

SUPREME COURT OF INDIA

DLF Universal Ltd.

Vs.

Appropriate Authority

(D. P. Wadhwa and Mrs. Ruma Pal, JJ.)

04.05.2000

JUDGEMENT

D. P. WADHWA, J.:-

1. This batch of 12 appeals is directed against the judgment dated December 1, 1998 of the Division Bench of the Delhi High Court interpreting Section 269-UC of the Income-tax Act, 1961 (for short, the 'Act') and Rule 48-L and Form 37-I of the Income-tax Rules, 1962 (for short, the 'Rules')

2. A number of writ petitions had been filed in the High Court by various parties challenging rejection of Form 37-I by the Appropriate Authority. High Court by its impugned judgment allowed the petitions, set aside the orders of the appropriate authority and requiring it to take fresh decision in each of the cases in accordance with law and keeping in view the principles laid by the High Court in its judgment. Aggrieved Appropriate Authority has filed 11 appeals. M/s. DLF Universal Ltd. (for short, 'DLF') has also filed one appeal. It is aggrieved by that portion of the judgment of the High Court where the High Court said "no objection by the Appropriate Authority based on an agreement for transfer of property which is to be constructed cannot be utilised for procuring a deed for transfer of that property which has been constructed".

3. To understand the controversy between the parties and findings arrived at by the High Court, we may examine facts in two cases, one pertaining to DLF and the other to M/s. Ansal Properties and Industries Ltd. (for short, 'Ansal'). Both DLF and Ansal are engaged in the business of developing and dealing in real estate, constructing multi-storey buildings and selling or letting them. Ansal floated a scheme which was widely advertised inviting applications from the public for allotment of apartments. In one of the cases the scheme pertained to apartments in "Celebrity Homes". Palam Vihar, Gurgaon. One Mr. Sudarshan Kumar Kohli and his wife Mrs. Nibha Kohli applied on July 13, 1995 for booking of an apartment. The application was in the form prescribed by Ansal. The application contains details regarding the apartment number, rates, accommodation available and payment plan. Initial deposit was made at the time of booking of the apartment. Building had yet to come up and payment was to be made as construction progressed. A formal agreement incorporating the terms of sale of the apartment was entered into on January 1, 1997. This agreement is in more details but incorporates all the terms of the application for booking of the apartment which was accepted by Ansal. By the time agreement dated January 1, 1997 was entered into, certain payments as per the plan had already been made. In January, 1997 itself, Ansal as transferor and Kohlis as transferee filed Form 37-I before the Appropriate Authority seeking no objection to the registration of the apartment with the registering authority. On March 13/14, 1997 Appropriate Authority sent a notice to Ansal and Kohlis under Section 269-UC(4) pointing out certain defects in Form 37-I and requiring them to remove these defects within 15 days and not later than March 28, 1997 by filing revised Form 37-I. This was replied to by Ansal by their letter dated March 27, 1997. However, by order dated April 28/29, 1997 made under Section 269-UC(4) Appropriate Authority held that Form 37-I had been belatedly filed in contravention of Rule 48-L and was not maintainable. In short, Form 37-I was rejected. It was already held that Form 37-I was defective inasmuch as particulars required in Column 12 of Form 37-I had not been furnished. Ansal challenged the order of the Appropriate Authority by filing writ petitions.

4. In the case of DLF, a scheme was advertised for sale of flats in Richmond, a multi-storey complex which was to come up in DLF Qutub Enclave, Gurgaon. Mrs. Ranjana Singh applied for allotment of a flat by making an application on April 9, 1997. DLF agreed to allot a flat to Mrs. Singh. All the relevant terms and conditions find mention in the letter of allotment. It gives the details of accommodation, mode of payment as and when construction progressed and in the table for office use in the application for allotment, details of the price etc. were all mentioned including the initial payment received on making of the application. A more detailed agreement called the "Apartment Buyers' Agreement" was then entered into on January 2, 1998. By this time, some payments towards construction of Richmond apartments had already been made by Mrs. Singh. On January 30, 1998, statement in Form 37-I was filed by DLF and Mrs. Singh before the Appropriate Authority. A notice under Section 269-UC (4) of the Act was issued by the Appropriate Authority to both DLF and Mrs. Singh on April 2/3, 1998 requiring them to remove certain defects within 15 days failing which it was intimated that Form 37-I shall be deemed not to have been furnished. DLF sent their reply on April 13, 1998 giving the relevant information. However, by order dated April 30, 1998 passed under Section 269-UC(4) of the Act Appropriate Authority held as under :

"It is the considered view of the Appropriate Authority that the transaction would fall into sub-clause (ii) of clause 'd' of Section 269-UA and once the property is not in existence, only the rights therein can be transferred. Since the major terms and conditions were finalised on the date of

booking/allotment, the Form 37-I should have been filed within 15 days thereof. Since this was not so, the form is treated as belated form. Further in absence of any power of condonation of delay, the form has to be treated as not maintainable."

5. This was challenged by DLF by filing writ petition in the High Court. These are some of the bare details.

6. We may now examine certain provisions of law relevant to the issues before us. Chapter XX-C consisting of Sections 269-U to 269-UO was inserted in the Act by the Finance Act, 1986 w.e.f. October 1, 1986. This was to curb the menace of black money. The basic scheme of Chapter XX-C is that the immovable property can be acquired by the Central Government if the apparent consideration as agreed to between the transferor and the transferee under agreement to sell does not represent the true market value of the property. The provisions spread a wide net by expanding the definition of immovable property and the transfer of such property. The envisaged transfer of immovable property yet to be constructed. "Agreement for transfer" is defined in clause (a)1 of Section 269-UA, "immovable property" in clause (d)2 and "transfer" in clause (f)3 thereof. For the performance of provisions under Chapter XX-C, an Appropriate Authority is constituted under Section 269-UB. Section 269-UC4 provides for restrictions on transfer of immovable property.

Under Rule 48-L5 Form 37-I is prescribed which is to be filed before the Appropriate Authority signed by both the transferor and the transferee within 15 days from the date on which the agreement for transfer is entered into. This is the requirement of Rule 48-L of the Rules. Section 269-UD6 deals with the order by

Appropriate Authority for purchase by the Central Government of immovable property subject-matter of the agreement to sell. This the Appropriate Authority does after examining form 37-I. As to how the immovable property which is yet to be constructed could vest in the Central Government after order by the Appropriate Authority is mentioned in sub-sections (6) 7 and (7) 8 of Section 269-UE. If there is failure on the part of the Central Government to make payment as required under Section 269-UG, the property reverts in the transferor as provided under Section 269-UH. Section 269-UK9 provides that after Form 37-I has been filed the agreement for transfer could not be revoked or altered. Section 269-UL10 places restrictions on the registering authority from registering a deed of transfer of immovable property unless no objection certificate has been issued by the Appropriate Authority. When order for purchase of any immovable property by the Central Government is made, transferor is indemnified from any claim that the transferee may have against him under the agreement for transfer (Section 269-UM11). If we concentrate on the relevant provisions of Chapter XX-C as applicable in the present appeals, it will be seen that immovable property means any right in or with respect to any building or part of a building which is yet to be constructed which right accrues or arises from any transaction including that by way of any agreement or any arrangement of whatever nature or being a transaction by way of sale exchange or lease of such building or part of a building. "Transfer" in relation thereto means the doing of

anything including by way of an agreement or arrangement which has the effect of transferring or enabling the enjoyment of such immovable property. No transfer of immovable property shall be effected except after an agreement for transfer as defined in clause (a) of Section 269-UA is entered into between the parties, i.e. the transferor and the transferee at least four months before the intended date of transfer. This is so notwithstanding anything contained in the Transfer of Property Act, 1882 or in any other law. This agreement for transfer is now required to be reduced in writing in the form of a statement by both the parties. The statement is to be in Form 37-I and is to be furnished to the Appropriate Authority within 15 days from the date on which agreement for transfer is entered into. If a defective statement in Form 37-I is filed Appropriate Authority is required to intimate the defect to the parties concerned and give them an opportunity to rectify the same within a period of 15 days or within such further period as may be allowed by the appropriate authority. In case the statement remains defective, it shall be deemed never to have been furnished. If the statement in Form 37-I is proper, Appropriate Authority may make an order for purchase of the immovable property, subject-matter of Form 374, by the Central Government at the rate equal to the amount of apparent consideration. In *C. B. Gautam v. Union of India*, (1993) 199 ITR 530 this Court laid down principles how the Appropriate Authority would apply its mind to the term "apparent consideration". Time limit has been laid by which the Appropriate Authority has to make an order for purchase by the Central Government of the immovable property. After an order is made, immovable property vests in the Central Government in terms of the agreement for transfer referred to under sub-section (1) of Section 269-UC. When the order is made under Section 269-UD(1) in respect of an immovable property being rights of the nature referred to in sub-clause (ii) of clause (d) of Section 269-UA the order shall have the effect of vesting such right in the Central Government and placing the Central Government in the same position in relation to such rights as the person in whom such a right would have continued to vest if such order had not been made. After statement in Form 37-I has been filed under Section 269-UC terms of agreement for transfer cannot be altered unless of course no order has been made by the appropriate authority for purchase of the immovable property by the Central Government or the order if any made stands abrogated under Section (1) of Section 269-UH. Any transfer of immovable property made in contravention thereof shall be void. Registering Officer under the Registration Act, 1908 is forbidden to register any document for transfer of immovable property unless a certificate from the appropriate authority that it has no objection to the transfer of such immovable property is furnished. There is also a prohibition on any person from doing any act which has the effect of transferring any immovable property unless the Appropriate Authority certifies that there is no objection thereto. In case no order for purchase by the Central Government is made by the Appropriate Authority or its order stands abrogated, it shall issue a certificate of no objection for transfer of the property. Where an order for the purchase of immovable property by the Central Government is made, no claim by the transferee shall lie against the transferor by reason of such transfer not being in accordance with the agreement for the transfer of immovable property entered into between the parties.

1. 269-UA.(a) "agreement for transfer" means an agreement, whether registered under the Registration Act, 1908 (16 of 1908) or not, for the transfer of any immovable property.

2. 269-UA(d) "immovable property" means,-

(i) any land or any building or part of a building, and includes, where any land or any building or part of a building is to be transferred together with any machinery, plant, furniture, fittings or other things, such machinery, plant, furniture, fittings or other things also.

Explanation. - For the purposes of this sub-clause, "land, building, part of a building, machinery, plant, furniture, fittings and other things" include any rights therein;

(ii) any rights in or with respect to any land or any building or a part of a building (whether or not including any machinery, plant, furniture, fittings or other things therein) which has been constructed or which is to be constructed, accruing or arising from any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement of whatever nature), not being a transaction by way of sale, exchange or lease of such land, building or part of a building;

3. 269-UA(f) "transfer",-

(i) in relation to any immovable property referred to in sub-clause (i) of clause (d), means transfer of such property by way of sale or exchange or lease for a term of not less than twelve years, and includes allowing the possession of such property to be taken or retained in part performance of a contract of the nature referred to in Section 53-A of the Transfer of Property Act, 1882 (4 of 1882).

Explanation. - For the purposes of this sub-clause, a lease which provides for the extension of the term thereof by a further term or terms shall be deemed to be a lease for a term of not less than twelve years, if the aggregate of the term for which such lease is to be granted and the further term or terms for which it can be so extended is not less than twelve years;

(ii) in relation to any immovable property of the nature referred to in sub-clause (ii) of clause (d), means the doing of anything (whether by way of admitting as a member of or by way of transfer of shares in a co-operative society or company or other association of persons or by way of any agreement or arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, such property.

4. Restrictions on transfer of immovable property.

269-UC (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.

5. "Statement to be furnished under Section 269-UC(3).

48-L (1) The statement required to be furnished to the appropriate authority under sub-section (3) of Section 269-UC shall be in Form No. 37-I and shall be signed and verified in the manner indicated therein by each of the parties to the transfer referred to in sub-section (1) of that section or by any of the parties to such transfer acting on behalf of himself and on behalf of the other parties.

(2) The statement in Form No. 37-I shall be furnished, in duplicate, to the appropriate authority

(a) ...

(b) ...

(c) before the expiry of 15 days from the date on which the agreement for transfer is entered into, in cases not covered by clauses (a) and (b).

6. Order by appropriate authority for purchase by Central Government of immovable property.

269-UD. (1) Subject to the provisions of sub-section (1-A) and (1-B), the appropriate authority, after the receipt of the statement under sub-section (3) of Section 269-UC in respect of any immovable property, may, notwithstanding anything contained in any other law or any instrument or any agreement for the time being in force, make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration :

Provided that no such order shall be made in respect of any immovable property after the expiration of a period of two months from the end of the month in which the statement referred to in Section 269-UC in respect of such property is received by the appropriate authority :

Provided further that where the statement referred to in Section 269-UC in respect of any immovable property is received by the appropriate authority on or after the 1st day of June, 1993, the provisions of the first proviso shall have effect as if for the words "two months", the words "three months" had been substituted.

Provided also that the period of limitation referred to in the second proviso shall be reckoned, where any defect as referred to in sub-section (4) of Section 269-UC has been intimated, with reference to the date of receipt of the rectified statement by the appropriate authority :

Provided also that in a case where the statement referred to in Section 269-UC in respect of the immovable property concerned is given to an appropriate authority, other than the appropriate authority having jurisdiction in accordance with the provisions of Section 269-UB to make the order referred to in this sub-section in relation to the immovable property concerned, the period of limitation referred to in the first and second proviso shall be reckoned with reference to the date of receipt of the statement by the appropriate authority having jurisdiction to make the order under this sub-section :

Provided also that the period of limitation referred to in the second proviso shall be reckoned, where any day has been granted by any Court against the passing of an order for the purchase of the immovable property under this Chapter, with reference to the date of vacation of the said stay.

(1-A) Before making an order under sub-section (1), the appropriate authority shall give a reasonable opportunity of being heard to the transferor, the person in occupation of the immovable property if the transferor is not in occupation of the property, the transferee and to every other person whom the appropriate authority knows to be interested in the property.

(1-B) Every order made by the appropriate authority under sub-section (1) shall specify the grounds on which it is made.

(2) The appropriate authority shall cause a copy of its order under sub-section (1) in respect of any immovable property to be served on the transferor, the person in occupation of the immovable property if the transferor is not in occupation thereof, the transferee, and on every other person whom the appropriate authority knows to be interested in the property.

7. 269-UF. (6) Where an order under sub-section (1) of Section 269-UD is made in respect of an immovable property, being rights of the nature referred to in sub-clause (ii) of clause (d) of Section 269-UA, such order shall have the effect of-

(a) vesting such right in the Central Government, and

(b) placing the Central Government in the same position in relation to such rights as the person in whom such a right would have continued to vest if such order had not been made.

8. 269-UE. (7) Where any rights in respect of any immovable property, being rights in, or with respect to, any land or any building or part of a building which has been constructed or which is to be constructed have been vested in the Central Government under sub-section (6), the provisions of sub-sections (1), (2), (3) and (4) shall, so far as may be, have effect as if the references to immovable property therein were references to such land or building or part thereof, as the case may be.

9. Restrictions on revocation or alteration of certain agreements for the transfer of immovable property or on transfer of certain immovable property.

269-UK. (1) Notwithstanding anything contained in any other law for the time being in force, no person shall revoke or alter an agreement for the transfer of an immovable property or transfer such

property in respect of which a statement has been furnished under Section 269-UC unless, -

(a) the appropriate authority has not made an order for the purchase of the immovable property by the Central Government under Section 269-UD and the period specified for the making of such order has expired; or

(b) in a case where an order for the purchase of the immovable property by the Central Government has been made under sub-section (1) of Section 269-UD, the order stands abrogated under sub-section (1) of Section 269-UH.

(2) Any transfer of any immovable property made in contravention of the provisions of sub-section (1) shall be void.

10. Restrictions on registration, etc., of documents in respect of transfer of immovable property.

269-UL. (1) Notwithstanding anything contained in any other law for the time being in force, no registering officer appointed under the Registration Act, 1908 (16 of 1908), shall register any document which purports to transfer immovable property exceeding the value prescribed under Section 269-UC unless a certificate from the appropriate authority that it has no objection to the transfer of such property for an amount equal to the apparent consideration therefor as stated in the agreement for transfer of the immovable property in respect of which it has received a statement under sub-section (3) of Section 269-UC, is furnished along with such document.

(2) Notwithstanding anything contained in any other law for the time being in force, no person shall do anything or omit to do anything which will have the effect of transfer of any immovable property unless the appropriate authority certifies that it has no objection to the transfer of such property for an amount equal to the apparent consideration therefor as stated in the agreement for transfer of the immovable property in respect of which it has received a statement under sub-section (3) of Section 269-UC.

(3) In a case where the appropriate authority does not make an order under sub-section (1) of Section 269-UD for the purchase by the Central Government of an immovable property, or where the order made under sub-section (1) of Section 269-UD stands abrogated under sub-section (1) of Section 269-UH, the appropriate authority shall issue a certificate of no objection referred to in sub-section (1) or, as the case may be, sub-section (2) and deliver copies thereof to the transferor and the transferee.

11. Immunity to transferor against claims of transferee for transfer.

269-UM. Notwithstanding anything contained in any other law or in any instrument or any agreement for the time being in force, when an order for the purchase of any immovable property by the Central Government is made under this Chapter, no claim by the transferee shall lie against the transferor by reason of such transfer being not in accordance with the agreement for the transfer of the immovable property entered into between the transferor and transferee :

Provided that nothing contained in this section shall apply if the order for the purchase of the immovable property by the Central Government is abrogated under sub-section (1) of Section 269-UH.

7. There is no dispute that agreement for transfer, which has been reduced into writing in Form 37-I, pertains to immovable property and amounts to transfer of immovable property within the meaning of clauses (d) and (f) of Section 269-UA. High Court, after examining the terms of the agreement and the provisions of

Chapter XX-C, reached various findings in paragraph 28 of the judgment, which we reproduce :-

"To sum up, our findings are :-

(i) Agreement for transfer as defined in clause (a) of Section 269-UA refers to an agreement which is entered into privately between the parties thereto; such an agreement may be oral or in writing.

(ii) An agreement for transfer entered into by the parties in Form 37-I under Section 269-UC is not an agreement defined by clause (a) of Section 269-UA. It is an agreement statutorily ordained to be entered into in a prescribed pro forma.

(iii) Agreement for transfer, the phrase as occurring in Chapter XX-C has two meanings depending on the context where it occurs. It may be an agreement for transfer as defined in Clause (a) of Section 269-UA (which in this judgment has been referred to as private agreement). It may be an agreement for transfer as defined in Section 269-UC (which in this judgment has been called a pro forma agreement). Since the agreement for transfer under Section 269-UC is to be drawn up in the form of a statement, in Chapter XX-C, the word 'statement' has been used interchangeably with

agreement for transfer in form 37-I. "Agreement for transfer" as occurring in Section 269-UKI, Section 269-UM and Section 269-UD is to be assigned the meaning as defined by Clause (a) of Section 269-UA. At all the other places in Chapter XX-C, agreement for transfer means and must be read as pro forma agreement i.e. an agreement for transfer in the prescribed form 37-I as the context so requires.

(iv) The Appropriate Authority cannot be found fault with refusing to act upon or take cognisance of pro forma agreement in statement form 37-I (i) if the requisite particulars though available are not supplied or (ii) if the requisite particulars would be available at the time when the property has reached a state in which it is proposed to be transferred and yet the particulars are not being made available with precision because the form is being filed with a view to secure NOC for a transfer in contemplation.

(v) A delay in filing Form 37-I is not a defect. The period of 15 days prescribed by Rule 48-L is directory and not mandatory.

(vi) The period of 15 days is to be calculated from the date of entering into the pro forma agreement in Form 37-I and not from the date of any other proceeding (sic) private agreement between the parties.

(vii) if there are agreement more than one entered into between the parties then it is the latest of the agreements which supersedes the earlier ones which has to accompany Form 37-I when filing before the Appropriate Authority. Other agreements if relevant may or (sic) looked into by the Appropriate Authority.

(viii) A defect contemplated by Section 269-UC (4) is one which is capable is being cured.

(ix) The stage for entering into the statutory agreement or pro forma agreement in Form 37-I arises when the parties are ready to make available all the particulars contemplated by several clauses of Form 37-I consistently with the nature of the property. The date of entering into the pro forma agreement must have proximity of relationship by time with the proposed transfer of property as defined in clause (f) of Sec. 269-UA. The test for determining proximity of relationship is the availability of the property agreed to be transferred in such status in which it is proposed to be transferred.

(x) A no objection issued by appropriate authority based on an agreement for transfer of property to

be constructed cannot be utilised for securing registration of property which has been constructed."

8. Agreement for transfer and statement in Form 37-I are two different documents. As rightly held by the High Court agreement for transfer can be oral as well as in writing but then this agreement for transfer has to be reduced in writing in Form 37-I. High Court has held that in certain sections in Chapter XX-C 'agreement for transfer' in fact means statement in Form 37-I as mentioned in sub-para (iii) of its findings.

9. The question that arise for consideration is if the period of 15 days, as mentioned in Rule 48-L, is to be calculated from the date when a prospective buyer applies for allotment of a flat or from the date when a regular agreement called the "Apartment Buyers' Agreement" is entered into between the transferor and the transferee or when the agreement for transfer is reduced into writing in Form 37-I. Appropriate Authority has held that 15 days are to be counted from the date when booking of the flat is done by the DLF or Ansal as the letter for booking and the official endorsements thereon constitute a regular agreement between the parties. This question, however, becomes academic if we hold that 15 days period is to be counted from the date when agreement for transfer is reduced into writing in the form of statement (Form 37-I). Can it be said under Rule 48-L that the term 'agreement for transfer' mentioned in clause (c) of sub-rule (2) thereof in fact means statement in Form 37-I ? If we take the literal meaning, this provision will become rather otiose. An 'agreement for transfer' is inter-parties and that can always be changed. That the term 'agreement for transfer' in fact means statement in Form 37-I, we can get clue from Section 269-UK which says that no person shall revoke or alter agreement for the transfer of an immovable property or transfer such property in respect of which a statement has been furnished under Section 269-UC. Reference to this statement is certainly to Form 37-I, it would mean that agreement for transfer can be changed by the parties but they have been forbidden from doing so after statement in Form 37-I has been furnished. We have, therefore, to give appropriate meaning to the term 'agreement for transfer' appearing in clause (c) of sub-rule (2) of Rule 48-L and cannot just adopt literal meaning. Foundation for exercise of jurisdiction by the Appropriate Authority under Section 269-UD is the statement in Form 37-I and not agreement for transfer.

10. In *C. B. Gautam v. Union of India*, (1993) 199 ITR 530, reference was made to an earlier decision by this Court in the case of *K. P. Varghese v. Income-tax Officer*, (1981) 131 ITR 597 : (AIR 1981 SC 1922) where the following passage was quoted with approval :

"The Court observed that the task of interpretation of a statutory enactment is not a mechanical task. The famous words of Judge Learned Hand of the United States of America that ".....it is true that the words used even in their literal sense are the primary and ordinarily the most reliable source of interpreting the meaning of any writing : be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning" were quoted with

approval."

It has, therefore, to be held that this term 'agreement for transfer' in clause (c) of sub-rule (2) of Rule 48-L, has reference to statement in Form 37-I.

11. The next question that arises for consideration is if clause (c) is mandatory or the Appropriate Authority has power to extend the time if the circumstances so require. Sub-rule (2) of Rule 48-L in which clause (c) occurs was substituted by the Income-tax (Seventh Amendment) Rules, 1987. Sub-section (4) of Section 269-UC was inserted by Finance Act, 1995 with effect from 1-7-1995. Before the insertion of sub-section (4) this Court in *Appropriate Authority v. Tanvi Trading and Credits P. Ltd.*, (1991) 191 ITR 307 approved the decision of the Delhi High Court in *Tanvi Trading and Credits P. Ltd. v. Appropriate Authority*, (1991) 188 ITR 623 by holding :-

"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. The special leave petition is dismissed. No costs."

Sub-section (4) of Section 269-UC was considered by this Court in *Jagdish A. Sadarangani v. Government of India*, (1998) 230 ITR 442. That case related to the interpretation of the provisions of sub-section (4) of Section 269-UC of the Act. Sadarangani, the appellant entered into an agreement dated September 9, 1995 for purchase of certain property in Madras for a sum of Rs. 5.50 crores. The property comprised upon land and built-up area. On the same date application in Form 37-I was filed before the Appropriate Authority. A letter dated October 30, 1995 was addressed by the Appropriate Authority to both the transferors and the transferees seeking certain clarifications in respect of certain points. After reply was received, the Appropriate Authority by order dated December 11, 1995 held that in view of the provisions of Section 6 of the Tamil Nadu Urban Land Ceiling Act the agreement dated September 7, 1995 to transfer entire land including the excess vacant land shall be deemed to be null and void and in that view of the matter Appropriate Authority could not effectively exercise its powers with regard to pre-emptive right to purchase the subject property. This Court referred to its earlier decision in *Appropriate Authority v. Tanvi Trading and Credits P. Ltd.*, (1991) 191 ITR 307, which approved the decision of the Delhi High Court as follows :

"Sub-section (4) was inserted in Section 269-UC by the Finance Act, 1995, with effect from July 1, 1995. Section 269-UC, as it stood before the said amendment of 1995, came up for consideration before the various High Courts. In *Tanvi Trading and Credits P. Ltd. v. Appropriate Authority*, (1991) 188 ITR 623, a Division Bench of the Delhi High Court has considered the provisions

contained in Sections 269-UC, 269-UD and 269-UL of the Income-tax Act. It has been held that the only right which Section 269-UD of the Act confers on the Appropriate Authority is to enable it to make an order for purchase of the 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 269-UD 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 269-UD is an order to purchase and no other order and 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 269-UL(3). The said decision of the Delhi High Court came up for consideration before this Court in Appropriate Authority v. Tanvi Trading and Credits P. Ltd., (1991) 191 ITR 307. This Court, while dismissing the special leave petition against the said judgment of the Delhi High Court, has said (page 308) :

"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."

12. Then this Court construed sub-section (4) of Section 269-UC as under :

"We are unable to construe the provisions contained in sub-section (4) of Section 269-UC 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 269-UC(2) has been submitted. What is contemplated by sub-section (4) of Section 269-UC is that if there is a defect in the statement submitted under Section 269-UC(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 269-UC 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 269-UC a defect regarding the 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 269-UC Parliament intended to confer a power on the Appropriate Authority to go into the legality or validity of the agreement."

13. Now Appropriate Authority is obliged to give opportunity to the parties to rectify the defects, if any, in Form 37-I within a period of 15 days or such extended period as the Appropriate Authority may allow. If we consider Section 269-UC(4) vis-a-vis Rule 48-L scenario or setting is rather incongruous. If statement in Form 37-I has no defect Rule 48-L mandates that it should be filed within 15 days but if it is defective then opportunity can be granted by the Appropriate Authority under sub-section (4) of Section 269-UC to correct mistakes even beyond the period of 15 days after filing of the statement in Form 37-I. It would appear that no thought was given to amend clause (c) of sub-rule (2) of Rule 48-L while inserting sub-section (4) of Section 269-UC of the Act. It would further appear as rightly held by the High Court that Rule 48-L is only directory and not mandatory.

14. We may also note the argument of the Appropriate Authority which was pressed into service to support its plea that 15 days period in Rule 48-L is mandatory and that Section 276-AB provides for prosecution in case there is failure to comply with the provisions of Section 269-UC. Submission of Form 37-I within the prescribed period is not the only requirement of Section 269-UC. Then under Section 278-AA12 if a person proceeded against under Section 276-AB13 and shows reasonable cause for his failure to file the statement in Form 37-I within the prescribed period, he cannot be punished. We do not think that the provision of Section 276-AB makes Rule 48-L in any way mandatory.

12. Punishment not to be imposed in certain cases.

278-AA. Notwithstanding anything contained in the provisions of Section 276-A, Section 276-AB, or Section 276-B, no person shall be punishable for any failure referred to in the said provisions if he proves that there was reasonable cause for such failure.

13. Failure to comply with the provisions of Sections 269-UC, 269-UE and 269-UL.

276-AB. Whoever fails to comply with the provisions of Section 269-UC or fails to surrender or deliver possession of the property under sub-section (2) of Section 269-UE or contravenes the provisions of sub-section (2) of Section 269-UL shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, such imprisonment shall not be for less than six months.

15. DLF and Ansal have strong objection to findings of the High Court in sub-paras (ix) and (x) in

para 28 of the judgment reproduced above. However, according to the Appropriate Authority keeping in view the principles laid by this Court in G. B. Gautam's case (1993 (199) ITR 530), it can exercise its jurisdiction to acquire the property if consideration agreed to is less than 15% of the market value. Mr. Verma, who appeared for the Appropriate Authority, said that the agreement for transfer contains variables and unless all these are known, Appropriate Authority will be handicapped in making an order under Section 269-UD. The variables which form terms in the agreement for transfer are external development charges that may be levied by the State of Haryana and price escalation up to 20% of the agreed consideration. It is a matter of common knowledge that in course of time, there can be escalation in the prices of various articles like steel, cement, labour etc. One can say with certainty that price escalation would be within the limit of 20% escalation and the external development charges that may be levied by the State of Haryana would be on certain set principles. Provision of Chapter XX-C do not require the parties to enter into more than one agreement for transfer. It is on the basis of the terms of that agreement for transfer which is reduced into writing in the shape of Form 37-I that the Appropriate Authority has to make up its mind to pass an order under Section 269-UD. These provisions do not contemplate filing of more than one Form 37-I and grant of more than one no objection certificate by the Appropriate Authority. We may in this connection refer to sub-sections (6) and (7) of Section 269-UE. Immovable property, subject-matter of transfer, is of the nature referred to in sub-clause (ii) of clause (d) of Section 269-UA and when an order is made under Section 269-UD with respect to that property, it shall place the Central Government in the same position in relation to such right as the person in whom such a right would have continued to vest if such order had not been made. The whole agreement for transfer and Form 37-I are before the Appropriate Authority. It has to make its mind once and for all whether to pass an order under Section 269-UD or not. If not, it is bound to grant no objection certificate as required by Section 269-UL. We do not, therefore, think that the High Court was right in its findings as given in sub-paras (ix) and (x) of para 28 of its judgment.

16. One of the grounds of rejection of Form 27-I was that it did not contain particulars required by paras 1214 and 1315 given in the Form. It must be seen that Form 37-I is a composite form used whether the transaction is sale, lease or exchange. It may not, therefore, be necessary that all the paras are required to be filled in when the transaction is either for sale or lease or exchange. Para 12 requires the particulars about the acquisition of the property which is proposed to be transferred. Requirement of para 13 is that names of the persons interested in the property be given and so also the consideration specifying their shares and basis thereof. As far as paras 12 and 13 are concerned, these requirements and particulars in the case of agreement for transfer as in the present case would appear to be rather unnecessary. When the Appropriate Authority pointed out that this was a defect and required Ansal to remove the defect, it was submitted by Ansal that it had purchased agricultural lands from time to time, obtained the licenses for sale of plots, houses, flats etc. and after obtaining the licenses, plots, houses and flats etc. were being sold regularly. It was further submitted that since last so many years permission under Chapter XX-C was also being given regularly and further that the lands were being developed by Ansal and were in their possession. Similarly, DLF had stated in Form 37-I with reference to paras 12 and 13 that immovable property was acquired from October 29, 1980 onwards and cost of acquisition of land worked out Rs. 1,534.00 per square meter. We do not think anything more was required to be stated in paras 12 and 13 of Form 37-I. As pointed out by this Court in C. B. Gautam's case (1993) 199 ITR 530 that the very historical setting in which the provisions of Chapter XX-C were enacted indicates that it was intended to be resorted to only in cases where there is an attempt at tax evasion by significant undervaluation of immovable property agrees to be sold. It is the fair market value of the immovable

property, which is to be found out and if the

Appropriate Authority is satisfied that the apparent consideration shown in the agreement for sale is less than the market value by 15% or more it may draw a presumption that this under valuation has been done with a view to evading tax. While examining the statement in Form 37-I this object has to be kept in view by the Appropriate Authority. It cannot act in a mechanical fashion and pass its order on irrelevant considerations. Sub-section (4) of Section 269-UC is not a device for the Appropriate Authority to raise irrelevant considerations ignoring the very object of Chapter XX-C. Paras 12 and 13 of Form 37-I cannot be sold to be relevant in the present cases. We, therefore, fail to understand as to what prevented the Appropriate Authority to exercise jurisdiction under Section 269-UD. The view which we have taken of Rule 48-L there is no delay in submission of statement in Form 37-I in any of the cases. Thus, taking note of all the relevant consideration, we are of the opinion that the Appropriate Authority was not correct in passing orders that the statement in Form 37-I was deemed never to have furnished, thus, creating a statement for sale of the flats which have by now been built but could not be transferred.

14. 12. Particulars about acquisition of the property proposed to be transferred :-

(i) Date on which the immovable property was acquired.

(ii) Cost of acquisition of the property. If the property was constructed by the transferor(s), the cost of acquisition of the land and cost of construction is to be given separately.

(iii) Was the property or part thereof acquired other than by way of purchase? If so, give the details of such acquisition and cost of acquisition to the previous owner. Furnish a copy of relevant document.

15. 13. Persons interested in the property and in the consideration specifying their shares and basis thereof.

(i)

(ii)

17. High Court by its impugned judgment allowed the writ petitions and set aside the orders of the Appropriate Authority. It directed that the Appropriate Authority shall take decisions afresh in each of the cases in accordance with law and consistently with the principles stated in the judgment which may be done within a period of three months. Since we have not agreed with all the findings of the High Court and in our opinion Appropriate Authority was not justified in holding that statement in Form 37-I was deemed never to have furnished, the question arises as to how the relief is to be moulded.

18. Under Section 269-UD an order by Appropriate Authority has to be made within three months of the receipt by it of the statement in Form 37-I. We have already held that statement filed in Form 37-I was in order. Since the Appropriate Authority did not pass any order within the prescribed period it had to issue no objection certificate under Section 269-UL. It is no use at this distant time sending the matter back to the Appropriate Authority for it again to apply its mind as period prescribed within which it has to pass order for purchase of the property by the Central Government has long since expired.

19. In *MOI Engineering Ltd. v. Appropriate Authority*, (1992) 198 ITR 270, which is a judgment of the Calcutta High Court, one of us (Ruma Pal, J.) noted that in view of the decision of Delhi High Court and the Supreme Court in *Tanvi Trading and Credits P. Ltd.*, (1999) 191 ITR 307) the Appropriate Authority, in exercise of its powers under Section 269-UD of the Act, did not have the jurisdiction to adjudicate upon the legality of the transaction, which was proposed to be entered into by the parties. It was also held that the only order which could be passed under Section 269-UD was an order of purchase and none other. The only point, therefore, which fell for consideration, was whether, in the circumstances, the Court could direct the Appropriate Authority to issue a 'No Objection Certificate' under Section 269-UL(3) of the Act or whether the Court should direct the Appropriate Authority to decide the matter afresh. After examining provisions of Chapter XX-C and considering various decisions of the High Courts and of this Court the order of the Appropriate Authority first holding that the statement filed in Form 37-I was premature and then refusing to grant No Objection Certificate, were quashed and directions were issued to the Appropriate Authority that No Objection Certificate under Section 269-UL(3) of the Act in respect of the transfer of the premises in terms of the agreement between the parties be issued.

20. In *Murlidhar Ratanlal Exports Ltd. v. Appropriate Authority*, (1998) 101 Taxman 562 (Cal) (DB), the High Court was considering an appeal against the order of the learned single Judge in *Shree Digvijay Cement Co. Ltd. v. Appropriate Authority*, (1998) 99 Taxman 32 (Cal). Here the agreement of sale was dated 7-3-1994. By insertion of Section 269-UL the Appropriate Authority treated the form 37-I as non est. The only question before the High Court was as to whether upon the submission of Form 37-I the Appropriate Authority had any option to pass order, the like of which it has done in the present case. In other words, under the Scheme of Chapter XXC, particularly with reference to Sections 269-UC, 269-UD and 269-UL, read with Section 276-AB, whether the Appropriate Authority is legally bound and obliged upon submission of Form No. 37-I only to pass order either granting 'No-Objection' Certificate to the parties or to direct the pre-emptive purchase of the property in terms of Section 269-UD, and not to pass any other order

whatsoever. In effect and substance, thereof, the appropriate authority has only two options, either to grant no objection certificate or to invoke Section 269-UD. The Division Bench noticed that under the agreement for sale, which was on the basis of Form 37-I, it was clear that the possession of the property in question was handed over by the vendor to the vendee not in pursuance of the sale agreement but as a consequence of the agreement for lease and that, therefore, there was no transfer within the meaning of clause (f) of Section 269-UA of the Act. Then the High Court went on to hold as under :-

"After having, thus, found that the Appropriate Authority acted in violation of law and beyond the jurisdiction vested in it, we have no hesitation in holding that it has lost the right to adjudicate upon the issue of the genuineness or otherwise on the apparent consideration, particularly because the time during which this had to be done has since expired. Since the Appropriate Authority failed to exercise the jurisdiction vested in it by law, and because we are proposing to set aside the order dated 24-6-1994, no purpose would be served by sending the matter back to the Appropriate Authority for reconsideration on the question of the appropriateness or otherwise of the apparent consideration. As no decision was taken by the Appropriate Authority within the time envisaged under Section 269-UD with regard to the apparent consideration, and because of the reason that we have set aside that order, the time limit cannot be extended by us and, therefore, the Appropriate Authority is bound to issue the certificate of 'No Objection' to the parties. We are fortified in our view by the two judgments of the Calcutta High Court in the cases of *Moi Engg. Ltd. v. Appropriate Authority*, (1992) 198 ITR 270 and *Hindustan Lever Ltd. v. Appropriate Authority*, (1994) 207 ITR 772 : (1994 Tax LR 146)."

21. We are of the opinion that these two decisions in *Moi Engineering Ltd.* (1992) 196 ITR 270) and *Murlidhar Ratanlal Exports Ltd.* (1998) 101 Taxman 562) state correct principles which can be applied in the present cases. We have held that statement in Form 37-I was in order and was furnished to the Appropriate Authority within the time prescribed. The Appropriate Authority did not make any order within three months of its receipt of the said statement for purchase by the Central Government of the immovable property in question. That being the position, the Appropriate Authority is duty bound to issue no objection certificate to the transfer of the property in the circumstances of the case we can also exercise jurisdiction under Article 142 of the Constitution. We would, therefore, direct the Appropriate Authority to grant no objection certificate to the parties forthwith.

22. The appeals are disposed of accordingly. Considering the issues involved in these appeals we leave the parties to bear their own costs.

Order accordingly.