court was informed that the petitioners were not willing to return the amount. It is in those circumstances the Court observed that the Court would refuse to tolerate a situation where the auction purchaser would be at peril of not knowing what would be result of the petition. It is in those circumstances that interim relief prayed was rejected.

14. In the case of Primetime Media Services (P) Ltd. (supra), the Court observed that though the auction was set on 26th April, 1995, the petitioner did not care to move the Court for withholding the auction till 25th April, 1995, and even after obtaining the ad interim order on the next day voluntarily sought variation of the order. The Court further observed that as third party interests had been created and as the property was of considerable value, it would not be appropriate to interfere in the exercise of its writ jurisdiction. The Court accordingly dismissed the petition.

15. In our view, the test of discretionary relief or equitable consideration will arise on the facts of each case. In the present case, as pointed out, the petitioner took all steps to pursue the matter, moved an application so that the intending purchaser would be made aware that the property was being sold during the pendency of the petition. Though no ad interim relief was sought the petition was admitted and it is clearly recorded that the petitioner was not seeking any interim relief. The fear expressed on behalf of respondents Nos. 1 to 4 that if completed transactions are set aside, no buyer would come forward at the auctions or if they come forward proper price would not be received, cannot be an answer to defeat the legal rights of a petitioner. The facts of each case will have to be considered and tested. The present case is not of a person seeking to develop a property for profit. It is a case of a middle class citizen who had agreed to buy a flat for his residence. He has pooled his resources to buy the flat. He was not in a position to deposit the entire amount of consideration because he was not to get possession of the flat for his residence. It is submitted that for the remaining amount he was required to sell the flat in which he was residing. Though the petitioner was not praying for any interim relief the Court admitted the petition. The Court having admitted the petition, the petition cannot

now be defeated on the ground that respondent No. 6 has purchased the property and is in possession. Respondent No. 6 has purchased the flat knowing fully well that the auction was subject to the result of the petition. The petitioner has taken proper steps to pursue the petition and represent his case before the authorities. For all these reasons the contention of the respondents that the petition should be dismissed on this count must be rejected.

16. That brings us to the question of non-application of mind. This point has been seriously debated for a considerable length of time. After the judgment of the apex Court in the case of C. B. Gautam (supra), the apex Court has made it clear that reasonable opportunity should be given to the transferor and the transferee to represent against the show-cause notice. In other words the show-cause notice should not be an empty formality. The Appropriate Authority while issuing the show-cause notice must act on the material before it. The material must disclose that the property is being sold for an amount considerably less than the market value in order to evade tax and that such evasion is at least to the extent of 15 per cent of the prevailing market rates. The authority must, therefore, disclose the material and further has to consider the explanation given by the transferor or transferee. The Appropriate Authority has also to consider the material produced by the transferor or transferee and has to give reasons as to why the material produced by the transferor or transferee has to be rejected. It is further the duty of the Appropriate Authority to carefully consider all the material specially the sale instances and to give reasons as to why the same are not considered to be comparable cases. The Appropriate Authority before passing the order must consider all the relevant factors and record its reasons for passing the order. It may further be noted that as has been held by this Court in the case of Shrichand Raheja (supra), that the Appropriate Authority should consider the fair market value of the property approximately on the same principles which are adopted while determining the compensation payable in respect of the property acquired under the Land Acquisition Act, 1894. The most comparable instances out of the genuine instances have to be 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. It is true that 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.

17. Considering the above, can it be said that the Appropriate Authority has applied its mind to the material placed before it while passing the order of purchase ? In the first instance it may be noted that the notice of the proposed purchase was given to the authorities on 28th October, 1994, when Form No. 37-I declaration was filed. The show-cause notice was issued only on 5th January, 1995. The petitioner received the same on 7th January, 1995. The last date for showing cause was on 13th January, 1995. The petitioner filed his reply which is dt. 11th January, 1995. The petitioner appeared on

13th January, 1995, and sought for further time. Time was not given and the order of purchase was made on 17th January, 1995. In other words, the entire exercise was completed within a period of 12 days from the issuance of the show-cause notice. The order of the Appropriate Authority mentions that the authority had personally visited the property on 5th January, 1995, the date on which the show-cause notice was issued. A perusal of the files and record do not disclose any report of the site inspection. The aspect is being set out as the petitioner has produced a report of a registered valuer giving the value of the flat and also its conditions. The contention of the petitioner that the mosaic flooring are uneven having cracks and due for replacement and that there was seepage from the external walls find no place in the order nor the contention of the petitioner that the roof was leaking and required repairs.

18. The petitioner had filed detailed representations against each of the three sale instances cited by the Appropriate Authority in the show-cause notice. Insofar as Bezolla Commercial Complex (Case No. 15352) it was contended by the petitioner that the complex was around seven years old with various facilities. Some of the most reputed companies had their showrooms and offices in the said building. It was situated on the main Sion-Trombay Road and the surrounding area was also commercial and as such the comparison of the sale instance in Bezolla Commercial Complex would not be proper. Similarly, in the case of Kaumudi Building (Case No. 16462) it was pointed out that the same was also a commercial building and the municipal authorities for the purpose of municipal tax assessment, had treated it as a commercial property. The ground floor was used by the State Bank of India until recently and the first floor by Amrut Industries. The distance of the said property from post office, nursing home, etc., had also been set out. It was, therefore, contended that the sale instance in Kaumudi Building should also not be considered while determining the value of a flat in Supriya Building. The third instance was of Ganga Estate (Case No. 15819). Ganga Estate, it was pointed out was a seven storeyed posh residential complex having elevators. The complex consisted of bungalows as well as duplex apartments. It had marble flooring, concealed wiring, concealed plumbing, granite platform in kitchen and other amenities. Apart from that it was pointed out that the flat in question had been very expensively done up by the previous owner and, therefore, no comparison could be made between the flat in Ganga Estate and Supriya Building. The petitioner had also enclosed the photographs of all three buildings.

19. The petitioner had cited two comparable instances. Though the agreement of the petitioner is dt. 19th October, 1994, the petitioner had explained that in fact the oral agreement had been arrived at much earlier and pursuant to the agreement with the transferor as the transferor had a heart attack and wanted to shift to another flat at Mulund which would be more convenient from the point of health, the petitioner initially had advanced two amounts, one in the sum of Rs. 10,001 and another in the sum of Rs. 5,000 by cheque dt. 17th August 1994. However, as the transferor could not get through the deal at Mulund the said amounts were returned to him in August, 1994. The petitioner pointed out that Case No. 15315 was a flat at Maitri Park which was sold at the rate of

Rs. 2,261 per sq. ft. It was pointed out that this would be a comparable instance. The other case cited was agreement dt. 20th May, 1995, in Case No. 15127. The address given was Flat No. 34, 3rd Floor, Swastick Park, Chembur, Bombay. 400 071, for a total consideration of Rs. 18.5 lakhs of a built up area of 900 sq. ft. and the rate worked out to Rs. 2,055 per sq. ft. The show-cause notice was issued by the Appropriate Authority on the basis that the rate per sq.ft. of built up area would be around Rs. 4,000 per sq. ft. The amount realised at the auction in May, 1996, was approximately Rs. 3,395 per sq. ft. of built up area.

The petitioner had also relied on the rates of property previously in the locality at the relevant time as shown in the Accommodation Times which showed rates at Chembur for residential premises ranging between Rs. 1,200 to Rs. 3,000 per sq. ft. and for commercial premises between Rs. 2,000 to Rs. 8,500 per sq. ft. Similarly, reliance was placed upon an extract from the Journal of Institution of Valuers, which showed that at the relevant time the rates at Ghatkopar ranged between Rs. 1,900 and Rs. 3,500 per sq. ft. for residential premises and Rs. 2,000 to Rs. 8,000 per sq. ft. for commercial premises. He has further relied upon the chart prepared by the stamp duty authorities which adopted the rate of Rs. 1,300 to Rs. 1,800 per sq. ft.

20. Insofar as the comparable sales are concerned, the Appropriate Authority held that no two properties are on all fours and the instances were cited not for comparable sales, but to indicate the trend of prices in the market in the vicinity of the subject property around that time. So far as Kaumudi building is concerned, one of the sale instances cited, the Appropriate Authority held that it was an old building and poorly maintained any yet the transaction price was Rs. 3,975 per sq. ft. in November, 1994, and that it was used only for residential purpose. Insofar as Ganga Estate is concerned, the flat was also considered for residential purpose and the rate in June 1994, was Rs. 4,303 per sq. ft. and the office premises in Bezzola transacted at the rate of Rs. 7,011 per sq. ft. in June 1994. The Appropriate Authority held that in view of those actually transacted rates the general submission based on newspapers and write up in journal is not a good guide for determining the fair market value. In the case of the two sale instances cited by the transferee the same were rejected on the ground that the transactions are of May and June, 1994, i.e. five months prior to the present transaction and during this period prices had gone up. It further pointed out Case No. 15315, i.e., flat at Maitri Park, pertains to the building constructed in 1966 and Case No. 15127 relates to the building yet to be constructed and it is in Ghatkopar area. That is how the material produced by the petitioner has been rejected.

21. From the discussion by the Appropriate Authority in its order it is clear that the explanation given by the petitioner in respect of the sale instances relied upon by the Appropriate Authority in its show-cause notice have not all been considered in determining the fair market value. The Appropriate Authority should have considered and tested the reasoning given to find out whether the instance which is cited could be used to find the prevailing rates in the area and if the prevailing rate would apply to a

residential flat in a building constructed in the year 1972. The authority itself has rightly proceeded on the footing that they have not been cited as comparable instances, but to indicate the trend of market prices. At the same breath the two sale instances cited by the petitioner have been rejected on the ground that the transactions are of May and June, 1994. The petitioner''s explanation that though the agreement was entered into in October, 1994, yet the oral understanding had been arrived at in June, 1994, has not at all been considered. Further, no material has been placed on record to show as to what was the percentage of increase of prices between June and October, 1994. The next reasoning given is that Case No. 15315 relates to the building constructed in 1966. The Appropriate Authority failed to consider that the building in which the flat in question was constructed in the year 1972. The Appropriate Authority itself had taken the price factor into consideration in respect of building constructed in the year 1989 to find out the trend. The rejection, therefore, on the second count also discloses total non-application of mind on the part of the authority inasmuch as the case of six years difference would be more comparable than a market trend of newly constructed building of a posh locality 17 years thereafter. Case No. 15127 has been rejected as a case where the building is yet to be constructed. In the written submissions filed by the petitioner Case No. 15127 had been shown as Flat No. 34, 3rd floor, Swastick Park, Chembur, Bombay-400 071. What the said reasoning discloses is that the case number given might have been mistaken. However, the flat which was sold was clearly identified. Yet, the Appropriate Authority chose not to make any attempt to ascertain the dates or seek further explanation from the petitioner. In fact the petitioner''s plea for further time was rejected. In other words, the Appropriate Authority did not apply its mind to the material on record. It only proceeded on the footing that it was considering the trend of market prices based on the sale instances given by it which totally ignores the sale instances given by the petitioner. As has already been pointed out, the Appropriate Authority while determining the market value of the property has to take into consideration genuine sale instances. In the instant case, the two sale instances of residential properties at about the same time which the petitioner had cited have been rejected on extraneous reasons. The location of the flat, the year of construction, the facilities which it had and what the willing purchaser from the open market was willing to pay from the open market have not at all been considered.

22. Further, it is argued that at the auction the property was sold for an amount of Rs. 22,50 lakhs and, therefore, it should be presumed that there is undervaluation. This contention has also no force because, admittedly on two prior occasions when auction for this flat was held it had not fetched the minimum price. On the third occasion, after a lapse of one and half years, the flat was sold for that amount. The petitioner has brought evidence to show that the agreement was entered into in June, 1994. Even if it is assumed that the period has to be taken as October, 1994, from the date of the auction held on 28th May, 1996, i.e., between two years if June, 1994, is concerned and one and half years if October, 1994, is considered, considering the normal appreciation of the rate of 12 per cent, the price of Rs. 25,50,000 would be more or less the same. In other words, the price fetched at the auction would be no different than the price which the

transferee had agreed to pay. It may be true that the valuation given in Accommodation Times may not give a fair answer, but it would show the trend of prices in the locality. Similar would be the case of the reports given by the Institute of Valuers. Under the Stamp Act, for the purpose of stamp fees, the stamp duty authorities have also fixed the stamp fees payable based on the market price prevailing. This material coupled with the sale instances show that the rate per sq. ft. of built up area agreed to be purchased by the petitioner could not be said not to be a fair market value.

23. In the circumstances the order of the Appropriate Authority having ignored material evidence and/or brushed aside the evidence on unsustainable grounds, cannot be upheld and the order dt. 17th January, 1995, in the circumstances has to be quashed and set aside.

24. For the aforesaid reasons, rule is made absolute in terms of prayers (a) and (b) of the petition. In the circumstances of the case there shall be no order as to costs.