

Jagdish A.Sadarangani

Vs

Govt.of India, Ministry of Finance, Madras

27.11.1997

(S. C. Agarwal, B. N. Kirpal JJ)

ORDER

1.The question that falls for consideration in this appeal by special leave against the judgment of the Madras High Court dated June 21, 1996 relates to the interpretation of the provisions of sub-section (4) of Section 269UC of the Income Tax Act, 1961 [hereinafter referred to as 'the Income Tax Act'].Section 269UC is contained in Chapter XXC relating to purchase by the Central Government of immovable properties in certain cases of transfer.

2.On September 7, 1995 the appellant entered into an agreement with the executors of Shri S.R.Unger for the purchase of urban property in the city of Madras (now Chennai) for a sum of Rs.5,50,00,000/-.The extent of the property is 23.5 grounds comprising 5,239 sq.mts.of vacant land and 954 sq.mts.of built up area.On the same date, i.e., September 7, 1995, an application in Form No.-37-I was filed before the appropriate authority, Madras.The appropriate authority addressed a letter dated October 30, 1995 to the intending transferors and transferees seeking certain clarifications in respect of nine points mentioned in the said letter. One of the said points was that the extent of the property under transfer is about 24 grounds 20 which includes 8.01 grounds for which acquisition under the Tamil Nadu Urban Land Ceiling Act [hereinafter referred to as 'the Urban Ceiling Act'] is in force and the stay order has been granted by the High Court and that the total consideration towards the entire land is inclusive of the portion affected under the said Act. The appellant submitted his reply to the said objections but the appropriate authority, by order dated December 11, 1995, held that in view of the prohibition in Section 6 of the Urban Ceiling Act the agreement entered into between the parties on September 7, 1995 to transfer the entire land, including the excess vacant land of 2.284.5 sq.mts., 35 shall be deemed to be null and void. In the said order it was also stated that the matter was already sub-judice vide writ petition No.16211/91 and that in view of the said petition the members of the appropriate authority could not effectively exercise their powers with regard to pre-emptive right to purchase the subject property and, therefore, the same has been lodged in the office. It was further stated that the petitioner, if so advised, may file a fresh Form No.37-I for transfer of the balance land or after finality was reached with regard to the excess vacant land. Feeling aggrieved by the said order, the appellant filed a writ petition [W.P.No.17773/95] in the Madras High Court which was allowed by a learned Single Judge by his judgment dated April 3, 1996.The learned Single Judge to directed the respondents to re-consider the matter and pass the appropriate orders keeping in view the said judgment.

3.The respondent filed an appeal [W.A.No.429/96] against the said judgment of the learned single Judge which has been allowed by the Division Bench of High Court by the impugned judgment dated June 21,1996.The High Court has held that keeping in view of sub-section (4) of Section 269UC, the order passed by the appropriate authority was valid since the agreement was

unenforceable and void being in violation of the provisions of Section 6 of the Urban Ceiling Act. Feeling aggrieved by the said judgment of the Division Bench of the High Court the appellant has filed this appeal.

Section 269UC provides as follows :-

"Restrictions on transfer of immovable property.

269UC(1)-Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), or in any other law for the time being in force, no transfer of any immovable property in such area and of such value exceeding five lakh rupees, as may be prescribed, shall be effected except after an agreement for transfer is entered into between the person who intends transferring the immovable property [hereinafter referred to as 'the transferor'] and the person to whom it is proposed to be transferred [hereinafter referred to as 'the transferee] in accordance with the provisions of sub-section (2) at least four months before the intended date of transfer.

(2) The agreement referred to in sub-section (1) shall be reduced to writing in the form of a statement by each of the parties to such transfer or by any of the parties to such transfer acting on behalf of himself and on behalf of the other parties.

(3) Every statement referred to in sub-section (2) shall,-

(i) be in the prescribed form;

(ii) set forth such particulars as may be prescribed; and

(iii) be verified in the prescribed manner and shall be furnished to the appropriate authority in such manner and within such time as may be prescribed, by each of the parties to such transaction or by any of the parties to such transaction acting on behalf of himself and on behalf of the other parties.

(4) Where it is found that the statement referred to in sub-section (2) is defective, the appropriate authority may intimate the defect to the parties concerned and give them an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the appropriate authority may, in its discretion, allow and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then notwithstanding anything contained in any other provision of this Chapter, the statement shall be deemed never to have been furnished."

4.Sub-section (4) was inserted in Section 269UC by the Finance Act, 1995 with effect from July 1, 1995. Section 269UC, as it stood before the amendment of 1995, came up for consideration before the various High Court. In Tanvi Trading & Credits P.Ltd.& Ors. Vs. Appropriate Authority, (1990)1 88 ITR 623, a Division Bench of the Delhi High Court has considered the provisions contained in Sections 269UC, 269UD and 269UL of the Income Tax Act. It has been held that the only right which Section 269UD of the Act confers on the appropriate authority is to enable it to make an order for purchase of immovable property at an amount equal to the amount of the apparent consideration and that it does not give jurisdiction to the appropriate authority to adjudicate upon the legality of the transaction which is proposed to be entered into by the applicant and that Section

269UD is not concerned with the validity of the sale. According to the said decision of the High Court the only order which can be passed under Section 269UD is an order to purchase and no other order and that if an order of purchase is not passed then it is imperative and obligatory on the part of the appropriate authority to issue the Certificate of No Objection under Section 269UL (3). The said decision of the Delhi High Court came up for consideration before this Court in *Appropriate Authority & Anr. Vs. Tanvi Trading & Credits P.Ltd. & Ors.*, (1991)191 ITR 307. This Court, while dismissing the special leave petition against the said judgment of the Delhi High Court, has said:

"We agree that two alternatives are open under the scheme of the legislation:- (i) the Union of India through the appropriate authority could buy the property, or (ii) in the event of its decision not to buy, it has to issue a "No Objection Certificate" leaving it open to the parties to deal with the property. In that view of the matter, the High Court was right in its conclusion." [p. 308].

5. In the impugned judgment, the Division Bench of the High Court has taken note of the said decision of the Delhi High Court as well as the aforementioned observations of this Court while dismissing the special leave petition against the judgment of the Delhi High Court but has observed that the position has changed as a result of the amendment which has been introduced in Section 269UC by the insertion of sub-section (4) in 1955. The learned Judges have held that sub-section (4) of Section 269UC enables the appropriate authority to return the statement in Form No.37-I that is submitted under Section 269UC (2) if it is found that the agreement suffers from basic defect and is void or unenforceable. The learned Judges have observed as under:

"We are of the considered view that sub-section (4) of Section 269UC of the Act in appropriate cases enables the appropriate authority to have recourse to third alternative. Having regard to the objects and reasons for enacting sub-section (4) of Section 269UC of the Act, we have no hesitation to hold that it covers not only the formal defects in the statement filed under sub-section (2) thereof, but also the defects which go to the very root of the transaction on the basis of which the statement is filed under sub-section (2) thereof. If such a transaction is impermissible in law, it is unenforceable. Such a transaction cannot form a basis for filing the statement under sub-section (2) of Section 269UC of the Act. The appropriate authority cannot be compelled to act upon an unenforceable, illegal and void agreement. The function of the appropriate authority is not merely confined to issuing "No Objection Certificate", it is coupled with a duty to make a decision as to pre-emptive purchase, if the real market value of the immovable property concerned in the proceeding demands it. A statutory authority exercising statutory power cannot be compelled to ignore the basic defect in the agreement, which also disables the appropriate authority to make its decision as to pre-emptive purchase, on determining the real market value, which will be the basis for taking a decision regarding pre-emptive purchase. As in the instant case, until the proceeding is completed as per Section 11 of the Urban Land Ceiling Act, no transaction of sale or purchase can take place. The appropriate authority cannot be expected or compelled to act in contravention of Section 6 of the Urban Land Ceiling Act and to make a decision as to pre-emptive purchase. Such an interpretation would not only defeat the very object of sub-section (4) of Section 269UC of the Act, and it would also result in contravention of the provisions of the Urban Land Ceiling Act, or, not to make any decision as to preemptive purchase of the immovable property concerned in the agreement."

6. The learned Judges have referred to the objects and reasons appended to the Bill which was enacted as the Finance Act of 1995. We have carefully perused the said reasons given by the learned Judges of the High Court in the impugned judgment as well as the objects and reasons of the Bill which was enacted as the Finance Act, 1995, namely, sub-section (4) inserted in Section 269UC of the Income Tax Act. We are unable to construe the provisions contained in sub-section (4) of Section 269UC as conferring a power on the appropriate authority to decide the question about the legality of the agreement which has been entered into by the parties and on the basis of which the statement under Section 269UC (2) has been submitted. What is contemplated by sub-section (4) of Section 269UC is that if there is a defect in the statement submitted under Section 269UC(2), which must comply with the requirements of sub-section (3), then the appropriate authority may intimate to the parties concerned about the said defect and give them the opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period as may be allowed by the appropriate authority on an application made in this behalf. The said provision in sub-section (4) of Section 269UC envisages a defect which can be removed/rectified within the period of fifteen days or the further period which is given by the appropriate authority. A defect regarding the legality and validity of the agreement which renders the agreement void and unenforceable cannot be rectified. Since a defect which cannot be rectified was not within the contemplation of the legislature in enacting sub-section (4) of Section 269UC a defect regarding legality or validity of the agreement would not fall within the ambit of the said provision. The objects and reasons of the Bill which was enacted as Finance Act, 1995 also do not give an indication that by inserting sub-section (4) in Section 269UC Parliament intended to confer a power on the appropriate authority to go into the legality or validity of the agreement. In the circumstances, we are unable to uphold the impugned judgment of the High Court.

7. The appeal is, therefore, allowed, the impugned judgment dated June 21, 1996 passed by the Division Bench of the High Court is set aside and the judgment of the learned Single Judge dated April 3, 1996 is restored. The appropriate authority shall reconsider the matter in pursuance of the directions given by the learned Single Judge within a period of four weeks from the date of this order and shall pass an order in accordance with law. No order as to costs.