Karnataka High Court Vidyavathi Kapoor Trust vs Chief Commissioner Of Income-Tax ... on 23 August, 1991 Equivalent citations: ILR 1991 KAR 3414, 1992 194 ITR 584 KAR, 1992 194 ITR 584 Karn Author: S Mohan Bench: S Mohan, N Hanumanthappa JUDGMENT S. Mohan, C.J. 1. These two appeals arise out of the judgment of our learned brother Rajasekhara Murthy J., dated April 19, 1991, rendered in Writ Petition No. 6655 of 1991. 2. We will refer to the facts in Writ Appeal No. 1318 of 1991 : Appellant entered into an agreement on November 28, 1990, with the third respondent for sale of an immovable property known as Mohan Buildings situate at Nos. 775 to 809, Old Taluk Cutchery Road, Chickpet, Bangalore. Both the appellant and the third respondent, i.e., the transferor and the transferee, filed Form No. 37-I prescribed by the Income-tax Rules, 1962 (hereinafter referred to as "the Rules"), framed under the Income-tax Act, 1961, (hereinafter referred to as "the Act"), with the appropriate authority on November 30, 1990. The appropriate authority, by exercising power under section 269UD(1) of the Act, passed an order on January 24, 1991, directing the purchase of the said immovable property by the Central Government and holding that the property has vasted in the Central Government. The consideration for sale was Rs. 1,55,00,000. In and by the agreement, a sum of Rs. 50,00,000 shall be paid within ten days from the date of receipt of the no objection certificate, and that the remaining sum of Rs. 55,00,000 shall be paid at the time of registration of the sale deed or within one year from the date of the agreement, whichever is earlier. The appropriate authority held that the provision pertaining to discounting the apparent consideration was available in respect of absolute of immovable property and, accordingly, arrived at the discounted value of consideration at Rs. 1,50,17,084. This was as against the apparent consideration of Rs. 1,55,00,000 stated in the agreement for sale. The appellant authorised the Chief Commissioner of Income-tax to pay Rs. 50,00,000 to the transferee, being the advance received by him. The Chief Commissioner of Income-tax paid to the appellant a sum of Rs. 97,67,233 the details of which are as under : Rs. Rs. Apparent consideration payable : 1,50,17,084 Less : Advance amount payable to third respondent : 50,00,000 Amount of arrears of tax outstanding towards income-tax/ wealth-tax in the case of Mohanlal Kapur, the beneficiary of the trust, as intimate by the Income-tax Officer, Ward-1(1), Bangalore, vide his letter dated 22-2-1991 : Income-tax 2,39,749 Wealth-tax 10,102 ———— 52,49,851 52,49,851 ————- Net consideration payable : 97,67,233 ————-

3. It was at this stage that Writ Petition No. 6655 of 1991 was filed by the appellant questioning the order of the appropriate authority dated January 24, 1991, and praying for a writ of certiorari to quash the same.

4. The learned single judge did not think it worthwhile to go into the merits. He was of the view that the appellant had acquiesced in the order of the appropriate authority without any reservation both with regard to the reasons given by it and the amount of net consideration determined as payable to the vendor (i.e., the appellant). Further, the appellant produced doc-

uments of title and furnished all particulars to the Chief Commissioner of Income-tax, handed over possession of the property, and attorned the tenancy existing in a portion of the building. After concluding so, the learned judge gave a direction to the Chief Commissioner of Income-tax to pay to the appellant a sum of Rs. 2,49,851 which, according to him, was not liable to be deducted from the consideration payable. Ultimately, by his order dated April 19, 1991, the learned judge dismissed the writ petition. It is against the said order that the appellant has preferred Writ Appeal No. 1318 of 1991.

5. As against the direction given by the learned single judge for payment of Rs. 2,49,851 to the appellant-transferor, the Revenue has preferred Writ Appeal No. 1335 of 1991.

6. Mr. K. Srinivasan, learned counsel for the appellant-transferor, attacking the order of the Chief Commissioner of Income-tax dated January 24, 1991, makes the following submissions : The order of the appropriate authority does not disclose any reason ex facie. Even if such reasons are contained in the file, they have not been communicated to the appellant.

7. Before recording the reasons which is a sine qua non for the exercise of power under section 269UD, an opportunity ought to have been afforded to the appellant to put forth its say. Failure to give such opportunity is violative of the principles of natural justice.

8. The definition of "apparent consideration" contained in clause (b) of section 269UA of the Act does not enable to arrive at a discounted value as far as the is concerned; it will apply only to leases. Assuming without admitting that there is a possibility of arriving at a discounted value even for sale, there are no specific dates in the agreement for sale. Unless and until, therefore, there is a specific date or dates, the discounted value cannot be arrived at. After payment of advance of Rs. 50,00,000 the further advance of Rs. 50,00,000 was to be paid within ten days from the date of receipt of the non objection certificate. One is not certain as to the date on which the appellant could expect the no objection certificate. The again, the balance of Rs. 55,00,000 is to be paid at the time of registration of the sale deed or within one year from the date of agreement, whichever is earlier. This again is not a specific date. Therefore, there was no jurisdiction to decided the apparent consideration.

9. The apparent consideration has not been paid within the prescribed period. The fact that the learned single judge directed payment of Rs. 2,49,851 itself is proof of the fact that the apparent consideration has not been paid. If that be so, where the appellant would be entitled to the no objection certificate under section 269UL(3) consequent on the failure to pay, the learned single judge was not right in extending the time for payment. As a matter of fact, section 269UH is unambiguous and does not vest power in any court to extend the period for payment of consideration.

10. Elaborating these submissions, learned counsel cite a Division Bench judgment of the Madras High Court in Government of India v. Maxim A. Lobo [1991] 190 ITR 101. This case is a clear authority for the proposition that the failure to afford an opportunity before an order is passed under section 269UD(1) of the Act would constitute flagrant violation of the rules of natural justice, and such an order cannot be sustained.

11. The next decision cited is Ajantha Industries v. CBDT . No doubt that case arose under section 127 of the Act; but the ratio squarely applies. Similarly, in S. L. Kapoor v. Jagmohan, , where supersession of a municipal council was ordered without hearing the concerned, that was held to be bad for violation of principles of natural justice. Then, the further question would be as to at what stage the hearing must be afforded. Certainly not before the authority decides to make the compulsory purchase; but, after arriving at the conclusion, if the reasons for such conclusion are communicated to the transferor, it would be open to him to demolish the reasons or at any rate demonstrate that such reasons cannot hold good. "Reasons to be recorded", means the order must contain reasons and they must be communicated to the party.

12. Section 269UA(b) defines "apparent consideration". That is the consideration specified in the agreement for sale. There cannot be any discounted value, except in the case of lease. When the definition clause says that, where the whole or any part of the consideration for such transfer by way of lease is payable on any date or dates falling after the date of such agreement for transfer the value of the consideration payable after such date shall be deemed to be the discounted value of such consideration, it cannot apply to a case of sale. Even otherwise, there are no specific dates as seen from clauses 1.3 and 1.4 of the agreement for sale. The two dates in the said clauses are hypothetical and, there is no scope for arriving at the discounted value.

13. Under section 269UG(1), proviso, the authorisation is only for the deduction of the liability of any person entitled to consideration. This means that the transferor, in the instant case, is a trust, and the trust as seen from Form No. 37-I is not an assessee. What has been deducted is the liability of the beneficiary. If the beneficiary is not entitled to receive the consideration, it will be illegal in law to deduct the liability of the beneficiary. This proviso contain three elements : (i) the tendering of consideration amount must be to the transferor; (ii) it must be pursuant to an order of the appropriate authority, and not any one else; in the instant case, it is the Chief Commissioner of Income-tax who orders so, and he is not thought of under this section, and (iii) this could be only after intimation. Therefore, if these three elements are not satisfied, the property shall revert to the transferor and the no objection certificate shall be issued as provided for under section 269UL(3) as laid down in Mrs. Satwant Narang v. Appropriate Authority . The submission is that where the Act

prescribes the consequences of not doing a thing, which consequences are serious in nature, the court cannot extend the time and defeat the working of the Act. In support of this Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke, is cited.

14. On the plea of acquiescence on which the appellant was non-suited, the submission is that the Chief commissioner of Income-tax has no jurisdiction to give directions and it is only the appropriate authority who can do that. Therefore, if the appellant accepts the money, that would not constitute acquiescence. In support of this, reliance is place on Khardah Co. Ltd. v. Raymon and Co. (India) P. Ltd., AIR 1956 Mad 680, and Union of India v. Watkins Mayor and Co., . Citing Krishnegowda v. Shivappa, , it is submitted that, where the order itself is a nullity, there cannot be an acquiescence. Further, reliance is placed on Orient Paper Mills v. Union of India, and Bakharia Dhuria v. Manak Gangaram, AIR 1954 Nag 97. In K. M. Oosman and Co. v. K. Abdul Malick Sahib, , which arose under the Trade Marks Act, it was held that acquiescence cannot be implied merely because of the delay in filing the suit or because the plaintiff was using the trade mark for a short period. In Basheshar Nath v. CIT , it has been held that voluntary relinquishment cannot amount to acquiescence. Again, in Manak Lal v. Dr. Prem Chand Singhvi, , it has been specifically held that the waiver of any right must be where the party was fully cognisant of his right. In C. N. Nataraj v. Fifth ITO [1965] 56 ITR 250 (Mys), where the service of notice under section 282(2) of the Act was not effected properly, the question arose as to whether it would amount to acquiescence; the principle laid down therein will clearly apply to this case as well. Likewise, in Gobinda Ramanuj Das Mohanta v. Ram Charan Das, AIR 1925 Cal 1107. The question, therefore, is whether the transferor has received the sum under protest. No doubt, in explicit terms, he has not done so. But, even then, where it is illegal, it would not matter as laid down in Goparanjan Dube v. Arbitrator, ; Gian Chand Dhawan v. Union of India, and Karnail Singh v. State of Punjab, .

15. The fact that the appellant asked for a higher amount and accepted a lower amount would not mean waiver of a right as laid down in Kamalpur (Assam) Tea Estate Pvt. Ltd. v. Superintendent of Taxes .

16. Mr. H. Raghavendra Rao, learned counsel for the Revenue, resting his case on acquiescence, refers us to the circumstances under which the appellant-transferor came to accept the payment of Rs. 97,67,233 as detailed in the statement of objections. Thereafter, he refers to Form No. 37-I wherein it is stated in the column of particulars of the transferor thus : "Messrs. Vidyavathi Kapur Trust, a private trust having its office at Rex Theatre Building No. 12, Brigade Road, Bangalore-560 001, represented by its trustees : (1) Mrs. Vidyavathi Kapur, (2) Mr. Mohanlal Kapur". While passing on the receipt on February 28, 1991, for Rs. 97,67,233 there was absolutely no protest at all. As a matter of fact, on February 26, 1991, the

trust was informed that the apparent consideration was Rs. 1,50,17,084 and certain amounts were going to be adjusted, and the transferor was called upon to obtain payment of Rs. 97,67,233 by way of cheque on February 28, 1991 positively. Later on, the order under section 269UF(1) of the Act was passed on February 26/27, 1991, and, in paragraph 9 of that order, the letter of the transferor dated February 26, 1991, was specifically referred to. Thereafter, on February 28, 1991, the receipt was passed on by the transferor. There cannot be a better case for acquiescence. The principle can be gathered from the leading case reported in Pannalal Binjraj v. Union of India . To the same effect is Maharashtra State Road Transport Corpn. v. Balwant Regular Motor Service, and State of Haryana v. Jage Ram, AIR 1980 SC 2018. Reliance is also placed on Lindsay Petroleum Co. v. Prosper Armstrong Hurd Abram Farewall and John Kemp, [1874] 5 PC 221. Where, therefore, the party, fully conscious of the right, did not think it worthwhile to offer even the mildest form of protest, he cannot turn round and say that the order is bad and the principle of acquiescence would not apply. In Chandra Bhan Singh v. Latafat Ullah Khan, , it was held that, where a party unlawfully invokes the review jurisdiction of the competent officer, he cannot later on take objection of the department invokes such jurisdiction. The same principle would apply here. This aspect of the matter has been clearly brought out in C. R. Gowda v. Mysore Revenue Appellate Tribunal, [1964] 1 Mys LJ 318; AIR 1965 Mys 41, in which the leading case of Pannalal [1957] 31 ITR 565 (SC) is relied on. Learned counsel also cites De Smith's Judicial Review of Administrative Action, Fourth edition, page 423, which is also relied on in 1964(1) Mys LJ 318, and he also cites Halsbury's Laws of England, Fourth edition, Vol. I, para 71, "Waiver and acquiescence". He also cites the unreported Division Bench decision in Writ Appeal No. 781 of 1989 dated November 6, 1989, of this court, where it was held under the Land Acquisition Act that, if a party prayed for higher compensation, he would be estopped from questioning the validity of the acquisition proceedings.

17. On the point whether reasons are required to be communicated, learned counsel draws our attention to section 148(2) of the Act. The said section requires "recording of reasons." If those reasons are recorded in the file, that would be enough. There is no necessity to communicate those reasons and the leading authority on this is S. Narayanappa v. CIT . The dictum laid down therein has been approved in a number of cases viz., S. Narayanappa v. CIT (sic), Madhya Pradesh Industries Ltd. v. ITO (sic), ITO v. Nawab Mir Barkat Ali Khan Bahadur , Ajantha Industries v. CBDT , ITO v. Lakhmani Mewal Das , Dr. Partap Singh v. Director of Enforcement , Indian Oil Corporation v. ITO (sic) etc. As a matter of fact, reasons have been recorded in the file as seen from the order of the appropriate authority date January 24, 1991.

18. As to when principles of natural justice need not be complied with can be

gathered from Union of India v. J. N. Sinha, , which was a case that arose under the Fundamental Rule 56(j). In Union of India v. Tulsiram Patel, , relating to civil servants, it has been held in paragraph 101 that the exclusion of the principles of natural justice would be justified under certain circumstances. Those circumstances did exist here. Even otherwise, what is the prejudice caused to the transferor ? For the state consideration, instead of his being obliged to sell in favour of a private individual, the Revenue orders the pre-emptive purchase. Therefore, the question of affording an opportunity of hearing does not and cannot arise. The ruling of the Madras High Court reported in Govt. of India v. Maxim A. Lobo [1991] 190 ITR 101 does not lay down the correct law.

19. With regard to the discounting, it is pointed out that, in Form No. 37-I, the discounted value is stated as Rs. 1,49,82,223 in accordance with rule 48(1) of the Rules. It is not that the party was unaware of the discounted value. In order to arrive at the discounted value all that section 269UA(b) provides is "date" or "dates" and not specific date or dates. On a reading of the agreement for sale, whether the dates could be ascertained is the question. Even otherwise, if there is any mistake the proper remedy will be to invoke section 269UJ and seek for rectification of mistakes and, on that score, the order of pre-emptive purchase cannot be held to be bad.

20. The question as to who is the authority enable to deduct will depend upon the interpretation of section 269UA. That section says : "unless the context otherwise requires", the appropriate authority is the authority constituted under section 269UB. Therefore, one must have regard to the context and find out who is the appropriate authority. Under section 269UF, it is the Central Government which pays the amount, under the proviso to section 269UD(1). If that appropriate authority is enable to set off, it means only the Central Government namely, the authority which makes the payment. Therefore, it cannot be the authority which directs the purchase. That being so, if the Central Government could exercise the power by virtue of delegated authority, the Chief Commissioner of Income-tax could exercise his power.

21. As to what is the meaning of "unless the context otherwise requires" can be gathered from State of Tamil Nadu v. Manakchand [1984] 56 STC 237, wherein the Full Bench of the Madras High Court had occasion to interpret this clause, and learned counsel would commend the principle enunciated therein to be applied here. Similarly, Pushpa Devi v. Milkhi Ram deals with this matter. In Girdhari Lal and Sons v. Balbir Nath Mathur, and Vanguard Fire and General insurance Co. Ltd. v. Fraser and Ross [1960] 30 Comp Cas (Ins) 13 (SC), it has been laid down as to what is the meaning of "repugnant to the context" in ascertaining the meaning of the word "insurer"; those principles would apply to the facts of this case. Again, in CIT v. J. H. Gotla this has been discussed. Similarly in State of Punjab v. Zokara Grain Buyers Syndicate Ltd., , it was observed that

the court must ascertain the true intention. Learned counsel also cites Crawford's Interpretation of Laws, page 337, para 196. It was pointed out therein that the court must endeavour to make the legislative intent effective. Shri Balaganesan Metals v. Shanmugham Chetty (M. N.), , arising under the Rent Control Act and Jagir Singh v. State of Bihar, are also cited in tis behalf.

22. In the appeal filed by the Revenue (Writ Appeal No. 1335 of 1991), learned counsel draws our attention to the pleadings and submits that the learned single judge was not right in holding that the Revenue had no objection to repay the amount stated to have been wrongly deducted, nor again did the Revenue at any point of time agree to make good this amount. The pleadings are emphatic on this aspect. There was no undertaking in that behalf. Therefore, the finding to this effect is wrong. If at all, the transferor could have asked for rectification under section 269UJ.

23. On the question as to whose liability could be deducted, though originally learned counsel sought to submit that the beneficiary will be a representative assessee within the meaning of sections 160 and 161 read with section 166 and cited Kanga and Palkhivala's Law and Practice of Income-tax, Seventh edition, Vol. 1, page 946, in this connection, he did not persist in that argument. He, however, subits that, in the trust deed, it is stated that Mohanlal Kapur is the trustee and this is also clear from Form No. 37-I. Mohanlal received the consideration as a trustee. At the time of making payment, the Revenue deducted the tax liability as per the proviso to section 269UG(1). Intimation was also given on February 26, 1991. Despite intimation, there was no demur by the transferor. Therefore, the action is prefectly valid. Accordingly, it is prayed that the appeal of the Revenue may be allowed.

24. Mr. H. B. Datar, Senior Advocate, appearing for the applicant in I. A. III, who purchased the property in the public auction pending the writ appeal, submits that this is a clear case in which the principle of acquiescence would apply. In support of this, De Smith's Judicial Review of Administrative Acts, Fourth edition, pages 422 and 423, is cited. Karnataka Power Corporation Employees' Co-operative Housing Society Ltd. v. State of Karnataka, , is a decision which fully supports this respondent on the principle of acquiescence. Again, in the unreported decision in Writ Appeal No. 781 of 1989 disposed of on November 6, 1989, this court has upheld the principle of acquiescence and that will apply to this case also.

25. With regard to issue of notice and the observance of the principles of natural justice, learned counsel submits that, in all the cases relied on on behalf of the transferor-appellant, some right or other was affected. Where the rights are not affected, nor any civil consequences ensue, there is no necessity to give notice. This aspect of the matter has been brought out in Mohinder Singh Gill v. Chief Election Commissioner, . Similar is the

decision in S. L. Kapoor v. Jagmohan, . In the instant case, there is no question of any prejudice or any right being affected. Instead of selling the property to the party to the agreement for sale, the transferor is obliged to sell in favour of the Revenue for the same consideration. Therefore, no notice is necessary. Learned counsel cites Halsbury's Law of England, Vol. 48, and draws our attention to paragraph 409 wherein the position of trustees vis-a-vis the trust has been clearly discussed. As to when the liability of the trustees for tax would arise is spoken to in paragraph 616. That will have to be applied to the instant case.

26. Mr. Srinivasan, in reply, submits that, in this case, it is clear that the deduction of the liability must be that of the person who is entitled to the consideration amount. It is the trust which is entitled to the consideration. Only if it were an assessee, that liability of the assessee could be deducted. But what has been deducted is the liability of the beneficiary. That is impermissible in law. The relevant citations are CIT v. J. B. Wadia [1963] 48 ITR 135 (Bom) and Addl. CIT v. Chitra Sagar . Concerning the interpretation of the appropriate authority, the argument of learned counsel for the Revenue must be rejected. The general principle is that the plain meaning should be accepted unless such plain meaning leads to absurdity. Here, no such situation arises. The relevant authorities are Girdhari Lal and Sons v. Balbir Nath Mathur, and Jagir Singh v. State of Bihar, . This is not a case of interpretation but, by reason of such interpretation, power is sought to be conferred on an authority not contemplated under the statute. The important aspect of the matter is whether power could be conferred on a designated authority. The leading case in this regard is Taylor v. Taylor [1875] 1 Ch D 426, which states that the mode prescribed under the statute must be adopted and the person on whom power is conferred must alone exercise the power. The dictum in Taylor v. Taylor has been approved in Ramchandra Keshav Adke v. Govind Joti Chavare, .

27. As regard discounted value, it is reiterated that, unless and until the dates are ascertained with a decree of certainty, the discounted value cannot be arrived at. In the instant case, the terms are vague. Governor-General in Council v. Shiromani Sugar Mills Ltd., AIR 1946 FC 16 and Mongibai Hariram v. State of Maharashtra, are cited.

28. Having regard to the above arguments, the following points emerge for our consideration :

(1) Whether the appropriate authority must record reasons in his order and communicate the same to the transferor ?
(2) Whether the principles of natural justice would apply to an order passed by the appropriate authority ?
(3) Whether the discounted value could be arrived at in terms of the definition, under section 269UA(b) of the Act, of apparent consideration ?

(4) If, under section 269UG(1) read with the proviso thereto, the tax liability of the person entitled alone could be deducted, whether the deduction in this case is warranted ?
(5) Whether, under the proviso to section 269UG(1), the appropriate authority is different from the Chief Commissioner of Income-tax ? In other words, can the Central Government exercise that power ?
(6) If, under section 269UH(1), any part of the consideration is not tendered within the specified period, is the transferee entitled to the no objection certificate ?
(7) When the consequences of non-payment are prescribed under the statute, has the court power to extend the time for payment ? If not, what is the effect of the direction given by the learned single judge in this case ?
(8) Is the transferor liable to be non-suited on the ground of acquiescence ?

29. Point No. 1 : Section 269UD(1) read as follows : "(1) The appropriate authority, after the receipt of the statement under sub-section (3) of section 269UC 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, and for reasons to be recorded in writing, make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration. . . . . ."
30. The right of pre-emptive purchase is made available to the Revenue notwithstanding any other law or instrument or agreement. Such a right is to be exercised for reasons to be recorded. Therefore, it is but necessary that reasons will have to be recorded. There cannot be the slightest doubt about it. In this connection, we may also look at section 148(2) of the Act with regard to issue of notice in the case of escaped assessment. It reads : "148. Issue of notice where income has escaped assessment. - . . . ..

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so."

31. As to what exactly is meant by "record reasons" and the purpose of such recording can be gathered from S. Narayanappa v. CIT . In paragraph 4 of the said decision it is held as follows (at pp. 222, 223 of 63 ITR) : "It was also contended for the appellant that the Income-tax Officer should have communicated to him the reasons which led him to initiate the proceedings under section 34 of the Act. It was stated that a request to this effect was made by the appellant to the Income-tax Officer, but the Income-tax Officer declined to disclose the reasons. In our opinion, the argument, of the appellant on this point is misconceived. The proceedings for assessment or reassessment under section 34(1)(a) of the Income-tax Act start with the issue of a notice and it is only after the service of the notice

that the assessee, whose income is sought to be assessed or reassessed, becomes a party to those proceedings. The earlier stage of the proceedings for recording the reasons of the Income-tax Officer and for obtaining the sanction of the Commissioner are administrative in character, and are not quasi-judicial. The scheme of section 34 of the Act is that, if the conditions of the main section are satisfied a notice has to be issued to the assessee containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22. But before issuing the notice, the proviso requires that the officer should record his reasons for initiating action under section 34 and obtain the sanction of the Commissioner who must be satisfied that the action under section 34 was justified. There is no requirement in any of the provisions of the Act or any section laying down as a condition for the initiation of the proceedings that the reasons which induced the Commissioner to accord sanction to proceed under section 34 must also be communicated to the assessee."

32. This dictum has been approved in the following rulings : In Madhya Pradesh Industries Ltd. v. ITO it is held at page 275 as follows : "In S. Narayanappa v. Commissioner of Income-tax [1967] 63 ITR 219, this court held that two conditions must be satisfied in order to confer jurisdiction on the Income-tax Officer to issue the notice under section 34 of the Act in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year, viz., (i) the Income-tax Officer must have reason to believe that income, profits or gains chargeable to income-tax had been underassessed, and (ii) he must have reason to believe that such 'underassessment' had occurred by reason of either (a) omission or failure on the part of the assessee to make a return of his income under section 22, or (b) omission or failure on the part of the assessee to disclose fully and truly all the material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income-tax Officer acquires jurisdiction to issue a notice under the section. If there are in fact some reasonable grounds for the Income-tax Officer to believe that there had been any non-disclosure as regards any fact, which could have a material bearing on the question of underassessment, that would be sufficient to give jurisdiction to the Income-tax Officer to issue the notice under section 34. Whether these grounds are adequate or not is not is not a matter for the court to investigate. In other words, the sufficiency of the grounds which induced the Income-tax Officer to act is not a justiciable issue. It is of course open to the assessee to contend that the Income-tax Officer did not hod the belief that there had been such non-disclosure. In other words, the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. Therein it was observed that the expression 'reasons to believe' in section 34 does not mean purely subjective satisfaction on the part of the Income-tax Officer. The belief must be held in good faith : it cannot be merely a pretence. It is open to the court to examine whether the reasons for the belief have a rational connection or a relevant

bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent, the action of the Income-tax Officer in starting proceedings under section 34 of the Act is open to challenge in a court of law."

33. In R. Dalmia v. Union of India [1972] 84 ITR 616 (Delhi) in which the headnote reads : "All that clause (a) of section 147 of the Income-tax Act, 1961, requires is that the Income-tax Officer must have reason to believe that income chargeable to tax has escaped assessment and not that he should launch an investigation and come to a positive finding before issuing the notice. There should be facts before him that reasonably give rise to the belief. The belief held by him must of course be in good faith. It cannot be a mere pretence; but the facts on the basis of which he entertained the belief need not at this stage be irrebuttably conclusive to support his tentative conclusion. In case of challenge, it is open to the court to examine whether there was material before the Income-tax Officer having a rational connection or relevant bearing to the formation of the belief that is claimed to have been held at the time when he issued the notice; but the court cannot for the purpose of ascertaining the validity of the notice examine the sufficiency of the reasons for the belief. Whether the facts before the Income-tax Officer were in fact true or not and whether these grounds were adequate or not is not a matter for the court to investigate at this stage."
34. In ITO v. Nawab Mir Barkat Ali Khan Bahadur , it is observed thus (at pp. 245, 246) : "The authorities to which Mr. Manchanda referred point out that the expression 'reason to believe' occurring in section 147 of the Income-tax Act, 1961, or the corresponding section 34 of the Act of 1922, does not mean a purely subjective satisfaction on the part of the Income-tax Officer, the reasons for the belief must have a rational connection or a relevant bearing to the formation of the belief, and that the High Court under article 226 of the Constitution has power to set aside a notice under section 147 of the Act of 1961, or section 34 of the Act of 1922, if the condition precedent to the exercise of jurisdiction under these sections does not exist."
35. In Ajantha Industries v. Central Board of Direct Taxes it is observed thus (at p. 286) : "Mr. Sharma also drew our attention to a decision of this court in S. Narayanappa v. Commissioner of Income-tax [1967] 63 ITR 219, where is no requirement in any of the provisions of the Act or any section laying down as a condition for the initiation of the proceedings that the reasons which induced the Commissioner to accord sanction to proceed under section 34 must also be communicated to the assessee. The Income-tax Officer need not communicate to the assessee the reasons which led him to initiate the proceedings under section 34. The case under section 34 is clearly distinguishable from that of a transfer order under section 127(1) of the Act."
36. In ITO v. Lakhmani Mewal Das , it is held thus (at p. 446) : "The expression 'reason to believe' does not mean a purely subjective satisfaction

on the apart of the Income-tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the Income-tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a court of law. (See the observations of this court in the cases of Calcutta Discount Co. Ltd. v. ITO [1961] 41 ITR 191 and S. Narayanappa v. Commissioner of Income-tax [1967] 63 ITR 219, while dealing with the corresponding provisions of the Indian Income-tax Act, 1922)."

37. In Partap Singh (Dr.) v. Director of Enforcement , it is observed as follows (p. 171) : "In Narayanappa v. CIT [1967] 63 ITR 219, the assessee challenged the action taken under section 34 and amongst others it was contended on his behalf that the reasons which induced the Income-tax Officer to initiate proceedings under section 34 were justiciable and, therefore, these reasons should have been communicated by the Income-tax Officer to the assessee before the assessment can be reopened. It was also submitted that the reasons must be sufficient for a prudent man to come to the conclusion that income has escaped assessment and that the court can examine the sufficiency or adequacy of the reasons on which the Income-tax Officer has acted. Negativing all the limbs of the contention, this court held that : 'if there are in fact some reasonable grounds for the Income-tax Officer to believe that there had been any non-disclosure as regards any fact, which could have a material bearing on the question of underassessment, that would be sufficient to give jurisdiction to the Income-tax Officer to issue notice under section 34.' The court in terms held that whether these grounds are adequate or not is not a matter for the court to investigate."

38. In Indian Oil Corporation v. ITO , it is observed as follows (p. 968) : "In the case of S. Narayananppa v. CIT [1967] 63 ITR 219, this court again reiterated the conditions required to be fulfilled to confer jurisdiction on the Income-tax Officer to issue a notice under section 34 of the 1922 Act which is in pari materia with section 147 of the Act. It was reiterated that if there were in fact some reasonable grounds for the Income-tax Officer to believe that there had been any non-disclosure as regards any fact which could have a material bearing on the question of underassessment or escapement, that would be sufficient to give jurisdiction to the Income-tax Officer to issue the notice for reopening. Whether those grounds were adequate or not was not a matter for the court to investigate. In other words, it was emphasised that sufficiency of the grounds which induced the Income-tax Officer to act was not a justiciable issue. It was of course open to the assessee to contend that the Income-tax Officer did not hod the belief that there had been such non-disclosure. In other words, the existence of the belief could be challenged by the assessee but not the sufficiency of the reasons for the belief."

39. Therefore, this is the settled law. In fact in the case on hand, elaborate reasons have been recorded. After elaborating on the various clauses of the agreement, it is stated by the appropriate authority as follows : "Thus, a significant point in the agreement is that the transferee agrees to purchase the property with the 46 existing tenants and that taking vacant possession is restricted only to the portion occupied by the transferor itself. On payment of the second instalment of Rs. 50 lakhs, the transferor has to permit development of the property and grant the necessary power of attorney in favour of Shri K. V. Shivakumar, trustee of the transferee. The nomination clause of the agreement states that, on payment of full consideration the transferor has to execute a sale deed in favour of the transferee or its nominees. The agreement also contemplates payment of liquidated damages and the right of specific performance by the parties to the agreement, in case of breach. The aggrieved party has the option to terminate the agreement and claim and recover liquidated damages of Rs. 15,50,000 being 10 per cent. of the consideration from the party committing breach, as an alternative to specific performance. An important stipulation in pages 10 and 11 of the agreement is that in the event of the schedule property being purchased by the Appropriate Authority for the Central Government under section 269UD(1) of the Income-tax Act, the agreement of 28th November 1990 for sale of 'Mohan Buildings' between the transferor and the transferee will be treated as cancelled without any of the penal consequences contemplated in the agreement and the transferor has to refund the entire advance to the transferee forthwith."
40. Again in paragraph 7, as to the importance of the property, it is stated thus : "7. Now for a detailed description of 'Mohan Buildings' itself. Mohan Buildings is situated in the intensely populated commercial cradle of Bangalore, namely, Chickpet, at OTC Road, also known as Chickpet Main Road. It covers a land area of 17,160 sft. (1594.2 sqms). Its dimensions are irregular. The width of the road on which the property is situated is 14.9 mts. It falls in Zone 'A' of CDP and enjoys an FAR of 1.25. The building covers an area of 2742 sqms. It is a double storeyed commercial complex constructed in the year 1909 with lime mortar and bricks. The roofing is partly Madras terrace and partly by Mangalore Tiles. All joinery works are with teakwood, no services have been provided except electricity, sanitary and water supply in a portion of the first floor. The tenants had done a lot of internal modifications at their cost. The buildings being 90 years old, has outlived its normal span of life. No maintenance has been done in many years. A prudent buyer will think of developing the property by dismantling the existing building and constructing a new commercial complex for which Chickpet is meant."
41. Then in paragraph 22, it is stated thus : "The facts of the case have been detailed in the precedings paras, because of the rather sensitive nature of this case itself and because of the fact that a large sum is involved in this transaction and the property sought to be transferred is an important commercial business asset situated in the most important commercial area

of Bangalore City. . . . . ."

42. It was also noted that there are a number of tenants in the building. Ultimately, it was concluded thus : ". . . . . .Thus, compared to the possible rate under development method, the land rate of Rs. 846 per sft. in the transaction between the transferor and the transferee relating to 'Mohan Buildings' is low. Therefore, compared to the development rate also there is considerable under statement of consideration.
43. We are therefore of the unanimous view that considered from any angle, from the angle of offers made for purchase of 'Mohan Buildings' by intending buyers, the comparable sale rate and the rate under the development method, there is significant understatement of consideration in the agreement of November 28, 1990, between the transferor and the transferor. Hence our unanimous decision to issue purchase order under section 269UD(1) of the Income-tax Act in this case."
44. Therefore, it is beyond doubt that elaborate reasons have been given as to why the power under section 269UD(1) ought to be exercised. We are clearly of the view that reasons are to be recorded only to avoid arbitrariness and to see that the pre-emptive right to purchase the property is not whimsical. Beyond that, nothing more could be required in this regard. We, therefore, hold that the reasons recorded by the appropriate authority under section 269UD(1) of the Act need not be communicated to the transferor.
45. Point No. 2 : Section 269UD(1) itself does not provide for any hearing, either expressly or impliedly. However, Mr. Srinivasan relies on certain rulings to emphasise his contention that it is essential for the appropriate authority to issue notice. Ajantha Industries v. CBDT relied on by him related to a case arising under section 127(1) of the Act. When the case-file of an assessee was transferred from one Income-tax Officer to another Income-tax Officer for facility of investigation, a question arose as to whether non-communication of the reasons for transfer to the assessee is an infirmity ? The Supreme Court observed in paragraphs 10 and 11 as follows : "10. The reason for recording of reasons in the order and making these reasons known to the assessee is to enable an opportunity to the assessee to approach the High Court under its writ jurisdiction under article 226 of the Constitution or even this court under article 132 of the Constitution in an appropriate case for challenging the order, inter alia, either on the ground that it is mala fide or arbitrary or that it is based on irrelevant and extraneous considerations. Whether such a writ or special leave application ultimately fails is not relevant for a decision of the question.
46. We are clearly of the opinion that the requirement of recoding reasons under section 127(1) is a mandatory direction under the law and non-communication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessee."
47. The reasons for such conclusion is stated in paragraph 15 as under : "15. When law requires reasons to be recorded in a particular order affecting

prejudicially the interests of any person who can challenge the order in court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reasons is not expiated."

48. In pointing out the distinction between section 127 and section 34, in paragraph 16, it was stated thus : "Mr. Sharma also drew our attention to a decision of this court in S. Narayanappa v. CIT , where this court was dealing with section 34 of the old Act. It is clear that there is no requirement in any of the provisions of the Act or any section laying down as a condition for the initiation of the proceedings that the reasons which induced the Commissioner to accord sanction to proceed under section 34 must also be communicated to the assessee. The Income-tax Officer need not communicate to the assessee the reasons which led him to initiate the proceedings under section 34. The case under section 34 is clearly distinguishable from that of a transfer order under section 127(1) of the Act. When an order under section 34 is made the aggrieved assessee can agitate the matter in appeal against the assessment order, but an assessee against whom an order of transfer is made has not such remedy under the Act to question the order of transfer. Besides, the aggrieved assessee on receipt of the notice under section 34 may even satisfy the Income-tax Officer that there were no reasons for reopening the assessment. Such an opportunity is not available to an assessee under section 127(1) of the Act. The above decision is, therefore, clearly distinguishable."
49. From the above, it will be clear that, where a party is prejudicially affected, it is but essential that a notice should be given. We are of the view that this decision has no application to the facts of this case because the language of section 127(1) was very different, viz., ".....after giving the assessee a reasonable opportunity of being heard in the matter.....". If that was the requirement of the section, naturally, the observance of the principles of natural justice was to be insisted upon. That is not the case here.
50. In S. L. Kapoor v. Jagmohan, , it was held as follows (at p. 145) : "17. Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it approves the non-observance of natural justice but because courts of not issue futile writs. But it will be a pernicious principle to paply in other situations where conclusions are controversial, however slightly, and penalties are discretionary..... In our view, the principles of natural justice know of non exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has

been denied justice is not prejudiced. As we said earlier, where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."

51. This decision also, in our opinion, does not held the appellant because that related to a case where a Municipal Committee was sought to be superseded since the status and office and the right and responsibilities and the expectation of the committee to serve its full term of office would create sufficient interest in the committee and their loss if superseded entails civil consequences, as stated in paragraph 9 therein.
52. Strong reliance was placed by Mr. Srinivasan on the decision of the Division Bench of the Madras High Court in Government of India v. Maxim A. Lobo [1991] 190 ITR 101. The Division Bench observed at page 113 that "the observance of the principles of natural justice is the pragmatic requirements of fair play in action. The purpose of following the principles of natural justice is the prevention of miscarriage of justice". Relying on Maneka Gandhi's case, , the Division Bench emphasised (at p. 113) : "The apex court ruled that although there were no positive words in the statute requiring that the party shall be heard, yet the justice of common law would supply the omission of the Legislature." In rejecting the argument that the observance of principles of natural justice was not warranted in that case, the Division Bench observed thus (p. 114) : "Thus, it is too late in the day to urge that since the Legislature did not specifically provide in Chapter XX-C of the Income-tax Act that the affected party shall have a right of hearing before an order under section 269UD(1) is passed, the courts would not insist upon compliance with at least the minimal rules of audi alteram partem to be followed particularly by an authority exercising quasi-judicial powers. We are unable to accept the argument that since the decision to act under section 269UD(1) is taken by 'senior officials of the Revenue' who are supposed to act 'fairly, justly and reasonably and not arbitrarily' there is no need to follows the audi alterman partem rule. Fair hearing is a postulate of decision making by a statutory authority exercising quasi-judicial powers."
53. It was further observed thus (p. 115) : "The purpose of recording reasons which lead to the passing of the order and conveying the same to the affected party by an authority exercising quasi-judicial powers is basically intended to serve a two-fold purpose :

(1) that the 'party aggrieved' in the proceeding acquires knowledge of the reasons and in a proceeding before the High Court or the Supreme Court (since there is no right of appeal or revision) it has an opportunity to demonstrate that the reasons which persuaded the authority to pass an order adverse to his interests were erroneous, irrational or irrelevant, and

(2) that the obligation to record reasons and convey the same to the party concerned operates as a deterrent against possible arbitrary action by the quasi-judicial or the executive authority invested with judicial powers."

51. On this basis, it is concluded in paragraphs 11 to 15 thus (p. 118) : "11. Since an order under section 269UD(1) is neither appealable nor revisable, its validity can only be tested by the High Courts under articles 226 and 227 and by the Supreme Court under article 136 of the Constitution. The non-disclosure of reasons in the order impugned or non-communication of the same, where separately recorded, is not a proper compliance with the requirements of section 269UD(2). The aggrieved party is handicapped inasmuch as it is unable to question the order with reference to the reasons given by the authority. Where the reasons are withheld, both the High Court and the Supreme Court are also placed at a great disadvantage to examine whether the reasons given are sufficient for the purpose of upholding the decision. An affected party, in all fairness to him, is entitled to know the 'reasons' to be able to appreciate as to how the matter has been considered by the appropriate authority, and to question its validity by reference to those reasons. That the Revenue can produce the reasons already recorded for scrutiny of the court, whenever demanded by the court, is not a substitute for passing and communicating a reasoned order to the affected party. Neither on the plain language of the section nor on the application of the rule of 'natural justice' can the stand of the Revenue be countenanced.

52. The exclusionary provision contained in section 269UN of the Act casts an even greater obligation on the authority passing an order under section 269UD(1) to record and communicate the reasons for the decision to the affected party. Learned counsel for the appellants, rightly, did not urge the applicability of the exclusionary clause in so far as the residuary jurisdiction of the Supreme Court under article 136 and of the supervisory and extraordinary jurisdiction of the High Courts under articles 226 and 227 of the Constitution of India are concerned. Judicial review, it is well-settled, is available on grounds of arbitrariness in petitions under articles 226 and 227 of the Constitution of India irrespective of the presence of a statutory exclusionary clause. The reason is that arbitrariness which results from non-observance of the principles of natural justice leads to infringement of article 14 of the Constitution of India and any act, which is repugnant to the fundamental law of the land, is null and void. The powers of the High Court under articles 226 and 227 of the Constitution of India to declare such orders null and void are unaffected by the presence of any exclusionary clause in a statute. Indeed, in the exercise of its supervisory jurisdiction, this court will not review findings of fact reached by quasi-judicial authorities, even if erroneous, but a writ of certiorari can be issued when the decision of a quasi-judicial authority suffers from an error of law manifest on the face of the record. It is the duty of the court

to examine whether the order is backed by appropriate legal foundations and has been passed fairly, justly, reasonably and not arbitrarily or capriciously for extraneous reasons. The law as settled by the apex court now admits of no doubt that the violation of the principles of natural justice being an infringement of article 14 of the Constitution, an order which infringes article 14 is an order which suffers from an error of law apparent on the face of it calling for interference by the High Court.

53. From the above discussion, it follows that the impugned order which did not incorporate the reasons for taking action under section 269UD(1) and the action of the appropriate authority of not even conveying the reasons, separately recorded, to the affected party either along with the impugned order or otherwise, is not only a violation of the statutory provisions of section 269UD(1) and (2) but also is against the established principles of natural justice. Such an order is a nullity and cannot be sustained.

54. Learned counsel for the Revenue, lastly, submitted that, even if the impugned order had violated the rule of audi alteram partem and the appropriate authority by withholding the reasons from the affected party had not acted strictly in accordance with the provisions of section 269UD(1) and (2) or had infringed the principles of fair play and natural justice, the impugned order could still be sustained because the appropriate authority had proceeded to purchase the immovable property on the same consideration as recorded in the agreement for sale and the order, therefore, had not visited the petitioner, strictly speaking, with any adverse consequences. We are afraid, we cannot agree.

55. Undoubtedly, from the very nature of the proceedings under Chapter XX-C of the Income-tax Act, the appropriate authority proceeds to act under that Chapter only after coming to a conclusion that it was a fit case for purchase of the property on account of 'undervaluation' of the property, implying thereby an effort on the part of the transferor to conceal the true value of the property to 'evade tax'. An action under section 269UD(1), therefore, prima facie casts a stigma on the affected party of deliberately undervaluing the property for the purpose of tax evasion. When such a property after it vests in the Central Government is put to action by a notification, it is an information to the people at large that the property in question had been acquired on account of its 'undervaluation' by the transferor. The action certainly affects the image and reputation of the party concerned and the loss of image and reputation is to be viewed far more seriously than mere monetary loss. The mere fact that the same price is being paid to the transferor does not take away the stigma of 'undervaluation' or 'tax evasion' and, therefore, it is futile to contend that an order under section 269UD(1) does not visit an affected party with civil consequences or adverse consequences merely because the purchase is made by the Central Government by paying or tendering the apparent consideration."

56. With great respect, we are unable to agree with this decision. It is one thing to say that reasons must be recorded. It is another thing to say that reasons must be communicated. According to the said decision, communication is to enable the party to canvass the correctness of the reasons. It has already been seen from the several decisions that it is open to the Legislature to exclude the observance of the principles of natural justice. In the instant case, what is it that the transferor could urge ? The sale consideration is the same. Instead of the transferor selling the property to a private individual, there is pre-emptive purchase. Beyond that, what is the prejudice caused to the transferor ? There is nothing whatever. The object of introduction of Chapter XX-C of the Act itself will make the position clear because of the following passage in the Finance Minister's speech (see [1986] 158 ITR (Journal) 13) : "In line with the Long Term Fiscal Policy another major step being taken is to empower the Government with a pre-emptive right to purchase properties which are offered for sale in the market at the price agreed to by the transferor. To begin with, this provision will apply to properties valued at over Rs. 10 lakhs located in metropolitan cities. An honest seller, wherever he may be, will not be hurt by this measure. For the rest, it is between them and the Income-tax Department - and God !"

57. To say that a stigma gets attached when once the Revenue exercises the right of pre-emptive purchase, in our considered view, is not the correct way of approach. Then again, the argument on behalf of the appellant proceeds on the footing that if reasons are to be given they should be given after recording the same before exercise of the right of pre-emptive purchase and then alone the transferor could canvass the correctness of the reasons. We are clearly of the opinion that these arguments are unwarranted having regard to the language employed in the section. In the guise of interpretation, we cannot add on to the legislation. This is well-settled principle.

58. In Union of India v. J. N. Sinha, , relied on by the Revenue, a question arose for consideration as to whether, before ordering compulsory retirement under the Fundamental Rule 56(j), it was incumbent to observe the principles of natural justice. In paragraph 7, it was held thus : "7. Fundamental Rule 56(j) in terms does not require that any opportunity should be given to the concerned Government servant to show cause against his compulsory retirement. A Government servant serving under the Union of India holds his office at the pleasure of the President as provided in article 310 of the Constitution. But this 'pleasure' doctrine is subject to the rules or law made under article 309 as well as to the conditions prescribed under article 311. Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this court in Kraipak v. Union of India, , 'the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law

validly made. In other words they do not supplant the law but supplement it'. It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules or principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not, depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

59. In the instant case, as we pointed out earlier, the statute, viz., section 269UD(1) of the Act, excludes the application of the principles of natural justice.

60. In Union of India v. Tulsiram Patel, , it has been held in paragraph 101, at page 1462, thus : "101, Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the nemo judex in causa sua rule as also to the audi alteram partem rule. The nemo judex in causa sua rule is subject to the doctrine of necessity and yields to it as pointed out by this court in J. Mohapatra and Co. v. State of Orissa . So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi's case at . If legislation and the necessities of situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiori so can a provision of the Constitution, for a constitutional provision has a far greater and all-pervading sanctity than a statutory provision."

61. In the instant case, the statutory provision has not even thought of providing for a hearing.

62. In Mohinder Singh Gill v. Chief Election Commissioner, , relied on by Mr. Datar appearing for the applicant in the impleading application, while discussing the necessity to observe the principles of natural justice from

paragraph 62 onwards, it was held in paragraph 65 as follows (at p. 876) : "A civil right being adversely affected is a sine qua non for the invocation of the audi alteram partem rule. This submission was supported by the observations in Ram Gopal Chaturvedi , Col. Sinha . Of course, we agree that if only spiritual censure is the penalty temporal laws may not take cognisance of such consequences since human law operates in the material field although its vitality vicariously depends on its morality. But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps ? 'Civil consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence."

63. It can thus be seen that the principles of natural justice had to be observed where the party was prejudicially affected or some civil consequence or the other was to follow. In this case, as already stated, no prejudice whatever is caused to the appellant-transferor.

64. Section 269UN of the Act, read as follows : "Order of appropriate authority to be final and conclusive. - Save as otherwise provided in this Chapter, any order made under sub-section (1) of section 269UD or any order made under sub-section (2) of section 269UF shall be final and conclusive and shall not be called in question in any proceeding under this Act or under any other law for the time being in force."

65. The object of making the order passed under section 269UD(1) final and conclusive is not without purpose.

66. Thus we conclude that there is no scope for observance of the principles of natural justice.

67. Point No. 3 : The argument of Sri Srinivasan is that section 269UA(b), while defining 'apparent consideration', states : ". . . and where the whole or any part of the consideration for such transfer is payable on any date or dates falling after the date of such agreement for transfer, the value of the consideration payable after such date shall be deemed to be the discounted value of such consideration, as on the date of such agreement for transfer, determined by adopting such rate of interest as may be prescribed in this behalf;" and this would apply only to transfers by way of lease.

68. We find no justification to restrict it only lease. We will now extract clauses 1.3 and 1.4 of the agreement for sale : "1.3 The purchasers shall pay a further advance of Rs. 50,00,000 (rupees fifty lakhs) to the vendors within ten days from the date of receipt of the no objection certificate under section 269UL of the Income-tax Act, 1961, by the purchasers. 1.4 The balance of the sale price, namely, Rs. 55,00,000 (rupees fifty-five lakhs) shall be paid by the purchasers to the vendors at the time of registration of the deed/s of sale or within one year, whichever date is earlier."

69. The argument proceeds that the two dates in the agreement for sale are hypothetical and, therefore, there cannot be a discounted value. We are unable to accept this argument also. In Form No. 37-I, in column 9, clause (v)(c), it is stated both by the transferor and transferee thus : "(c) discounted value of consideration on the date of agreement for transfer as per rule 48(I) : Rs. 1,49,82,223."

70. Therefore, it will be clear that the appellant was aware of the discounted value. Besides, section 269UA(b) extracted above does not say specific date or dates. As rightly contended by Mr. Raghavendra Rao, on a reading of the agreement for sale, the dates could be ascertained on a reasonable basis, and if it could be so done, we think that that will be enought to arrive at the apparent consideration. More than above all this, if there is any mistake in this regard, section 269UJ which specifically provides for rectification of mistakes could be invoked. That power is available not only suo motu but even when the mistake is brought to its notice. We, therefore, conclude on point No. 3 that, in this case, apparent consideration could be arrived at.

71. Point No. 4 : Section 269UG (1) of the Act reads as follows : "269UG. (1) The amount of consideration payable in accordance with the provisions of section 269UF shall be tendered to the person or persons entitled thereto, within a period of one month from the end of the month in which the immovable property concerned becomes vested in Central Government under sub-section (1), or, as the case may be, sub-section (6) of section 269UE : Provided that if any liability for any tax or any other sum remaining payable under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Gift-tax Act, 1958 (18 of 1958), the Estate Duty Act, 1953 (34 of 1953), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), by any person entitled to the consideration payable under section 269UF, the appropriate authority may, in lieu of the payment of the amount of consideration, set off the amount of consideration or any part thereof against such liability or sum, after giving an intimation in this behalf to the person entitled to the consideration."

72. From this provision, it is apparent that it is only the tax liability of the person entitled to the consideration payable under section 269UF that could be deducted. In the instant case, the trust deed in the preamble states as follows : "This declaration of trust dated the 14th day of August, 1945, by and between Sri Vidyavati Kapur, aged about 45 years, wife of Mr. Nandalal Kapur (hereinafter called the Trustor or 'Author of the Trust' of the one part) and (1) Sri Vidyavati Kapur, (2) Nandlal Kapur, aged about 47 years, son of Thakordass Kapur, (3) Mohanlal Kapur, aged about 27 years, son of Thakordass Kapur, (4) Premavati Kapur, aged about 26 years, wife of Mohanlal Kapur, the said 1, 2, 3 and 4 hereinafter called the Trustees of the other part at present residing in Bangalore (which expressions Trustor and Trustees shall unless it be repugnant to the

context or meaning thereof include the survivors or survivor of them and the heirs, executors and administrators of the last survivor, their/his or her assigns and the trustees or trustee for the time being of these presents . . ."

73. Thus Mohanlal Kapur is the trustee mentioned in Form No. 37-I in which the particulars of the transferors are stated as follows : "Messrs. Vidyavathi Kapur Trust, a private trust having its office at Rex Theatre Building, No. 12, Brigade Road, Bangalore-560 001, Karnataka, represented by its Trustees :

74. Mrs. Vidyavathi Kapur.

75. Mr. Mohanlal Kapur. Telephone No. 214249. CONSENTING PARTIES :

76. Mr. Mohanlal Kapur, No. 1 Commissariat Road, Bangalore.

77. Mr. Kamal Kumar Kapur, No. 45, Grant Road, Bangalore-560 001.

78. Mrs. Kusum Kapur.

79. Mr. Anil Kapur.

80. Mrs. Anita Bhat.

81. Miss Anjali Kapur. Nos. (3) to (6) residing at No. 9, St. Mark's Road, Bangalore-560 001."

82. The factual position is explained in the statement of objections filed by the Revenue in Writ Petition No. 6655 of 1991, as follows : ". . . the petitioner further states that, under proviso to section 269UG(1), only tax liabilities due by a person interested in the consideration alone can be deducted, that the transferor-trust had no arrears and that the consideration cannot be reduced by the tax due by the beneficiary, Sri Mohanlal Kapoor. It is further stated that the arrears deducted are not correct arrears. In response to this, it has to be stated that Sri Mohanlal, apart from being a beneficiary, is also one of the persons entitled to dispose of Mohan Buildings. As a matter of fact, a notice was given to the transferor on February 26, 1991, regarding the adjustment of tax arrears to be made. No objection was raised. The adjustment was impliedly accepted. Therefore, the petitioner cannot question the adjustment now. At any rate, the alleged mistake in adjusting the tax arrears of Sri Mohanlal against the consideration payable to the trust, is a matter that can be sorted out between the department and the transferor through correspondence. The mistake is not so grave as to challenge the validity of the order itself."

83. We will now refer to the letter of the Income-tax Officer, Ward-1, Bangalore, dated February 22, 1991, addressed to the Chief Commissioner of Income-tax, Bangalore, and it reads : "Sub : Pre-emptive purchase of

immovable properties by the Central Govt. under Chapter XX-C of the Income-tax Act, 1961, property premises 'Mohan Buildings', Nos. 775 to 809, Old Taluk Cutchery Road, Chickpet; Bangalore-53 - Transferor Messrs. Vidyavathi Kapur Trust, Rex Theatre Building No. 12, Brigade Road, Bangalore-560 001 - Submission of list of arrears reg. Ref : CCIT's letter in F. No. CC/DC(HQ-I)/XXC(P)/63/90-91, dated 4-2-1991. Kind reference is invited to the letter cited above. In this connection, I am enclosing herewith list of income-tax and wealth-tax arrears outstanding against Sri Mohanlal Kapur, beneficiary of M/s. Vidyavathi Kapur Trust, as on date, along with regular challans so as to effect necessary adjustment from out of the apparent sale consideration of the above property payable to Sri Mohanlal Kapur, as desired by the Chief Commissioner (Sd.) ..... Income-tax Officer. ABSTRACT (Rs.) Total income-tax arrears 2,39,749 Total wealth-tax arrears 10,102 ——— Total 2,49,851" ———

84. On February 26, 1991, the transferor was informed by the Deputy Commissioner of Income-tax as under :

"As per the above purchase order by the Appropriate Authority, Income-tax Department, Bangalore, cited under reference, an apparent consideration of Rs. 1,50,17,084 is payable to you. The above payment if payable to you after effecting the following adjustments.
(Rs.) (Rs.) Apparent consideration payable : 1,50,17,084 Less : (i) Amount payable to M/s. Rajatha Trust, No. 495, Avenue Road, Bangalore-2 (Transferees) towards the advance taken by you on 28-11-90 in terms of the agreement dt. 28-11-90 : 50,00,000 (ii) Amount of arrears of tax outstanding towards income-tax/ wealth-tax in the case of Shri Mohanlal Kapur, beneficiary of the trust, as intimated by the Income-tax Officer, Ward-1, Bangalore, vide his letter dated 22-2-91 : Income-tax 2,39,749 Wealth-tax 10,102 ——— 2,49,851 52,49,851 ——— ——— Net consideration payable 97,67,233 ———

You are requested to obtain payment of the amount of Rs. 97,67,233 being the net consideration payable to you by way of cheque to be drawn in your favour on February 28, 1991, positively."

73. On the same day (February 26, 1991), a letter was sent by the transferor to the Chief Commissioner of Income-tax, Bangalore, to the following effect :

"Sir, We, Mohanlal Kapur, S/o. late Sri Thakurdas, and Kamal Kapur, S/o. Sri Mohanlal Kapur, representing the Vidyavathi Kapur Trust, the owners of Mohan Buildings, No. 775-809, Old Taluk Cutchery Road, Chickpet, Bangalore, hereby state that since Mohan Buildings has been purchased by the Appropriate Authority, vide their order under section 269UD(1) dated 24-1-91, under Chapter XX-C of the Income-tax Act, 1961, for the Central Government, the

agreement between us and M/s. Rajatha Trust represented by K. V. Shivakumar, sole trustee dated 28-11-90 for sale of Mohan Buildings stands cancelled in terms of clause 10(3) of the agreement. We further state that in terms of this clause of the agreement, we are authorising the purchaser, namely, M/s. Rajatha Trust, 495, Avenue Road, Bangalore, represented by Sri K. V. Shivakumar to receive the refund of advance of Rs. 50,00,000 (rupees fifty lakhs only) directly from Central Government (represented by Chief Commissioner of Income-tax, Bangalore). We clarify that we have no objection to the advance of rupees fifty lakhs being paid by the Central Government to M/s. Rajatha Trust directly. We further clarify that the interest of the purchaser would stand extinguished as and when the payment of the sum of Rs. 50 lakhs is tendered to M/s. Rajatha Trust. We further request that the balance consideration of Rs. 1,00,17,084 (rupees one crore seventeen thousand and eighty-four only) may please be paid forthwith, since we have complied with all the formalities. (Sd.) Mohanlal Kapur (Sd.) Kamal Kapur." 74. Despite intimation by the Deputy Commissioner of Income-tax dated February 26, 1991, there was no demur by the transferor. If Mohanlal Kapur has received the consideration without any demur, we are unable to see what valid objection the appellant could take, notwithstanding the fact that the order of the Deputy Commissioner refers to Mohanlal Kapur as the beneficiary. As to what would be the tax liability where the trustee and the beneficiary are one and the same individual, is the real point for consideration. In this case, Mohanlal Kapur occupies a dual capacity. Therefore, so long as the amount has been paid into his hands, it matters very little as to what position he occupies - whether trustee or beneficiary. In Halsbury's Laws of England, Fourth edition, vol. 48, para 616, it is stated : "Liability of trustee for legal outgoings and taxes : The possession by a trustee of the legal estate or legal ownership of trust property invests him with the legal burdens and privileges incident to that estate or ownership." 75. We would also add that Mohanlal Kapur did not even protest that the amount was paid to him as beneficiary and not as trustee. On the contrary, he was anxious to get the money as seen from his letter dated February 26, 1991, extracted above. It is not that he was unaware of the law. It cannot be pretended, nor even contended, to that effect. The following clause in the agreement for sale makes the position clear : "10.3. In the event of the schedule propety being acquired under the provisions of Chapter XX-C of the Income-tax Act, 1961, then this agreement shall be treated as cancelled without any of the aforementioned penal consequences and the vendors shall refund the entire advance to the purchasers forthwith. Such refund shall be by authorising the purchasers to receive the refund of advance directly from the Appropriate Authority, Income-tax Department, from out of the sale price; in the event of the entire amount being received by the vendors directly from the Income-tax Department, then the vendors shall forthwith refund the advance to the purchasers." 76. It is the contention of Mr. Srinivasan that the proviso to section 269UG(1) requires three elements to be satisfied, viz. : (i) the tendering must be to the transferor, (ii) there must be an order of the appropriate authority, and (iii) payment must be made after intimation. Here, all the three conditions are fully satisfied. As seen above, Mohanlal Kapur himself being a transferor,

the fact that he happened to be the beneficiary does not militate against the payment under the proviso to section 269UG(1). Thus, we answer point No. 4 in the affirmative. 77. Point No. 5 : When the proviso to section 269UG(1) talks of the appropriate authority, the question is whether it is the "appropriate authority" which is constituted under section 269UB. In the definition section 269UA, the opening words are "In this Chapter, unless the context otherwise requires". Therefore, stress is laid by the Revenue that it cannot mean the appropriate authority at all times. Under section 269UF(1), it is stated as under : "269UF. (1) Where an order for the purchase of any immovable property by the Central Government is made under sub-section (1) of section 269UD, the Central Government shall pay, by way of consideration for such purchase, an amount equal to the amount of the apparent consideration." 78. Hence, the authority which pays the amount is the Central Government. Then again, under section 269UG(1) which has already been extracted, the amount of consideration payable must be in accordance with section 269UF. Certainly, therefore, if the Central Government is obliged to pay, it is that authority which could make the payment after deducting the tax liability to the transferor in accordance with section 269UG(1), proviso. Thus, the conclusion could be reached that it is the Central Government which is thought of as the "appropriate authority" for the purpose of the proviso to section 269UG(1). 79. In State of Tamil Nadu v. Manakchand [1984] 56 STC 237 (Mad) [FB], it has been observed as follows (at pp. 250 to 253) : "It is one of the settled canons of interpretation of statutes that if an interpretation clause gives a particular meaning to a word it does not follow as a matter of course that if that word is used more than once in the Act it is on each occasion used in the same meaning. Whether the same meaning, as has been given in the interpretation clause, should be given to the word wherever it occurs, will depend upon the context. To quote Craies on Statute Law, seventh edition, page 216 : 'Another important rule with regard to the effect of an interpretation clause is, that an interpretation clause is not to be taken as substituting one set of words for another, or as strictly defining what the meaning of a term must be, under all circumstances, but rather as declaring what may be comprehended within the term where the circumstances require that it should be so comprehended. If, therefore, an interpretation clause gives an extended meaning to a word, it does not follow as a matter of course that, if that word is used more than once in the Act, it is on each occasion used in the extended meaning and it may be always a matter for argument whether or not the interpretation clause is to apply to the word as used in the particular clause of the Act, which is under consideration. "It appears to me" said Lord Selborne in Meux v. Jacobs [1875] LR 7 HL 481, "that the interpretation clause does no more than say that where you find these words in the Act, they shall, unless there be something repugnant in the context or in the sense, include fixtures". So the words "any person" in the Solicitors Act, 1932, were held not to include a body corporate, but only such person as could become a solicitor in spite of section 2 of the Interpretation Act, which enacts that "person" shall include a body corporate unless a contrary intention appears.' 80. In Dhandhania Kedia and Co. v. CIT , the question for consideration was the meaning to be attached

to the word 'previous year'. It was contended before the Supreme Court that the expression 'previous year' used in section 2(6A)(c) of the Indian Income-tax Act, 1922, as amended in 1939, should be given the same meaning as given in the definition clause of section 2(11). Venkatarama Aiyer J., observed as follows :"The argument of Mr. Sharma for the appellant is that section 2(11) having defined the meaning which the expression 'previous year' has to bear in the Act, that meaning should, according to the well-settled rules of construction, be given to those words wherever they might occur in the statute, and that that is the meaning which must be given to the words "six previous years" in section 2(6A)(c). It is to be noticed that the definitions given in section 2 of the Act are, as provided therein, to govern "unless there is anything repugnant in the subject or context". Now, the appellant contends that the words "unless there is anything repugnant" are much more emphatic than the words such as "unless the subject or context otherwise requires", and that before the definition in the interpretation clause is rejected as repugnant to the subject or context, it must be clearly shown that if that is adopted, it will lead to absurd or anomalous results. And our attention was invited to authorities in which the above rules of construction have been laid down. It is unnecessary to refer to these decisions as the rules themselves are established beyond all controversy, and the point to be decided ultimately is whether the application of the definition in section 2(11) is repelled in the context of section 2(6A)(c).'81. In the context of the situation, the learned Judges held that it would be repugnant to the definition of 'dividend' in section 2(6A)(c) to import into the words 'six previous years' the definition of 'previous year' in section 2(11) of the Act. 82. In Commissioner of Expenditure-tax v. Darshan Surendra Parekh , it has been observed as follows : 'It is a settled rule of interpretation that in arriving at the true meaning of any particular phrase in a statute, the phrase is not to be viewed isolated from its context; it must be viewed in its whole context, the title, the preamble and all the other enacting parts of the statute. It follows therefrom that all statutory definitions must be read subject to the qualifications expressed in the definition clauses which create them, such as "unless the context otherwise requires", or "unless a contrary intention appears", or "if not inconsistent with the context or subject-matter". 83. In State of M. P. v. Saith and Skelton (P.) Ltd., , the question arose whether the word "court" occurring in section 14(2) of the Arbitration Act should be given the same meaning as contained in the definition of "court" in section 2(d) of the Act. With reference to this aspect, Vaidialingam J., spoke thus : 'It should be noted that the opening words of section 2 are "In this Act, unless there is anything repugnant in the subject or context". Therefore, the expression "court" will have to be understood as defined in section 2(c) of the Act, only if there is nothing repugnant in the subject or context. It is in that light that the expression "court" occurring in section 14(2) of the Act will have to be understood and interpreted.' 84. In Vanguard Fire and General Insurance Co. Ltd. v. Fraser and Ross , Wanchoo J., speaking for the court, stated the ratio thus : "It is well-settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the

definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore, in finding out the meaning of the word"insurer" in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the or context. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances. Therefore, though ordinarily the word "insurer" as used in the Act (Insurance Act, 1938) would mean a person or body corporate actually carrying on the business of insurance it may be that in certain sections the word may have a somewhat different meaning.'The above being the canon of interpretation of definition clauses, we have to examine whether the expression 'total turnover' occurring in the proviso to section 7A of the Act can be given the same meaning as the meaning to be given to the expression 'total turnover' in section 2 of the Act. Section 2 begins with the words 'In this Act, unless the context otherwise requires'. Therefore, it will certainly be open to the court to give a different meaning to the words 'total turnover' occurring in the proviso to section 7A of the Act if the context so requires. On the contrary, if the context does not call for a different meaning being given to the words 'total turnover' other than the one given in section 2 read with section 2(r) then the expression must be deemed to have been used in the same sense in which it has been given the meaning in the definition clause." 85. In State of Punjab v. Okara Grain Buyers Syndicate Ltd., , it has been observed (at p. 679) : "The court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs." 86. In Girdhari Lal and Sons v. Balbir Nath Mathur, , it has been observed (p. 1503) : "8. Once Parliamentary intention is ascertained and the object and purpose of the legislation is known, it then becomes the duty of the court to give the statute a purposeful or a functional interpretation. This is what is meant when, for example, it is said that measures aimed at social amelioration should receive liberal or beneficent construction. Again, the words of a statute may not be designed to meet the several uncontemplated forensic situations that may arise. The draftsman may have designed his words to meet what Lord Simon of Glaisdale calls the 'primary situation'. It will then become necessary for the court to impute an intention to Parliament in regard to 'secondary situations'. Such 'secondary intention' may be imputed in relation to a secondary situation so as to best serve the same purpose as the primary statutory intention does in relation to a primary situation." 87. In Vanguard

Fire and General Insurance Co. Ltd. v. Fraser and Ross , it has been held at paragraph 6 (at p. 974 of AIR 1960 SC) as follows : "6. The main basis of this contention is the definition of the word 'insurer' in section 2(9) of the Act. It is pointed out that that definition begins with the words 'insurer means' and is therefore exhaustive. It may be accepted that, generally, the word 'insurer' has been defined for the purposes of the Act to mean a person or body corporate, etc., which is actually carrying on the business of insurance, i.e., the business of effecting contracts of insurance of whatever kind they might be. But section 2 begins with the words 'in this Act, unless there is anything repugnant in the subject or context' and then come the various definition clauses of which clause (9) is one. It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore, in finding out the meaning of the word 'insurer' in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances. Therefore, though ordinarily the word 'insurer' as used in the Act would mean a person or body corporate actually carrying on the business of insurance it may that, in certain sections, the word may have a somewhat different meaning." 88. In CIT v. J. H. Gotla, , it is observed as follows (at page 339) : "Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by Judge Learned Hand that one should not make a fortress out of the dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning." 89. In Pushpa Devi v. Milkhi Ram, , it is observed as follows : "18. It is true when a word has been defined in the interpretation clause, prima facie that definition governs wherever that word is used in the body of the statute unless the context requires otherwise.

'The context' as pointed out in the book Cross - Statutory Interpretation (Second Edn., p. 43 'is both internal and external'. The internal context requires the interpreter to situate the disputed words within the section of which they are part and in relation to the rest of the Act. The external context involves determining the meaning from ordinary linguistic usage (including any special technical meanings), from the purpose for which the provision was passed, and from the place of the provisions within the general scheme of statutory and common law rules and principles. 19. The opening sentence in the definition of the section states 'unless there is anything repugnant in the subject or context'. In view of this qualification, the court has not only to look at the words but also to examine the context and collocation in the light of the object of the Act and the purpose for which a particular provision was made by the Legislature. Reference may be made to the observations of Wanchoo J., in Vanguard Fire and General Insurance Co. Ltd. v. Fraser and Ross , where the learned judge said that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or context. In that case, the learned judge examined the construction of the word 'insurer' as used in sections 33(1) and 2D of the Insurance Act, 1938, in the light of the definition of that word under section 2(9) thereof. The Insurance Act by section 2(9) defines an 'insurer' as a person carrying on the business of 'insurance'. The question arose whether sections 33(1) and 2D did not apply to an insurer who had closed his business completely as the definition of the word insurer in section 2(9) postulates actual carrying on of the business. It was pointed out that in the context of sections 33(1) and 2D and taking into account the policy of the Act and the purposes for which the control was imposed on insurers, the word 'insurer' in the said sections also refers to insurers who were carrying on the business of insurance but have closed it. 20. Great artistry on the Bench as elsewhere is, therefore, needed before we accept, reject or modify any theory or principle. Law as creative response should be so interpreted to meet the different fact situations coming before the court. For, Acts of Parliament were not drafted with divine prescience and perfect clarity. It is not possible for the legislators to foresee the manifold sets of facts and controversies which may arise while giving effect to a particular provision. Indeed, the legislators do not deal with the specific controversies. When conflicting interests arise or a defect appears from the language of the statute, the court by consideration of the legislative intent must supplement the written word with 'force and life'. See, the observation of Lord Denning in Seaford Court Estates Ltd. v. Asher [1949] 2 KB 481-498." 90. In Crawford's Interpretation of Laws, at pages 338 and 339, it is stated thus : "They (the rules of grammar) may also be disregarded, modified or extended where a strict adherence to them would operate to defeat the obvious intention of the lawmakers, and especially where they will lead to repugnancy, inconsistency or absurdity. Indeed, the court may go so far as to rearrange a sentence in order to carry out the obvious legislative intent. In other words, the true meaning of a statute must prevail, although it conflicts with the strict rules of grammar . . . where the statute in its enacted form on its

face is without meaning, in order that it may give expression to the legislative intent, if one be ascertainable, from the words actually employed." 91. If this interpretation is applied, we do not see why the "appropriate authority" under section 269UG(1), proviso, should not be taken to mean the "Central Government" since the opening words of the definition clause under section 269UA are : ". . . unless the context otherwise requires". If the context here so requires and if so read, it would bring out the true intention of the Legislature as to the appropriate authority, we think such an interpretation is warranted. The Central Government has delegated the power under sections 269UF and 269UG to the Chief Commissioner of Income-tax, Bangalore, by its order dated July 21, 1989, which reads : "F. No. 316/217/87-OT (Pt. III) Government of India Ministry of Finance Department of Revenue Central Board of Direct Taxes New Delhi, 21st July, 1989. It is hereby ordered that the following Chief Commissioners of income-tax shall exercise the functions of the Central Government in their respective charges for the purpose of the provisions of section 269UF and section 269UG of the Income-tax Act, 1961 : ... 5. Chief Commissioner of Income-tax, Bangalore. (Sd.) N. K. Sangwan, Under Secretary to the Govt. of India." 92. In view of the said delegation of power, the Chief Commissioner of Income-tax, Bangalore, has in this case, exercised that power and passed orders. Thus, we conclude on point No. 5 that the Central Government can exercise power as the "appropriate authority" under the proviso to section 269UG(1). 93. Point No. 6 : Section 269UH lays down in sub-section (1) as under : "(1) If the Central Government fails to tender under sub-section (1) of section 269UG or deposit under sub-section (2) or sub-section (3) of the said section, the whole or any part of the amount of consideration required to be tendered or deposited thereunder within the period specified therein in respect of any immovable property which has vested in the Central Government under sub-section (1) or, as the case may be, sub-section (6) of section 269UE, the order to purchase the immovable property by the Central Government made under sub-section (1) of section 269UDshall stand abrogated and the immovable property shall stand revested in the transferor after the expiry of the aforesaid period." 94. It can thus be seen that, where the amount of consideration is not paid within the prescribed time, the immovable property will revest in the transferor. In such an event, section 269UL(3) which reads as follows will be attracted : "(3) In a case where the appropriate authority does not make an order under sub-section (1) of section 269UD for the purchase by the Central Government of an immovable property, or where the order made under sub-section (1) of section 269UD stands abrogated under sub-section (1) of section 269UH, 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." and, therefore, the no objection certificate will have to be issued. In Mrs. Satwant Narang v. Appropriate Authority , reads (p. 664) : "18. Now the question that further requires going into is as to what relief the petitioner is entitled to. The submission of the learned counsel for the respondent is that in case it is held that the impugned order of the appropriate authority is not on a sound footing, then the respondent be given an opportunity to reconsider

the statement of the petitioner filed in Form No. 37-I of the Act and to make up its mind, if the Central Government would like to purchase the property for the apparent consideration mentioned in the agreement or not. According to learned counsel, the petitioner will not suffer any injury inasmuch as she has agreed to sell the property for the consideration mentioned in the agreement whether it goes to the purchaser or the Central Government that will not make any difference to the petitioner." 95. The argument of Mr. Srinivasan is that, where the Act prescribes a particular mode and a particular authority to exercise the power, no other mode is possible. He relies on the leading decision in Taylor [1875] 1 Ch D 426. At pages 431 and 432, it is observed as follows : "The 16th section says : 'Any person entitled to the possession or to the receipt of the rents and profits of any settled estates for a term of years determinable on his death, or for an estate for life, or any greater estate, may apply to the court by petition in a summary way to exercise the powers conferred by this Act.' The 17th section provides that, subject to the exception contained in the next section, every application must be made with the concurrence of certain persons. It appears to me that the 16th section, though in form merely enabling, is in fact the only enabling part which entitles the court to set the Act in motion. When a statutory power is conferred for the first time upon a court, and the mode of exercising it is pointed out, it means that no other mode is to be adopted. For instance, the 16th section says that the proceeding is to be by petition. It is enabling, I know, in form, that the application may be by petition; but no other process can be adopted. That has been decided on a great variety of Acts where the application has been directed to be by petition, and it has been laid down that that being the mode pointed out by the Act which conferred the jurisdiction, you must exercise the jurisdiction (as the second section of this Act says in terms, though it was not necessary) according to the provisions of the Act. In the same way, when the statute says who is the person to petition, it means that the person or persons so described, and no others, shall be entitled to petition, otherwise any one interested might petition under the general principle that when powers are to be exercised by a court of law any person interested in calling those powers into execution is entitled to come before the court, and the only reason for putting in such a section is to show that that is not the meaning of the Legislature, but that the right of calling for the exercise of the powers shall be confined to the persons so described." 96. This dictum has come to be approved by the Supreme Court in Ramchandra Keshav Adke v. Govind Joti Chavare, , it is observed thus : "25. A century ago, in Taylor v. Taylor, [1875] 1 Ch D 426, Jessel M. R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council in Nazir Ahmed v. King Emperor 63 IA 372; AIR 1936 PC 253(2) and later by this court in several cases, Rao Shiv Bahadur Singh v. State of V. P., ; Deep Chand v. State of Rajasthan , to a Magistrate making a record under sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies 'where, indeed, the whole aim and object of the Legislature would be plainly

defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other. Maxwell on the Interpretation of Statutes, Eleventh Edn., pp. 362-363'. The rule will be attracted with full force in the present case, because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the Legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it non est for the purpose of section 5(3)(b)." 97. Certainly, if the object and the aim of the legislation is defeated, one should adopt this principle. But, in this case, we are not persuaded to hold that, by adoption of this interpretation in relation to an appropriate authority or in relation to the payment of a lesser value, the object of the Act is in any way frustrated. Even then, as we have stated above, under section 269UJ there is power to rectify a mistake. It has not been shown to us as to how the appellant-transferor is prejudiced by the exercise of power under the said provisions. We may also add that we are not conferring power on an authority wholly alien in the context in which case it could be held that this is not a case of interpretation but conferring power on a designated authority. Therefore, we conclude that this is not a case where the amount of consideration has not been tendered by the appropriate authority. It is important to bear in mind in this connection that though the trustee was put on notice on February 26, 1991, as to the amount which will be paid to him, there was no demur whatever by him and he received the amount on February 28, 1991, and passed on the receipt. Therefore, our answer to point No. 6 is that as the amount of consideration has been tendered and accepted, the question of issuing a no objection certificate does not arise in this case. 98. Point No. 7 : This takes us to Writ Appeal No. 1335 of 1991 filed by the Revenue. The learned single judge (at p. 591), in his order, has stated thus : "So far as the discounted value is concerned, it was argued with reference to the relevant dates that the computation of the discounted value has been correctly done. It is stated in the statement of objections that deduction of the income-tax/wealth-tax arrears due from one of the beneficiaries of the trust, namely, Mohanlal Kapoor was made only after instructing the petitioners by letter dated February 26, 1991, a copy of which was produced before me by Sri Chanderkumar. It is, however, undertaken by the Department to make good the said deduction if this court comes to the conclusion that the said deduction should not have been made." 99. Ultimately, a direction is given which reads as follows (at p. 593) : "Since it is admitted on behalf of the Department that the deduction of the income-tax/wealth-tax arrears due from Mohanlal Kapoor should not have been deducted, I direct the Chief Commissioner of Income-tax to immediately make good the deduction and pay the same to the petitioners-vendors." 100. The contention of the Revenue is that there was no such admission on behalf of the Department. The statement of objections filed by the Revenue in the writ petition requires to be seen in this connection. At the risk of repetition, we repeat it once again (p. 619) : ". . . the petitioner further states that, under the proviso to section 269UG(1), only tax liabilities due by a person interested in the consideration alone can be

deducted, that the transferor-trust had no arrears and that the consideration cannot be reduced by the tax due by the beneficiary, Sri Mohanlal Kapoor. It is further stated that the arrears deducted are not correct arrears. In response to this, it has to be stated that Sri Mohanlal, apart from being a beneficiary, is also one of the persons entitled to dispose of Mohan Building. As a matter of fact, a notice was given to the transferor on February 26, 1991, regarding the adjustment of tax arrears to be made. No objection was raised. The adjustment was impliedly accepted. Therefore, the petitioner cannot question the adjustment now. At any rate, the alleged mistake in adjusting the tax arrears of Sri Mohanlal against the consideration payable to the trust is a matter that can be sorted out between the Department and the transferor through correspondence. The mistake is not so grave as to challenge the validity of the order itself." 101. Further, in the grounds of appeal filed by the Revenue, it is stated in grounds D and E thus : D. That there being a consent on the part of respondent No. 1 for deducting the arrears of income and wealth-tax of the trustee-cum-beneficiary of respondent No. 1, the question of refund of the same to respondent No. 1 does not arise in law and therefore there cannot be any undertaking given by the Revenue in this regard. E. The reference made by the learned single judge to the statement of objections that the Department undertook to refund the amount if it was found to be untenable in law is also incorrect inasmuch as in para three of the statement of objections the appellant has categorically stated that : 'Shri Mohanlal apart from being a beneficiary is also one of the persons entitled to dispose of Mohan Building. As a matter of fact, a notice was given to the transferor on February 26, 1991, regarding the adjustment of tax arrears to be made. No objections were raised. The adjustment was impliedly accepted. Therefore, the petitioner cannot question the adjustment in the writ proceedings'. Hence the question of giving an undertaking to refund the said amount does not arise. Therefore, there was no question of giving any undertaking by the Revenue to enable the learned single judge to give such a direction. The stand taken by the Revenue on this aspect of the matter is well-founded. Hence, the said direction given by the learned judge cannot be sustained. This is our answer to point No. 7. 102. Point No. 8 : This is the most important point because it was by applying the principle of acquiescence that the learned single judge had dismissed the writ petition. On facts, the following are undeniable : On February 26, 1991, the transferor was specially informed by the Deputy Commissioner of Income-tax "to obtain payment of the amount of Rs. 97,67,233 being the net consideration payable to you by way of cheque to be drawn in your favour on February 28, 1991, positively". This was in spite of the request made by the transferor in his letter dated February 26, 1991, for payment of Rs. 1,00,17,084. On February 28, 1991, i.e., 2 days later, the transferor received Rs. 97,67,233 without a demur or protest, and passed on a receipt for the said sum. Added to this, a letter of attornment of the tenancy in respect of 46 tenants existing in the Mohan Buildings, in favour of the Central Government is given by the transferor. 103. Why did the transferor do all these ? It is hard put to explain. The law on acquiescence can be gathered from the following rulings. 104. In Pannalal Binjraj v. Union of India , it is observed at page 412 thus :

"45. There is moreover another feature which is common to both these groups and it is that none of the petitioners raised any objection to their cases being transferred in the manner stated above and in fact submitted to the jurisdiction of the Income-tax Officers to whom their cases had been transferred. It was only after our decision in Bidi Supply Co. v. Union of India , was pronounced on 20th March, 1956, that these petitioners woke up and asserted their alleged rights, the Amritsar group on 20th April, 1956, and the Raichur group on 5th November 1956. If they acquiesced in the jurisdiction of the Income-tax Officers to whom their cases were transferred, they were certainly not entitled to invoke the jurisdiction of this court under article 32. It is well settled that such conduct of the petitioners would disentitle them to any relief at the hands of this court . . . " 105. In Maharashtra State Road Transport Corporation v. Balwant regular Moor Service, , it is held in paragraph 11 thus (at p. 335) : "11. In any event, we are satisfied that it is not open to the private operators including respondent No. 1 to apply for a writ in the nature of certiorari for quashing the order of the R. T. A., dated September 10/11, 1965, in view of their conduct. It is not disputed that the private operators including respondent No. 1 were present in the meeting of the R. T. A. held on September 10/11, 1965, either personally or through duly appointed counsel. Respondent No. 1 and the other private operators assured the R. T. A. at the hearing that they would withdraw the writ petitions pending in the High Court. On such assurances and subject to the actual withdrawal of the writ petitions in terms of the assurance, the R. T. A. considered the matter in the said meeting and after hearing the parties, made an order giving effect to the compromise. It is obvious that the private operators including respondent No. 1 were parties to the order dated September 10/11, 1965, had accepted that order, acted upon it and derived benefits and advantages from it for nearly one year and 9 months. But for the said order which suspended the operation of the permit of the appellant till July 1, 1967, the private operators including respondent No. 1 could not have got temporary permits to operate on the same routes as no stage carriage permits could be issued under section 62 of the Act during the subsistence of substantive permits. In these circumstances, we consider that there was such acquiescence in the R. T. A's order dated September 10/11, 1965, on the part of respondent No. 1 and other private operators as to disentitled them to a grant of a writ under article 226 of the Constitution. It is well established that the writ of certiorari will not be granted in a case where there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. The principle is to a great extent similar to, though not identical with, the exercise of discretion in the Court of Chancery. The principle has been clearly stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp [1874] 5 PC 221 at p. 239 as follows : 'Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not

waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were after wards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.' This passage was cited with approval by this court in a recent case - Moon Mills Ltd. v. M. R. Mehar, President Industrial Court, Bombay, AIR 1967 SC 1450. In our opinion, the principle of this decision applies to the present case and since respondent No. 1 and the other private operators had not even pleaded any circumstances justifying the delay or their conduct, the High Court was in error in granting a writ of certiorari in their favour." 106. In State of Haryana v. Jage Ram, AIR 1980 SC 2018, it is observed in paragraphs 13 to 15 as follows (at p. 2022) : "13. The writ petitions filed by the respondents in the High Court in instant case are open precisely to the same objection which was upheld by this court in Har Shankar, . They entered into a contract with the State authorities with the full knowledge of the conditions which they had to carry out in the conduct of their business, on which they had willingly and voluntarily embarked. The occurrence of a commercial difficulty, inconvenience or hardship in the performance of those conditions, like the sale of liquor being less in summer than in winter, can provide no justification for not complying with the terms of the contract which they had accepted with open eyes. The respondents could not, therefore, invoke the writ jurisdiction of the High Court to avoid the contractual obligations incurred by them voluntarily. On this ground alone, the State is entitled to succeed in this appeal. 14. The judgment in Har Shankar was followed in Sham Lal v. State of Punjab, , wherein the appellants were the highest bidders in an auction for the sale of country liquor vends at various places in the State of Punjab. The appellants were called upon by the State to pay the amounts which they were liable to pay under the terms of the auction, whereupon they filed writ petitions in the High Court to challenge the demand. Relying upon the passage from Har Shankar extracted above, the court held that the licensees could not be permitted to avoid the contractual obligations voluntarily incurred by them and that, therefore, the High Court was right in refusing to exercise its jurisdiction under article 226 of the Constitution in their favour. 15. In view of these decisions, the preliminary objection raised by the learned Solicitor-General to the maintainability of the writ petitions filed by the respondents has to be upheld. We hold accordingly that the High Court was in error in entertaining the writ petitions for the purpose of examining whether the respondents could avoid their contractual liability by challenging the rules under which the bids offered by them were accepted and under which they became entitled to conduct their business. It can never be that a licensee can work out the licence if he finds it profitable to do so; and he can challenge the conditions under which he

agreed to take the licence, if he finds it commercially inexpedient to conduct his business." 107. In N. Chellappan v. Kerala State Electricity Board, , it has been observed thus in paragraph 7 (at p. 233) : "The High Court said that acquiescence of the Board by participating in the proceedings before the umpire as sole arbitrator could not confer jurisdiction as there was inherent lack of jurisdiction in that the order in O. P. No. 11 of 1972 was bad in law and that it did not clothe the umpire with any jurisdiction. We are of the view that even assuming that the order in O. P. No. 11 of 1972 was not passed on consent, the umpire had power to pass the award. As we have said, the umpire could have entered upon the reference under rule 4 of the First Schedule when the arbitrators failed to make the award within the extended time. Neither the fact that the umpire wanted an order from the court to enter upon the reference nor the fact that an application was made by the Board on February 5, 1972, to extend the time for the arbitrators to make the award would denude the umpire of his jurisdiction to enter upon the reference and pass an award under rule 4 of the First Schedule. Therefore, when the Board, without demur, participated in the proceedings before the umpire and took the chance of an award in its favour, it cannot turn round and say that the umpire had no inherent jurisdiction and therefore its participation in the proceedings before the umpire is of no avail. The fact that the umpire did not purport to act in the exercise of his jurisdiction under rule 4 of the First Schedule but under the order of the court, would not make any difference when we are dealing with the question whether he had inherent jurisdiction. As the umpire became clothed with jurisdiction when the extended period for making the award by the arbitrators expired, it cannot be said that he had no inherent jurisdiction. As we have said, neither the fact that the umpire expressed his unwillingness to enter upon the reference without an order of the court nor the fact that an application to extend the period for making the award had the effect of depriving him of his jurisdiction under rule 4 of the First Schedule. The High Court was, therefore, clearly wrong in thinking that acquiescence did not preclude the Board from challenging the jurisdiction of the umpire as sole arbitrator." 108. In Chandra Bhan Singh v. Latafat Ullah Khan, , it has been observed in paragraph 14 (at p. 1817) as follows : "14. This fact was specifically brought to the notice of the High Court, but it ruled it out by merely saying that the 'fact that the petitioners had wrongly filed a review application which was allowed by the Competent Officer would not confer jurisdiction on the Competent Officer to review his orders if the statute had not made any provision for it'. That was begging the question, and could not possibly meet the objection of the present appellants. If we may say so with respect, what the High Court failed to appreciate was that while it was true that want of jurisdiction to review the order of August 31, 1955, could not be cured by waiver, it would not necessarily follow that the court was obliged to grant certiorari at the instance of a party whose conduct was such as to disentitle it for it. The High Court was exercising its extraordinary jurisdiction and the conduct of the petitioners was a matter of considerable importance. The High Court did not take due notice of the fact that the writ petitioners (or other predecessors-in-interest) had allowed the passing of the order dated August 31,

1955, in spite of the individual notices which were issued under section 7, and did not deserve any relief. It did not notice the further fact that when the order dated August 31, 1955, had become final because of the failure to file an appeal or an application for revision, it was not permissible under the law, in view of the specific bar of section 18 for the writ petitioners to move a 'restoration' application on March 12, 1958, for its review and to obtain its reversal by the Competent Officer's orders dated March 15, 1958, and May 12, 1958, and to obtain a wholly beneficial order for the transfer of the one-third evacuee interest to them on payment of Rs. 5,000. They nevertheless did so. So when the writ petitioners had themselves unlawfully invoked the review jurisdiction of the Competent Officer, which did not exist to their advantage, and to the disadvantage of the present appellant, by their application dated March 12, 1958, they could not be heard to say, when the Department invoked the self-same jurisdiction on two important grounds (to which reference has been made earlier) that the review orders of the Competent Officer dated July 10, 1958, and September 8, 1958, were void for want of jurisdiction and must be set aside for that reason. The conduct of the writ petitioners was therefore such as to disentitle them to certiorari, and the High Court erred in ignoring that important aspect of the matter even though it was sufficient for the dismissal of the writ petition." 109. In C. R. Gowda v. Mysore Revenue Appellate Tribunal, AIR 1965, Mys 41, 45; [1964] 1 Mys L. J. 318, it has been observed at page 323 thus : "What is more material is, whether the petitioner has not, by his own conduct, precluded himself from urging this contention, now, to invoke the jurisdiction under article 226 of the Constitution. If the petitioner is found to be so precluded, it will be unnecessary for this court to give a finding on the legality or otherwise of the impugned proceedings before the R. T. A. The legal position has been well set out by S. A. De Smith in his 'Judicial Review of Administrative Action'. At page 314, it is stated as follows : 'A decision made without jurisdiction is void, and it cannot be validated by the express or implied consent of a party to the proceedings. It does not always follow, however, that a party adversely affected by a void decision will be able to have it set aside. As we have seen certiorari and prohibition are, in general, discretionary remedies, and the conduct of the applicant may have been such as to disentitle him to a remedy ..... Whether the Tribunal lacked jurisdiction is one question; whether the court, having regard to the applicant's conduct, ought in its discretion to set aside the proceedings is another. The confused state of the present law is due largely to a failure to recognise that these are two separate questions.' A person who, though aware of a defect in or lack of jurisdiction, does not raise any objection on that ground but acquiesces and takes the chance of a decision in his favour, will be disentitled to a writ of certiorari. At page 315 of his book, De Smith states as follows : 'The right to certiorari or prohibition may be lost by acquiescence or implied waiver. Acquiescence means participation in proceedings without taking objection to the jurisdiction of the Tribunal once the facts giving ground for raising the objection are fully known. It may take the form of failing to object to the statutory qualification of a member of the Tribunal, or appealing to a higher Tribunal, against the decision of the Tribunal of first instance without raising

the question of jurisdiction.' 110. The Supreme Court, in the case of Pannalal Banjraj v. Union of India , has stated as follows in para 45 at page 412 (pp. 593, 594 of 31 ITR) : 'There is moreover another feature which is common to both these groups and it is that none of the petitioners raised any objection to their cases being transferred in the manner stated above and in fact submitted to the jurisdiction of the Income-tax Officer to whom their cases had been transferred. It was only after our decision in Bidi Supply Co. v. Union of India [1956] 29 ITR 717 was pronounced on 20th March 1956, that these petitioners woke up and asserted their alleged rights, the Amritsar group on 20th April, 1956, and the Raichur group on 5th November, 1956. If they acquiesced in the jurisdiction of the Income-tax Officer to whom their cases were transferred they were certainly not entitled to invoke the jurisdiction of this court under article 32. It is well settled that such conduct of the petitioners would disentitled them to any relief at the hands of this court (vide Halsbury's Laws of England, Vol. II, Third Edn., page 140, para 265 : Rex v. Tabrum : Ex parte Dash [1907] 97 L. T. 551, O. A. O. K. Latchmanan Chettiar v. Corporation of Madras [1927] ILR 50 Mad 130; AIR 1927 Mad 130 [FB]. In Civil Petition No. 400 of 1961 (Mys), which has decided very recently (August 8, 1963) by a Division Bench of this High Court, Kalagate J., has stated as follows : 'Can a party who seeks to challenge the jurisdiction of the Tribunal to which he has submitted himself be permitted to raise the question of jurisdiction when he invokes our power in a writ petition under article 226 and 227 of the constitution ? The power the High Court is asked to exercise is a discretionary one, and when the party who has not challenged the jurisdiction of a Tribunal but submitted to it and took the chance of a decision in his favour, later turns round when the decision goes against him and challenges the jurisdiction of the very Tribunal, the High Court will not exercise its discretionary power in favour of such a party. By refusing to exercise its discretionary power under article 226 and 227 of the Constitution, it is plain that the High Court is not holding that the petitioner by not challenging the jurisdiction of the Tribunal confers jurisdiction upon it if that Tribunal has, in fact, no jurisdiction, but simply tells him that he by his own conduct is precluded from invoking its discretionary powers under the writ jurisdiction, no matter whether the proceedings which he seeks to quash are without jurisdiction. If they are without jurisdiction it is true that no conduct of the party will make them with jurisdiction. But such considerations do not affect the principle on which he seeks to quash are without jurisdiction. If they are without jurisdiction it is true that no conduct of the party will make them with jurisdiction. But such considerations do not affect the principle on which the court acts in granting or refusing to grant the writ of certiorari." 111. This is exactly the position in the instant case. We may also refer to Halsbury's Laws of England, Vol. 1, Fourth edition, para 71, which reads : "71. Waiver and acquiescence. - The right to impugn proceedings tainted by the participation of an adjudicator disqualified by interest or likelihood of bias may be lost by express or implied waiver of the right to object." 112. Mr. Srinivasan tries to get over the application of this principle of acquiescence, stating that, where the action of the appropriate authority is whthout jurisdiction, this principle would not

apply. Reliance is placed on Khardah Company Ltd. v. Raymon and Co. (India) (P.) Ltd., AIR 1962 SC 1810, and at pages 1815 and 1816, it is stated thus : "But what confers jurisdiction on the arbitrators to hear and decide a dispute is an arbitration agreement as defined in section 2(a) of the Arbitration Act, and where there is no such agreement, there is an initial want of jurisdiction which cannot be cured by acquiescence. It may also be mentioned that the decision in Wyld, ex parte [1860] 30 LJ Bcy 10 has been understood as an authority for the position that when one of the parties to the submissions is under a disability, that will not be a ground on which the other party can dispute the award if he was aware of it. Vide Russel on Arbitration, Sixteenth Edition, 320. We are, therefore, unable to accept the contention of Mr. Sanyal that the respondents were estopped by their conduct from questioning the validity of the award." 113. We do not think that this decision will be of any help because of what we have observed above about the apparent consideration and the power of the Chief Commissioner of Income-tax, Bangalore. In P. J. Francis v. P. J. Verghese, AIR 1956 Mad 680, it is held as follows (p. 681) : "But the fact that the parties did not raise the question as to want of jurisdiction or even acquiesced in the jurisdiction of a court would not confer on the court a jurisdiction which it has not. See the decision of the Privy Council in Ledgard v. Bull [1886] ILR 9 All 191 and in Minakshi Naidu v. Subramanya Sastri [1887] ILR 11 Mad 26. In these circumstances, we fell that the Subordinate Judge has granted the letters of administration without due authority or jurisdiction." 114. This decision again is of no help to the appellant because the question is even if a wrong authority had paid the amount of consideration, why should be accept the amount and attorn the tenancy ? Therefore, where, by his conduct in receiving the amount, the transferor had disentitled himself from approaching this court, we think the principle of acquiescence should apply. Krishna Gowda v. Shivappa, is a case of nullity and hence that would not apply here. Bakharia Dhuria v. Manak Gangaram, AIR 1954 Nag 97, lays down that mere inactivity will not constitute acquiescence; that is not the position here. In Ramadas K. Shenoy v. Chief Officers, Town Municipal Council, , it is held in paragraph 30 (at p. 2182), thus : "An excess of statutory power cannot be validated by acquiescence in or by the operation of an estoppel. The court declines to interfere for the assistance of persons who seek its aid to relieve them against express statutory provision. Lord Selborne in Maddison v. Alderson, [1883] 8 App Cas 467 said that courts of equity would not permit the statute to be made an instrument of fraud. The impeached resolution of the Municipality has no legal foundation. The High Court was wrong in not quashing the resolution on the surmise that money might have been spent. Illegality is incurable." This ruling also does not in any way help the appellant in this case. 115. K. M. Oosman and Co. v. K. Abdul Malick Sahib , is a case relating to trade mark where it was held that acquiescence cannot be implied merely because of the delay in filing the suit and using the trade mark for a short period. We do not think that this has any application to the facts of the case on hand. 116. No doubt the principle of acquiescence will not apply to a position which is against law, and approbate and reprobate will not apply to acts which are ultra vires. But, here we have

concluded otherwise. Therefore, Basheshar Nath v. CIT , has no application. In fact, at page 172 of AIR 1959 SC, it is observed (p. 234 of 35 ITR) : "It has been said that 'waiver' is a troublesome term in the law. The generally accepted connotation is that to constitute 'waiver', there must be an intentional relinquishment of a known right or the voluntary relinquishment or abandonment of a known existing legal right, or conduct such as warrants an inference of the relinquishment of a known right or privilege. Waiver differs from estoppel in the sense that it is contractual and is an agreement to release or not to assert a right; estoppel is a rule of evidence (see Dawson's Bank Ltd. v. Nippon Menkwa Kabushiki Kaisha [1935] 5 Comp Cas 191; 62 Ind App 100 at p. 108; AIR 1935 PC 79 at p. 82). What is the known legal right which the assessee intentionally relinquished or agreed to release in 1953-1954 ? He did not know then that any part of the Act was invalid, and I doubt if in the circumstances of this case, a plea of 'waiver' can be founded on the maxim of 'ignorance of law is no excuse'. I do not think that the maxim 'ignorance of law is no excuse' can be carried to the extent of saying that every person must be presumed to know that a piece of legislation enacted by a Legislature of competent jurisdiction must be held to be invalid, in case it prescribes a differential treatment, and he must, therefore, refuse to submit to it or incur the peril of the bar of waiver being raised against him." 117. Therefore, we hold that, in this case, the appellant had voluntarily relinquished a valuable right. Even regarding the principle of waiver it is state in Manak Lal v. Dr. Prem Chand Singhvi, thus : "Waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question. As Sir John Romilly M. R., has observed in Vyuyan v. Vyuyan [1861] 30 Beav 65 at p. 74; 54 E. R. 813 at p. 817, waiver or acquiescence, like election, presupposes that the person to be bound is fully cognizant of his rights,. . . .." 118. What else is it than the appellant being fully cognizant of his right ? C. N. Nataraj v. Fifth ITO [1965] 56 ITR 250 (Mys) was a case where service of notice under section 282(2) of the Act was not effected properly. Again, in Gobinda Ramanuj Das Mohanta v. Ram Charan Das, AIR 1925 Cal 1107, it has been observed at page 1113 as follows : "The equitable doctrine of acquiescence may be taken to be that 'if a party having a right stands by and sees another dealing with the property in a manner inconsistent with that right, and makes no objection, while the act is in progress, he cannot afterwards complain." 119. The decision in P. V. Doshi v. CIT [1978] 113 ITR 22 (Guj) lays down that jurisdiction cannot be waived. Here, we have already seen that there is no lack of jurisdiction. At a right moment, when it was the duty of the appellant-transferor to protest, he did not do so. In fact, Mr. Srinivasan frankly concedes that there was no protest in explicit terms. We may add that there was not even an implicit protest. He now wants to rely on technicalities and revelling in them. Hence, neither Goparanjan Dube v. Arbitrator, Hirakud Land Organisation, , nor Gain Chand Dhawan v. Union of India, , can help him. In Karnail Singh v. State of Punjab, , it is stated at page 161 thus : "Thus where the application for payment clearly states that the payment was sought for under protest, the mere fact that the receipt did not contain any words indicating protest is not sufficient to hold that the party had

waived the right to apply for reference." The argument of Mr. Srinivasan that the fact that the appellant asked for payment of Rs. 1,00,17,084 and accepted a lesser amount would not amount to waiver does not appeal to us. Therefore, reliance place on Kamalpur (Assam) Tea Estate P. Ltd. v. Supdt. of Taxes cannot help him because what is stated in that decision is this (headnote at p. 143) : "Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. Where an executive authority has been empowered to collect tax by an invalid law or rules made thereunder, the court is entitled to interfere. Acquiescence cannot take away from a party the relief he is entitled to in case of contravention of article 265." But it is not so in the instant case. 120. Thus, we conclude on an analysis of the facts before us in the light of the relevant case law that there cannot be a clearer case of acquiescence than the present one. Even at the risk of repetition, we may state that the appellant was informed as to what he would be entitled to, viz., Rs. 97,67,233 though the demand in his letter was for Rs. 1,00,17,084. It was the bounden duty of Mohanlal Kapur whose tax liability was deducted from the apparent consideration and who happened to be the trustee, to refuse to receive payment of Rs. 97,67,233 as a beneficiary. The order of the Revenue dated February 26, 1991, made the position of the Revenue very clear. For reasons best known to himself, he did not do it. Further, when the Deputy Commissioner of Income-tax directed acceptance of the cheque for Rs. 97,67,233, at least then it should have occurred to him not to accept it from him but to insist on payment by the appropriate authority. Even this he did not do. On the other hand, he received the cheque without any demur or protest whatsoever and passed on a receipt for the sum of Rs. 97,67,233 and attorned all the 46 tenancies in favour of the Revenue. Therefore, the conclusion is inescapable that the appellant-transferor had acquiesced in the order of the Revenue and was anxious to get the money. Hence, this is a clear case to which the doctrine of acquiescence applies disentitling the appellant now to question the said order of the Revenue. Further, the learned single judge has in his order observed as follows (at p. 592) : "As can be seen from the events that took place after the order was made by the appropriate authority on 24-1-1991 it cannot be disputed that he acquiesced in the order passed by the Appropriate Authority without any reservation, both as to the reasons given by it and the amount of net consideration determined as payable to the vendors. After the order of the Appropriate Authority was served on the petitioner on 31-1-1991, they co-operated with the Commissioner of Income-tax most willingly and produced the documents of title and furnished all other particulars and handed over possession of the property and also attorned the tenancy of a portion of the building in favour of the Central Government. It is only thereafter that the payment was made to the petitioner under section 269UF(1) by the Chief Commissioner of Income-tax. Therefore, quite apart from the legal arguments advanced by Sri K. Srinivasan highlighting the alleged violations committed by the Chief Commissioner both as to the computation of the discounted value and the deduction of arrears of income-tax/wealth-tax due from one of the beneficiaries, the petitioner must fail on the ground of acquiescence." 121. We are in entire agreement with this finding of the learned

judge. Hence, irrespective of other issues, on the application of the principle of acquiescence alone, the case of the appellant-transferor is liable to be thrown out. Accordingly, we answer point No. 8 in the affirmative. 122. Before parting, we must place on record our appreciation of the valuable assistance afforded by all learned counsel in this case where we trod upon new ground on important points of law. 123. In the result, we dismiss Writ Appeal No. 1318 of 1991. We allow Writ Appeal No. 1335 of 1991, and set aside the impugned direction of the learned single judge. There shall be no order as to costs. 124. After we pronounced judgment, Mr. Srinivasan, learned counsel for the appellant in W. A. No. 1318 of 1991, prays for leave to appeal to the Supreme Court. As, in our opinion, this case involves substantial questions of law of general importance to be decided by the Supreme Court, we grant leave. 125. Pending writ appeals, auction had taken place and the applicants in I. A. II have come to purchase the property. The purchasers have deposited a sum of Rs. 47,01,000 as earnest money. The auction has not been confirmed because of the interim stay granted by this court. Now that we have dismissed W. A. No. 1318 of 1991 and allowed W. A. No. 1335 of 1991, we do not think that the stay should continue. It is open to the Revenue to take such further action as may be warranted pursuant to this order. However, we make it clear that it shall be subject to the ultimate decision of the Supreme Court.