

Adair Dutt and Co. India Pvt. Ltd.

Vs

Appropriate Authority

Civil Appeal No. 1109 of 1995

(Kuldip Singh, K.T. Thomas JJ)

25.09.1996

JUDGMENT

K.T. THOMAS J.

Whether a bona fide statutory tenant has the right to continue in possession even after an order of purchase was made under section 269UE(1) in Chapter XX-C of the Income-tax Act, 1961 (for short, "the Act"), is the question sought to be raised in this appeal. According to the appellant, the answer to the said question must be in the affirmative.

A brief sketch of the facts :

The appellant - a private limited company - is a tenant on the ground floor of a building situate on the Mount Road (now called Anna Salai), Madras. On March 30, 1989, the owner of the building entered into an agreement with another person for sale of the building, for a sum of Rs. 26 lakhs. The appropriate authority, constituted under Chapter XX- C of the Act, on coming to know of the aforesaid agreement initiated proceedings, in exercise of its powers under the said Chapter for purchase of the building. He ordered the building to be purchased by the Central Government for the same consideration as shown in the agreement in accordance with section 269UD of the Act. The appropriate authority then issued a communication to the appellant informing it that the building stood vested in the Central Government by virtue of section 269UE(1) of the Act free from all encumbrances with effect from June 22, 1989. The appellant was requested to surrender possession of the building. A writ petition was filed before the High Court of Madras challenging the said communication and the subsequent request. A Division Bench of the Madras High Court (see [1994] 210 ITR 1063) dismissed the writ petition. This appeal by special leave has been filed against the judgment of the Division Bench.

The two sub-sections of section 269UE of Chapter XX-C of the Act which are relevant for this appeal are quoted below :

"269UE. Vesting of property in Central Government. - (1) Where an order under sub-section (1) of section 269UD is made by the appropriate authority in respect of an immovable property referred to in sub-clause (i) of clause (d) of section 269UA, such property shall, on the date of such order, vest in the Central Government free from all encumbrances.

(2) The transferor or any other person who may be in possession of the immovable property in respect of which an order under sub-section (1) of section 269UD is

made, shall surrender or deliver possession thereof to the appropriate authority or any other person duly authorised by the appropriate authority in this behalf within fifteen days of the service of such order on him."

The contention of the appellant before the Madras High Court was two- fold. The first is that as the Constitution Bench of this court in C.B. Gautam v. Union of India [1993] 199 ITR 530, has struck down the expression "free from all encumbrances" in sub-section (1) of section 269UE, what was vested with the Central Government is only the right of the erstwhile owner of the building without affecting the leasehold right of the appellant. The second is that the appellant's right in the building has been protected by the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (for short, "the T.N. Act"), and as such His statutory right cannot be by-passed through the vesting process.

The Division Bench of the Madras High Court repelled both contentions. The learned judges pointed out that the transferor has stipulated in the agreement for sale, dated March 30, 1989 (which led to the action taken by the appropriate authority), that the transfer of the premises shall be free from all encumbrances and then held (at page 1070 of 210 ITR) : "When the agreement in this case provides for a sale free of all encumbrances, the property agreed to be sold would also vest in the Central Government free of such encumbrances. Only in a case where the agreement does not provide that the sale would be free of all encumbrances, the encumbrance-holder or lessee in possession may not be obliged to deliver possession of the property". Regarding the second contention, the High Court pointed out that even otherwise the provisions of the T.N. Act do not afford any protection to the tenants of the buildings owned by the Central Government.

The Constitution Bench of this court has struck down the words "free from all encumbrances" in sub-section (1) of section 269UE of the Act. The material portion of the judgment is extracted below (at page 558 of 199 ITR) :

"In view of the express provision in section 269UE that the property purchased would vest in the Central Government 'free from all encumbrances', it is not possible to read down the section as submitted by the learned Attorney-General. In the result the expression 'free from all encumbrances' in sub-section (1) of section 269UE is struck down and sub-section (1) of section 269UE must be read without the expression 'free from all encumbrances' with the result that the property in question would vest in the Central Government subject to such encumbrances and leasehold interests as are subsisting thereon except for such of them as are agreed to be discharged by the vendor before the sale is completed."

However, the Bench approved the distinction that in case the agreement for sale contains the stipulation to the effect that the property would be sold free from all encumbrances or certain encumbrances then the vesting in the Central Government would be free from such encumbrances. The following passage in the judgment makes the position clear (at page 559 of 199 ITR) :

"As we have stated earlier, where an agreement for sale provides that the property is intended to be sold free of all encumbrances or leasehold rights, the order for purchase of such property under section 269UD(1) in the said Chapter would result in the said property vesting in the Central Government free of such encumbrances or leasehold interests. In such a case, the holders of the encumbrances or leasehold interests would have to obtain their compensation from the amount awarded as the purchase price to the owner of the property. This appears to be a fair construction

because, in such a case, the apparent consideration can be expected to include the value of such leasehold interests or encumbrances...."

It was not disputed before us that the agreement for sale executed by the erstwhile owner, regarding the property in question, contained a stipulation that the property would be sold free of all encumbrances. However, learned counsel tried to get support for this contention from a decision of the Karnataka High Court in *Tata Consulting Engineers v. Union of India* [1994] 206 ITR 237, wherein it has been observed that (at page 251) : "The Supreme Court did not specifically consider a case where ignoring or suppressing the fact that the premises were in the occupation of a monthly tenant who had not agreed to vacate, the agreement of sale, without referring to such tenancy, provided for delivery of vacant possession at the time of sale. Chapter XX-C also does not provide for a case where the agreement of sale contained an incorrect information regarding possession, that is agreeing to deliver vacant possession even though vacant possession could not be delivered having regard to the fact that the premises were in the occupation of a bona fide tenant." The Karnataka High Court concluded that (page 252) : "on the facts and circumstances set out above, in so far as the tenant is concerned, the term of the sale agreement providing for delivery of vacant possession should be read down as only providing for delivery of vacant possession of the remaining portions of the premises...."

The said view of the learned single judge of the Karnataka High Court is not in consonance with the reasoning of this court in *C.B. Gautam's case* [1993] 199 ITR 530. The position has been clearly stated by this court in the judgment as follows (at page 560 of 199 ITR) :

"The holders of the encumbrances or leasehold interests which would be destroyed in this manner can be said to be persons interested as contemplated in clause (e) of section 269UA. In this connection, we may refer to sub-section (5) of section 269UE which declares that nothing in the said section which deals with the vesting of property in the Central Government shall operate to discharge the transferor or any other person (not being the Central Government) from liability in respect of any encumbrances on the property and, notwithstanding anything contained in any other law for the time being in force, such liability may be enforced against the transferor or such other person. This provision makes it amply clear that, in the case we have just referred to, the encumbrance holder or the holder of the leasehold rights could claim the fair value of his encumbrance or the leasehold interest out of the amount paid on account of the purchase price to the owner of the immovable property acquired by the Central Government under section 269UD."

In this context, we may point out that the Constitution Bench in *C.B. Gautam's case* [1993] 199 ITR 530 considered whether such vesting in the Central Government would affect monthly tenancies. The following observation has been made regarding that aspect (at page 559 of 199 ITR) :

"As far as monthly tenancies are concerned, they do not pose any difficulty because monthly tenants are also lessees in law although their right is a very limited one. If the agreement to sell does not provide for vacant possession or the determination of monthly tenancies, such tenancies would continue even on an order for purchase by the Central Government being made by the appropriate authority concerned under section 269UD(1); but such tenants would lose the protection given to tenants under the rent protection laws because such laws are not made applicable to properties owned by the Central Government with the result that their tenancies could be

terminated by the Central Government."

Learned counsel for the appellant, however, contended that the T.N. Act applies even to buildings owned by the Central Government and hence the aforesaid observation cannot apply to the tenancy rights protected by the said Act. We agree that the Constitution Bench has not considered the situation where the monthly tenancy is protected by a rent control legislation. No doubt, the learned judges have stated in the impugned judgment that (at page 1070 of 210 ITR) : "In relation to such statutory tenancy rights, there is no protection as such available, as the rent control laws are inapplicable to properties owned by the Central Government, and such tenancies could be terminated by the Government."

The aforesaid finding in the impugned judgment is also challenged in this appeal. Learned counsel contended that though the T.N. Act excludes Government buildings from its purview such exclusion is confined to buildings owned by the State Government because of the definition contained in the T.N. Act for the word "building" as meaning "State Government".

We think that the question regarding application of the T.N. Act to buildings owned by the Central Government must be considered afresh by the High Court in view of the aforesaid contention. We, therefore, set aside the judgment under challenge and remit this case to the High Court for disposal of the writ petition afresh in the light of the observations made above.