

Mrs. Rajalakshmi Narayanan

Vs

Margret Kathleen Gandhi

Civil Appeal No. 3303 of 1992

(CJI M. H. Kania, J.S. Verma, S. C. Agrawal, Yogeshwar Dayal, A. S. Anand JJ)

14.08.1992

JUDGEMENT

M. H. KANIA, C. J.:-

1. Leave granted. Counsel heard.

2. This appeal is directed against an interim order passed by a Division Bench of the Delhi High Court in Civil Writ Petition No. 387 of 1988 on May 4, 1988.

3. On 9th December, 1987 a formal agreement to sell the property in question to respondent No. 1 was signed by the appellant and his co-vendor, respondent No. 8 for a total consideration of Rs. 18 lacs, out of which Rs. 50,000/- was already paid to them in November, 1987. A further amount of Rupees one lac and fifty thousand was received by the vendors from the first respondent in February, 1988. As a security for the said amount the first respondent was put in possession of a portion of the property and she continues to be in possession of the same till date. On February 10, 1988 the appellant entered into an agreement for the purchase of a flat in Alaknanda, New Delhi for a total consideration of Rupees six lacs and seventy five thousand, out of which Rs. 20,000 /- was paid as earnest money. On March 14, 1988, the Appropriate Authority under Chapter XX-C of the Income-tax Act, 1961 passed an order directing the purchase of the said property by the Central Government under the provisions of Section 269-UD (1) of the Income-tax Act, 1961. Respondent No. 1 filed Civil Writ Petition No. 387 of 1988 in the Delhi High Court challenging the aforesaid order of the Appropriate Authority. As a result of the impugned interim order made by the Delhi High Court the acquisition of the property by the order of the Appropriate Authority was stayed and in the circumstances set out earlier, the intended sale to respondent No. 1 could also not be completed. The appellant filed an application being Serial No. 625/88 in the aforesaid Writ Petition for the payment of the balance amount under the agreement of sale to her either by respondent No. 1 as the vendee or by the Income-tax Department. This application was dismissed by the impugned order. The appeal is directed against this order.

4. It is pointed out to us by Mr. Vaidyanathan, learned counsel for the appellant that in the present case the appellant, namely, the vendor, is in a completely helpless position although she is in urgent need of money in order to acquire another flat. It is pointed out by him that so far as the appellant is concerned, she never had any objection to the completion of the purchase of the property by the Government nor had she any objection to the specific performance of the agreement of sale in favour of respondent No. 1. It was submitted by Mr. Vaidyanathan that for no fault of his client and

as a result of the order passed by the Appropriate Authority and the impugned interim order passed by the Delhi High Court she is neither able to dispose of the said property to a third party nor she is able to get the sale price of the said property either from respondent No. 1 or from the Government. He contended that if the balance of the purchase price is not paid to the appellant without delay, she will again lose interest for several years.

5. In our opinion, in this case, some relief should be granted to the appellant because she has neither attempted to delay or defeat the compulsory purchase of the property by the Government nor has she any objection to the completion of the agreement for sale of the property to respondent No. 1. However, we are not in a position to direct any amount to be paid to the appellant at this stage because it is not possible to predict whether the order for purchase of the said property made by the Appropriate Authority will be upheld or it will be set aside and the sale of the property in favour of respondent No. 1 can be completed.

6. We can safely take judicial notice of the fact that the prices of immovable properties have shot up continuously for the last few years and today the said property, if sold in the open market, would fetch a much larger amount than that for which it was agreed to be sold to respondent No. 1.

7. Taking into account these circumstances we modify the impugned order and direct that in the event of the aforesaid order of the Appropriate Authority being upheld, the Government shall pay to the appellant, as the purchase price, the amount stated as the consideration for the sale of the said property in the agreement entered into between the appellant and respondent No. 1 with interest thereon at 15 per cent per annum. In case the order of the Appropriate Authority is set aside and the transaction of sale in favour of respondent No. 1 is completed, respondent No. 1 shall pay to the appellant interest on the balance amount payable on account of the purchase price by respondent No. 1 interest @ 20% per annum. The interest in either eventuality will be calculated right from the day the impugned interim order was made by the Delhi High Court.

8. We may clarify that whether interest should be paid to the owner of an immovable property who has entered into an agreement to sell the same which cannot be completed by reason of an order of purchase under S. 269-UD of the Income-tax Act and at what rate, will have to be decided in the facts and circumstances of the each case. All that can be observed by way of a general principle is that where such a seller has raised no objection or obstruction either to the purchase of his property by an order under S. 269-UD or to the completion to the agreement of sale entered into by him but is unable to get the purchase price by reason of the said order and the stay order or orders passed by a Court interest at appropriate rate can, if equity so requires, be paid to him.

9. There will be no order as to the costs of the appeal. Order accordingly.

</html