Delhi High Court 1. Mrs. Kailash Suneja (C.W. No. ... vs Appropriate Authority And ... on 17 December, 1997 Equivalent citations: 1998 231 ITR 318 Delhi, 1998 97 TAXMAN 144 Delhi JUDGMENT K. RAMAMOORTHY J. - I have had the benefit of reading the draft judgment prepared by my learned brother. I am really elated at the way in which he could put the factual matrix and the law in very sweet and esoteric language. My learned brother had been unique in this respect. I have always been admiring his gift of the gab. I derived immense solace and comfort while working with him. He provoked my thinking and prompted me to proceed on the right track which enabled me to have a hang of the matters. I am spellbound, as it were, and I am in entire agreement with all that he has said. I now proceed to express my views in the Pan Indian fashion. All law is an experiment, as all life is an experiment as stated by Justice Holmes of the United States of America. The Government of India made an experiment by introducing Chapter XX-C in the Income-tax Act, 1961, with effect from 1986, but the Supreme Court in Gautam (C. B.) v. Union of India held that no doubt the Government could make an experiment but within the parameters of the Constitution. Apparently, keeping in mind the principles that there should not be unending conflict or strife or competition between the Government and the citizens in the field of taxation, the Supreme Court laid down the law clearly, the attempt of the Revenue to garner resources, to mop up the deficiency in the budget by collecting revenue through tax laws has been the subject-matter of decisions for a long time. It would be scarcely relevant to trace the history of direct taxation in India except to note that there were some Acts from 1860 onwards and in the year 1886 there was some Acts and the complete codification of the law covering the entire territory of India was not there and the native States were having their own laws. For the first time in 1922, the British Government enacted the Indian Income-tax Act, 1922, to collect revenue. There were loopholes and the citizens always tried to find out some means to get round the law and the courts were to resolve the disputes. In view of the present economic scenario, the resources crunch is always pressing the Government to amend the tax laws, now and then, to increase the collection of revenue. Every year the Government tries to bring about legislation for amending the tax laws and they are always challenged. Being not satisfied with existing machinery, Parliament introduced in the Income-tax Act, 1961, Chapter XX-A by the Taxation Laws (Amendment) Act, 1972, which came into force on November 15, 1972. In 1986, Parliament introduced Chapter XX-C. "Purchase by Central Government of immovable properties in certain cases of transfer." The object of the Bill is to give effect to the financial proposals of the Central Government of India for the financial year 1986-87. The Notes on Clauses explained the various provisions contained in the Bill. Clause 33 of the Bill reads as follows (see [1986] 158 ITR (St.) 95) : "Clause 33 of the Bill seeks to amend section 269C of the Act relating to immovable property in respect of which proceedings for acquisition may be taken. Under the existing provisions where the competent authority has reason to believe that any immovable property of a fair market value exceeding one hundred thousand rupees has been transferred by a person to another person for an apparent consideration which

is less than the fair market value of the property and that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer, the competent authority may initiate proceedings for the acquisition of such property. Under the proposed amendment, it is provided that no such proceedings shall be initiated in respect of properties transferred after the 30th September, 1986. This amendment will take effect from 1st October, 1986." Clause 34 reads as under (see [1986] 158 ITR (St.) 96) : "Clause 34 seeks to insert a new Chapter XX-C in the Income-tax Act, 1961, enabling the Central Government to purchase immovable properties in certain cases of transfer. This Chapter contains 16 sections from section 269U to section 269UO. The provisions of the new Chapter will come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different areas. There are no other objection petitions and the Bill was adopted and became an Act." Parliament thought by enacting a law and leaving the entire implementation to the Income-tax Department it could achieve the purpose of getting more revenue for the Government and preventing concentration of wealth. The authorities commenced proceedings purporting to act under Chapter XX-C and those actions were challenged in various courts and, ultimately, the Supreme Court had to consider the attack on the constitutional validity of the Chapter in C. B. Gautams case . Before the Supreme Court, the Union of India challenged the correctness of the Supreme Court judgment in K. P. Vargheses case dealt with the scope of Chapter XX-A. The Supreme Court in Gautam (C. B.) v. Union of India rejected the challenge made by the Union of India and followed and reaffirmed the dictum laid down in K. P. Vargheses case . Parliament while enacting Chapter XX-C thought that the Department would appreciate the spirit behind the enactment and would act in the interests of the Revenue following the principles laid down by the Supreme Court, keeping in view the rights of the citizens. Parliament was well aware of the scope and ambit of article 14 of the Constitution of India with reference to the actions of the executive authorities in determining the rights and obligations of the citizens. The depth and the toughness of the roots of article 14 of the Constitution of India were in the mind of Parliament. Parliament assumed that whatever may be the actions of the officers of the Income-tax Department they are always subject to the control of the High Courts and the Supreme Court exercising their powers and testing the orders of the authorities on the anvil of article 14 of the Constitution of India. In the process, Parliament having in mind the provisions of Chapter XX-A and K. P. Vargheses case Chapter XX-C giving powers to the authorities under the Act for purchasing property coming within the ambit of Chapter XX-C. While dealing with the law enacted by Parliament, the presumption always is aequum et bonum est lex legum - that which is equal and good is the law of laws. Citizens also presume jus est normam recti; et quicquid est contra normam recti est injuries - Law is rule of right : and whatever is contrary to the rule of right is a wrong. The principle in lex est tutissima cassis sub clypeo legis nemo decipitur - Law is the safest helmet; under the shield of the law none are deceived, is well recognised from the days of magna carta. It is also well settled that the

law would coincide with reason lex semper intendit quod convenit rationi - The law always intends what coincides with reason. Parliament did not direct the Government to frame any rules for the purpose of implementing the provisions and rested content with the provisions made in the Chapter leaving it to the Department to take decisions in accordance with the well settled principles in this arena. Parliament is presumed to know the well established principles adumbrated by the Supreme Court of United States of America in Yick Wo v. Hopkins [1886] 118 US 356, wherein the court laid down : "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this court in Henderson v. Mayor, etc. of New York (92 U.S. 259; Bk 23 LEd. 543; Chy Luny v. Freeman 92 US 275; (Bk 23 LEd 676); Neal v. Dlaware 103 US 370 (Bk. 26 LEd. 267) and Soon Hing v. Crowley (supra). The present case, as shown by the facts disclosed in the record, are within this class. It appears that both petitioners have complied with every requisite, deemed by the law or by the public officers charged with its administration necessary for the protection of neighbouring property from fire, or as a precaution against injury to the public health. No reason whatever, except the will of the supervisors, is assigned why they should not be permitted to carry on, in the accustomed manner, their harmless and useful occupation, on which they depend for a livelihood. And while this consent of the supervisors is withheld from them and from two hundred others who have also petitioned, all of whom happened to be Chinese subjects eighty others, not Chinese subjects, are permitted to carry on the same business under similar conditions. The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted, that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which in the eye of the law is not justified. The discrimination is, therefore, illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution. The imprisonment of the petitioners is, therefore, illegal, and they must be discharged." The declaration made by Thomas Jefferson, one of the great Presidents of the United States of America must always be kept in mind. He said "laws and institutions must go hand in hand with the progress of human mind as new discoveries are made, new truths are discovered and manners and opinions change with the change of circumstances, institutions must advance also and keep pace with the time." Therefore, the authorities while implementing the provisions of Chapter XX-C should have in mind the entire constitutional mandate and the constitutional ethos in discharging their duties. In its wisdom, Parliament left it to the courts to control the actions of the officers while acting under Chapter XX-C. As declared by Glanville Austin, who said "The judiciary was to be the arm of the social revolution, upholding the quality that institutions had longed for in colonial days. The courts were also idealistic because as guardians of the constitutions they established the expres-

sion of a new law created by institutions for institutions." Consistent with this theory, in Garg (R. K.) v. Union of India , the Supreme Court held (page 255) : "... laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the Legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved ... The court must always remember that legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry that exact wisdom and nice adaptation of remedy are not always possible and that judgment is largely a prophecy based on meagre and uninterpreted experience. Every legislation particularly in economic matters is essentially empiric and it is based an experimentation or what one may call trial and error method and, therefore, it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in Secretary of Agriculture v. Central Reig Refining Co. [1950] 94 L Ed. 381, be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any Legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation, which may be made by those subject to its provisions, and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The court must, therefore, adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the Legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the Legislature in dealing with complex economic issues." In laying down the dictum, the Supreme Court followed the principles laid down in Kesavananda Bharati Sripadagalvaru (His Holiness) v. State of Kerala . "In exercising the power of judicial review, the courts cannot be oblivious of the practical needs of the Government. The door has to be left open for trial and error. Constitutional law like other mortal contrivances has to take some chances. Opportunity must be allowed for vindicating reasonable belief by experience". The Supreme Court laid down the principle in State of Rajasthan v. Union of India : "It

must be remembered that merely because power may some time be abused, it is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a Government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief." In the light of these principles, the Supreme Court in C. B. Gautams case , held rejecting the challenge on the constitutional validity of the Chapter (page 551)."In these circumstances, in our opinion, it cannot be said that the provisions of the said Chapter conferred an unfettered discretion on the appropriate authorities to order the purchase by the Central Government of immovable properties agreed to be sold and hence they cannot be regarded as conferring arbitrary or unfettered discretion on the appropriate authorities, The challenge to the provisions of the said Chapter as being violative of article 14 of the Constitution of India must, therefore, fail". Dealing with the scope of Chapter XX-C and the obligation of the Department, the Supreme Court observed (at page 548) : "The legislative history of Chapter XX-C, in the stand taken by the Union of India and the Central Board of Direct Taxes as shown in the main counter affidavit and the affidavit of H. K. Sarangi, which has been filed after obtaining instructions from the Income-tax Department and the Central Board of Direct Taxes, make it clear that the powers of compulsory purchase conferred under the provisions of Chapter XX-C of the Income-tax Act are being used and intended to be used only in cases where in an agreement to sell an immovable property in an urban area to which the provisions of the said Chapter apply, there is a significant under valuation of the property concerned, namely, of 15 per cent. or more. If the appropriate authority concerned is satisfied that, in an agreement to sell immovable property in such areas as set out earlier, the apparent consideration shown in the agreement for sale is less than the fair market value by 15 per cent. or more, it may draw a presumption that this under valuation has been done with a view to evade tax of course, such a presumption is rebuttable and the intended seller or purchaser can lead evidence to rebut such a presumption. Moreover, an order for compulsory purchase of immovable property under the provisions of section 269UD requires to be supported by reasons in writing and such reasons must be germane to the object for which Chapter XX-C was introduced in the Income-tax Act, namely, to counter attempts to evade tax." Therefore, the categoric statement of law by the Supreme Court is that the order of compulsory purchase should be on valid reasons and must be consistent with Chapter XX-C. The Supreme Court dealing with K. P. Vargheses case : "The conclusion that the provisions of Chapter XX-C are to be resorted to only where there is significant under valuation of the immovable property to be sold in the agreement of sale with a view to evade tax finds support from the decision of this court in the case of K. P. Varghese v. IT. Section 52 in the Income-tax Act, 1961, which has now been deleted, came up for consideration before a Bench comprising two learned judges of this court. Very briefly put, that section provided that where a person acquired a capital asset from an assessee connected with him and the Income-tax Officer had reason to believe that the transfer was effected with a view to avoid or reduce the liability of the assessee under section 45 to the tax on capital gains and with that object the transfer of the capital

asset was being made at an undervalue of not less than 15 per cent., for the purposes of taxing the assessee, the full value of the consideration was taken to be its fair market value on the date of the transfer. It was pointed out by the Bench that sub-section (1) of section 52 did not deal with income to accrue or to be received, which in fact never accrued and was never received. It sought to bring within the net of taxation only that income which has accrued or is received by the assessee as a result of the transfer of the capital asset and since it would not be possible for the Income-tax Officer to determine precisely how much more consideration is received by the assessee than that declared by him, sub-section (1) provides that the fair market value of the property as on the date of the transfer shall be taken to be the full value of the consideration which has accrued or has been received by the assessee. The onus of establishing that the conditions of taxability are fulfillled is always on the Revenue. In that case, it was urged on behalf of the Revenue that, under the provisions of section 52(2), once the Income tax Officer is satisfied of the condition that the consideration declared by the assessee in respect of the transfer is less by 15 per cent. or more of the fair market value, the capital gains can be computed on the footing that the fair market value was the consideration received by the assessee. This submission was rejected by this court. It was pointed out that the submission would be justified only on a strict literal reading of sub-section (2) of section 52 but that such a construction could not be adopted. The court observed that the task of interpretation of a statutory enactment is not a mechanical task. The famous words of Judge Learned Hand of the United States of America that ... it is true that the words used even in their literal sense are the primary and ordinarily the most reliable source of interpreting the meaning of any writing : be it a statute, contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning were quoted with approval. After considering various authorities and the historical setting in which the provisions of the said section were enacted, it was held that the fair and reasonable construction to put on the provisions of sub-section (2) of section 52 would be to so construe it that it would apply only when the consideration for the transfer is understated or in other words, only where the assessee has actually received a larger consideration for the transfer than that which is declared in the instrument of transfer and it could have no application in the case of a bona fide transaction where the full value of the consideration for the transfer is correctly declared by the assessee (see page 606 of the Report of 131 ITR)." Referring to the case decided by the Gujarat High Court in CIT v. Smt. Vimlaben Bhagwandas Patel [1976] 118 ITR 134, the Supreme Court held that the satisfaction of the competent authority for initiation of acquisition proceedings is a subjective satisfaction on the objective facts and the reasons for the formation of the belief must have a rational and direct connection with the material coming to the notice of the competent authority, though the question of sufficiency or adequacy of the material is not open to judicial review. The Supreme Court read this into Chapter XX-C. The authori-

ties have to act in accordance with the principles of natural justice, the Supreme Court posited thus (page 553 of 199 ITR) : "As we have already pointed out, the provisions of Chapter XX-C can be resorted to only where there is a significant under valuation of property to the extent of 15 per cent. or more in the agreement of sale, as evidenced by the apparent consideration being lower than the fair market value by 15 per cent. or more. We have further pointed out that, although a presumption of an attempt to evade tax may be raised by the appropriate authority concerned in the case of the aforesaid circumstances being established such a presumption is rebuttable and this would necessarily imply that the concerned parties must have an opportunity to show cause as to why such a presumption should not be drawn. Moreover, in a given transaction of an agreement to sell, there might be several bona fide considerations which might induce a seller to sell his immovable property at less than what might be considered to be the fair market value. For example : he might be in immediate need of money and unable to wait till a buyer is found who is willing to pay the fair market value for the property. There might be some dispute as to the title of the immovable property as a result of which it might have to be sold at a price lower than the fair market value or a subsisting lease in favour of the intending purchaser. There might similarly be other genuine reasons which might have led the seller to agree to sell the property to a particular purchaser at less than the market value even in cases where the purchaser might not be his relative. Unless an intending purchaser or intending seller is given an opportunity to show cause against the proposed order for compulsory purchase, he would not be in a position to rebut the presumption of tax evasion and to give an interpretation to the provisions which would lead to such a result would be utterly unwarranted. The very fact that an imputation of tax evasion arises where an order for compulsory purchase is made and such an imputation casts a slur on the parties to the agreement to sell leads to the conclusion that, before such an imputation can be made against the parties concerned, they must be given an opportunity to show cause that the under valuation in the agreement for sale was not with a view to evade tax." Referring to the challenge on sections 269UD and 269UE of the Act which speak of encumbrance and leasehold rights, the Supreme Court said "In our view, the submissions of learned counsel are not without merit." The Supreme Court held (page 557 of 199 ITR) : "It, therefore, appears to us difficult to uphold the last part of sub-section (1) of section 269UE in so far as it provides that the property in respect of which an order under sub-section (1) of section 269UE is made shall vest in the Central Government free of all encumbrances. In our opinion, the expression free of all encumbrances is liable to be struck down as arbitrary, without any rational nexus with the object of the legislation in question and violative of article 14 of the Constitution. Similarly, the provisions of sub-section (2) of section 269UE set out by us earlier must be read down so as to make them inapplicable to bona fide lessees in possession or bona fide encumbrance holders in possession." Therefore, following this dictum of the Supreme Court the authorities under the Act have to be very careful in ordering compulsory purchase when there are lessees or persons having subsisting mortgage rights over the properties. The Supreme Court held (page 558 of 199

ITR) : "In the result the expression free from all encumbrances in sub-section (1) of section 269UE is struck down and sub-section (1) of section 269UE must be read without the expression free from all encumbrances with the result that the property in question would vest in the Central Government subject to such encumbrances and leasehold interests as are subsisting thereon except for such of them as are agreed to be discharged by the vendor before the sale is completed." Regarding the monthly tenancies, the Supreme Court held (page 559 of 199 ITR) : "The next controversy posed was regarding the monthly tenancies. As far as monthly tenancies are concerned, they do not pose any difficulty because monthly tenants are also lessees in law although their right is a very limited one. If the agreement to sell does not provide for vacant possession or the determination of monthly tenancies, such tenancies would continue even on an order for purchase by the Central Government being made by the appropriate authority concerned under section 269UD (1); but such tenants would lose the protection given to tenants under the rent protection laws because such laws are not made applicable to properties owned by the Central Government with the result that their tenancies could be terminated by the Central Government. The loss of the protection of the Rent Control Acts cannot be regarded as an interest for which any compensation is liable to be paid. As we have stated earlier, where an agreement for sale provides that the property is intended to be sold free of all encumbrances or leasehold rights, the order for purchase of such property under section 289UD (1) in the said Chapter would result in the said property vesting in the Central Government free of such encumbrances or leasehold interests. In such a case, the holders of the encumbrances or leasehold interests would have to obtain their compensation from the amount awarded as the purchase price to the owner of the property. This appears to be a fair construction because, in such a case, the apparent consideration can be expected to include the value of such leasehold interests or encumbrances. The holders of the encumbrances or leasehold interests which would be destroyed in this manner can be said to be persons interested as contemplated in clause (e) of section 269UA. In this connection, we may refer to sub-section (5) of section 269UE which declares that nothing in the said section which deals with the vesting of property in the Central Government shall operate to discharge the transferor or any other person (not being the Central Government) from liability in respect of any encumbrances on the property and, notwithstanding anything contained in any other law for the time being in force, such liability may be enforced against the transferor or such other person. This provision makes it amply clear that, in the case we have just referred to the encumbrance holder or the holder of the leasehold rights, could claim the fair value of his encumbrance or the leasehold interest out of the amount paid on account of the purchase price to the owner of the immovable property acquired by the Central Government under section 269UD. It was urged by learned counsel for the Revenue that, in case a view is taken that the expression free from all encumbrances should be struck down, it would be left open to an intending seller of immovable property to undervalue the property by creating a bogus lease or a bogus encumbrance thereon and this would defeat the purpose for which Chapter XX-C was introduced. We are

unable to agree. If a lease or an encumbrance is found to be bogus, it can be treated as of no legal effect and in that event, it would not affect any of the rights of the Central Government on the vesting of the property in the event of an order for purchase being made under section 269UD (1). If it is so considered necessary, the provisions of the Chapter might be so amended so as to clarify that if any lease or encumbrance is created with a view to defeat the provisions of Chapter XX-C, such lease or encumbrance will be regarded as void or ignored for the purposes of the said Chapter. That, however, is for Parliament to consider." The Supreme Court recognised that the object of the provisions of Chapter XX-C is a laudable object, namely, to counter evasion of the tax in transactions of sale of immovable properties. The judgment of the Supreme Court is that the authorities acting under Chapter XX-C have to conform to the principles of natural justice and are obliged to give reasons for making compulsory purchase, and the decisions of the authorities should be fair and reasonable and must satisfy the test laid down by the Supreme Court. We all have to remember, what Justice Holmes said "we need attention in the obvious to learn to transcend our own convictions and to leave room for much we hold dear to be done away with, short of revolution by the orderly change of law". That means the authorities should always be aware of the fact that their actions are subject to judicial review and would be tested on the touchstone of article 14 of the Constitution of India. The House of Lords in Gold Coast Selection Trust Ltd v. Humphrey, [1949] 17 ITR (Suppl.) 19, observed : "... valuation is an art, not an exact science, mathematical certainty is not demanded, nor indeed is it possible. A certain element of guess has to be there based on objective factors having reasonable nexus with the evidence on record. The various factors are there on the basis of which out of the various methods by which the valuation of the immovable property can be made, appropriate method is to be adopted. It depends on the location of the property, the purpose for which the property is used, the nature of the property, the time when the agreement is entered into and similar other objective factors. The valuation, therefore, has to be done by a method which is more objective and could furnish reliable data to arrive at a just conclusion." It is in the light of these principles we have to examine the facts and circumstances of each case. Learned counsel appearing for the Revenue fairly submitted that there are no rules framed under Chapter XX-C by the Government which could form guidelines for the authorities to fix up the fair market value in the areas coming under the penumbra of Chapter XX-C. It was submitted on behalf of the Revenue that the appropriate authorities in various States had to follow the principles laid down by the courts in fixation of market value and the appropriate authorities have been following the guideline values fixed by the Revenue authorities, D.D.A. in Delhi, Delhi Administration in Delhi and other authorities in various States concerned with the collection of urban land tax and other taxes from immovable properties. When a question was put to learned counsel for the Revenue whether any rules have been framed or guidelines issued to the authorities with reference to the deductions to be made or the additions to be made while making comparative study with other sale instances properties, learned counsel submitted that no such rules

have been framed. The crux of the matter is that Parliament had brought into the statute book Chapter XX-C with a particular purpose; to prevent evasion of tax. It is a basic principle of the interpretation of statutes right from Heydons case [1584] 76 ER 637, the courts should consider a few facts to appreciate the object of the law and intendment of theirs by the law maker. Stating it broadly without intending to be exhaustive the factors are (1) What was the law before the making of the Act ? (2) What was the mischief and defect which the earlier law could not remedy ? (3) What remedy Parliament had decided to provide in the new law ? (4) The true reason of the remedy; (5) The language of the law should be analysed. At this moment when we are considering the orders passed in the above cases by the appropriate authority our task is rendered easier by the judgment of their Lordships of the Supreme Court in Gautams case . Parliament was fully aware of the methods of evaluating fair market value. Parliament left it to the discretion of the appropriate authority without giving any specific guidelines. Parliament did not provide for any appeal by the aggrieved persons against the order of the appropriate authority. Parliament is aware as noticed by their Lordships of the Supreme Court in Gautams case , and accepted by the Department that the order of the appropriate authority is subject to judicial review by the High Court under articles 226 and 227 of the Constitution of India. And Parliament knows and appreciates the scope of the power of the judicial review by the High Courts. Therefore, while enacting the Chapter, Parliament expected the appropriate authority to act in all cases in accordance with the fundamental principles of valuation to find out the real and fair market value of the property in the light of so many imponderables and in the valuation sphere the appropriate authority is expected to act reasonably bearing in mind the interest of the Revenue and the rights of the citizens. It is this dual constitutional responsibility that was put on the shoulders of the appropriate authority, a high public functionary under the law. Therefore, on a proper interpretation of the law and as per the categorical dictum laid down by the Supreme Court in Gautams case , in unmistakable terms noting very carefully, with great respect, the argument of the learned Attorney-General, the legal position that emerges, is that the appropriate authority should strive to find out the fair market value on a proper basis as known in the field, adopting a reasonable approach giving full and reasonable opportunity to the parties. An analysis of the facts and circumstances of each case would show that the appropriate authority had taken into account sale instances of the properties and tried to compare the value arrived at by the appropriate authority with the apparent consideration mentioned by the parties in the agreements of sale produced before it, on what can be characterised on the basis of some permutations and combinations depending upon its view either to make a pre-emptive purchase or not. No norms have been prescribed and no standard or principles had been adopted or set for itself by the appropriate authority. We want to note that learned counsel for the petitioners submitted in some cases, a particular method of deductions and additions is adopted in one case but under exactly similar circumstances in another case a different method is adopted without any rational basis. However, we do not want to dilate on this aspect because

we are sitting under articles 226 and 227 of the Constitution of India and the parameters laid down by the Supreme Court are well settled and clear. The appropriate authority had acted in an arbitrary fashion in arriving at the fair market value in all the cases. The sale instances of properties comparable with the subject properties have not been taken into account and properties situate far away from the subject properties have been taken into consideration and the additions and deductions are made at the whims and fancies at the subjective satisfaction of the appropriate authority. In none of the cases, we are able to see any reasonable basis known to the field to fix the fair market value. It is a matter of common knowledge nowadays in all the cities all over India that Revenue authorities have fixed the value for areas where the land is situate for the purposes of stamp duty. In Delhi, in particular, the Delhi Administration and the Delhi Development Authority periodically are reviewing the value of the land in all localities on relevant factors for the purpose of stamp duty and unearned increase. So far as Delhi is concerned, the value fixed by these public authorities could form the proper basis for arriving at the market value of the land. The value of the building can be ascertained in accordance with the well known principles. These two things would give a clear idea about the real worth or the fair market value of the property. The value of an immovable property depends upon a variety of factors. Two buildings may be adjacent to another; one may fetch a large price and the other may not. The authorities have also to take into account all the vicissitudes in the lives of the parties and the circumstances under which the transactions are being entered into. That is the reason why the Department in giving instructions to the appropriate authority had said that there will be a presumption if the apparent consideration is less than the fair market value by 15 per cent. of tax evasion. Therefore, while issuing the show-cause notice it is incumbent on the appropriate authority to collect all facts which would enable a reasonable authority properly instructed in law to make the presumption. The Supreme Court, as we had pointed earlier in Gautams case , had to make things clear, with great respect, had placed on record the dictum by the Supreme Court in K. P. Vargheses case which was sought to be challenged by the Department but that was not done and that was approved by the Supreme Court. And as we had said above, Parliament has not said that for the purpose of Chapter XXC a particular method of evaluation should be adopted. The appropriate authority had assumed in all cases without any exception whatsoever that it can follow a method to suit its convenience. If that is allowed, the very purpose of law is defeated. The law has not been made to enable the State to unjustly enrich itself at the cost of the citizens. The core of the democratic polity is wholly misunderstood by the appropriate authority and that is the kernel of the issue. If Parliament intended, as assumed by the appropriate authority, the language of Chapter XX-C would have been couched in different words and would not be as it is found in the statute book. We may also notice just to appreciate the question that has arisen for consideration; previously Parliament inserted by the Taxation Laws (Amendment) Act, 1972, Chapter XX-A with effect from November 15, 1992; it ceases to be operative in respect of transaction of immovable property made after September 13, 1986.

Under section 269A the definition of apparent consideration is given as under : "apparent consideration (1) in relation to any immovable property transferred, being immovable property of the nature referred to in sub-clause (i) of clause (e), means, - (i) if the transfer is by way of sale, the consideration for such transfer as specified in the instrument of transfer; (ii) if the transfer is by way of exchange, - (A) in a case where the consideration for the transfer consists of a thing or things only, the price that such thing or things would ordinarily fetch on sale in the open market on the date of execution of the instrument of transfer; (B) in a case where the consideration for the transfer consists of a thing or things and a sum of money, the aggregate of the price that such thing or things would ordinarily fetch on sale in the open market on the date of execution of the instrument of transfer and such sum; (iii) if the transfer is by way of lease, - (A) in a case where the consideration for the transfer consists of premium only, the amount of premium as specified in the instrument of transfer; (B) in a case, where the consideration for the transfer consists of rent only, the aggregate of the moneys (if any) payable by way of rent and the amounts for the service or things forming part of or constituting the rent, as specified in the instrument of transfer; (C) in a case where the consideration for the transfer consists of premium and rent, the aggregate of the amount of the premium, the moneys (if any) payable by way of rent and the amounts for the service of things forming part of or constituting the rent, as specified in the instrument of transfer, 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 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 transfer, determined by adopting the rate of interest at eight per cent per annum; (2) in relation to any immovable property transferred, being immovable property of the nature referred to in sub-clause (ii) of clause (e), means, - (i) in a case where the consideration for the transfer consists of a sum of money only, such sum; (ii) in a case where the consideration for the transfer consists of a thing or things only, the price that such thing or things would ordinarily fetch on sale in the open market on the date of the transfer; (iii) in a case where the consideration for the transfer consists of a thing or things and a sum of money, the aggregate of the price that such thing or things would ordinarily fetch on sale in the open market on the date of the transfer and such sum; 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 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 transfer, determined by adopting the rate of interest at eight per cent per annum." The Chapter also defines fair market value in the following terms : "fair market value, - (i) in relation to any immovable property transferred by way of sale or exchange, being immovable property of the nature referred to in sub-clause (i) of clause (e), means the price that the immovable property would ordinarily fetch on sale in the open market on the date of execution of the instrument of transfer of such property; (ii) in relation to any immovable property transferred by way of lease, being immovable property of the nature

referred to in sub-clause (i) of clause (e), means the premium that such transfer would ordinarily fetch in the open market on the date of the execution of the instrument of transfer of such property, if the consideration for such transfer had been by way of premium only; (iii) in relation to any immovable property transferred, being immovable property of the nature referred to in sub-clause (ii) of clause (e), means the consideration in the form of money that such transfer would ordinarily fetch in the open market on the date of the transfer, if such transfer had been made only for consideration in money;" Under section 269D the competent authority was enjoined to issue preliminary notice. Under section 269C the competent authority could initiate proceedings for acquisition of property and the competent authority was obliged to give reasons. The second proviso to section 269C(1) is relevant and it reads as follows : "Provided further that no such proceedings shall be initiated unless the competent authority has reason to believe that the fair market value of the property exceeds the apparent consideration therefor by more than fifteen per cent of such apparent consideration." While introducing Chapter XX-C Parliament did not think fit or necessary to have similar proviso but it came in the form of instructions in the Department to the appropriate authorities. Section 269G provided for an appeal to the Tribunal against the order of the competent authority and section 269H provided for a further appeal to the High Court. The Chapter XX-C was inserted by the Finance Act, 1986, with effect from 1st of October 1986. I do not want to advert to the scope of the Finance Act because the objects had already been extracted. Thus, in the light of the above position of law, the approach made by the appropriate authority cannot be said to be in accordance with the law. We may also notice that there are mainly four methods of evaluation which are known in the field : (1) The comparative or market sales approach; (2) The cost approach; (3) Income or investment approach (on the basis of rental income); (4) Developers approach. In the case of the method of fixing fair market value on the basis of comparative sales, it could be done only on the basis of genuine comparable sale instances, even though a particular sale instance may not be a matching fair by the subject property. In this method, the important element is the immediate vacant possession being made available to the purchaser. Further, the property to be valued should be of a type that is easily available in the market. If the property is very valuable, as in these cases, it will be very difficult to find a comparable sale instance, leave alone the matching fair. Chapter XX-C is not for acquisition of property in public interest, but as we had indicated above, is only for the purpose of preventing evasion of tax. Consequently, the usual method of comparison for the purpose of valuation for giving compensation under the Land Acquisition Act, 1894, cannot be applied to the property coming within the purview of Chapter XX-C. Before issuing the show-cause notice, the law enjoins on the appropriate authority, as the initial burden is on it, to take into account sale instances which could be compared and the appropriate authority cannot issue show-cause notice by resorting to Procrustean methods by making additions and deductions without any rational basis and acting on that premise come to a conclusion relating to a figure to assume that the apparent consideration is 15 per cent. less than the fair mar-

ket value and, therefore, the parties intended evasion of tax. In the context of the law laid down by the Supreme Court in our view, in none of the cases the appropriate authority could discharge the initial burden. The Department along with the instructions issued, could have notified appropriate value bounds giving the value of the land in different areas depending upon the location and facilities available as was done in England under the Domestic Property Regulations, 1991. The Department also could have issued specific instructions giving the rates of construction and method of depreciation for the purpose of implementing the provisions of Chapter XX-C. Suppose the Department had fixed the value of the land at Connaught Place at Rs. 10 lakhs per ground and value of construction for the purpose of the Chapter at Rs. 1,000 per sq. ft. and the parties intending to enter into transactions of transfer should fix that value and pay tax to the Department on that basis. The Department could also have said if the parties entered into transactions less than the value fixed by the Department there will be presumption of tax evasion and the Department could issue show-cause notice for pre-emptive purchase. If the parties enter into transactions of transfer in accordance with the value fixed by the Department then there will be no under valuation and tax could be levied and collected on that basis. Instead of purchasing on pre-emptive basis one or two properties on the exercise of the discretion by the appropriate authority, a large number of properties could be brought within the tax net and the revenue also would be more by manifold. The Income-tax Department knows that this is similar to the process of rating in banking jurisprudence. That could be adopted by providing relevant data for arriving at the fair market value. The moment Parliament enacted the law the Department ought to have revived up to meet the situation realising its tremendous responsibilities. We do not intend to suggest anything to the Department, we are only testing the action of the appropriate authority on the basis of the law governing the interpretation of Chapter XX-C in its effective implementation. For, after all, the ultimate object of the law is to enable the Department to collect revenue by preventing evasion of tax. While fixing the valuation the appropriate authority should also take into account whether the properties are tenanted or any other restrictions on transfer and encumbrances are existing over the property as was contended by the learned Attorney-General before the Supreme Court in Gautams case . The appropriate authority should be inquisitive, flexible, observant, sensitive, eclectic and constructive and should explore all possible and relevant avenues to get necessary information to arrive at a fair justifiable and accurate data to form a credible opinion to issue the show-cause notice. The appropriate authority is also expected to know that the term, market, is, what normally we think of as the place where the sellers and buyers meet, but in economics in a larger sense market would mean the availability of commodities at a particular price specifying the needs and requirements of the sellers and buyers and the appropriate authority is also expected to know that in real estate parlance market would mean the availability of the title to a property and interest therein, the bundle of rights at a particular point of time as required, by specifying the needs of the parties. It is an operation between the parties in trading with each other, depending upon

the utility of the property from the purchasers point of view and the price from the vendors point of view. It is in this backdrop the Department should consider issuing show-cause notice for making pre-emptive purchase. The market value of a property would depend on important factors like (1) its demand in the investment market; (2) annual net income the property may yield in future. The appropriate authority should analyse the investment carefully and all the important and relevant factors should be dynamically considered weighing all things in operation in the actual market. No doubt, the potential of the subject property could be taken into account on development right basis but that would come in the last after everything relevant is brought into the decision making process for fixing the fair market value before issuing show-cause notice. There is no point in attempting to cherry-pick the fair market value in cases where the appropriate authorities desire to pass an order of compulsory purchase. The appropriate authorities should not be like charlatans with a tunnel vision but shall act with a statesmanship to achieve the goal set by Parliament and at once make the citizens discharge their obligations without hardship. The citizens should be satisfied that the appropriate authorities function within the well defined boundaries under the Constitution. There should not be any chinks in the exercise of power by the appropriate authorities. In the above backdrop, as it were, we have to consider the facts of each case. In C.W. 5220 of 1993 the subject property is C-62 (New G-4), Maharani Bagh, New Delhi. The property is owned by Mrs. Khatoon Qumarain (hereinafter referred to as the owner). She was 86 at the time of the agreement in the year 1993. The property which is referred to as subject property consists of two floors, ground floor and first floor. They are occupied by tenants, the area of the land is about 800 sq. yds. On July 1, 1993, the owner entered into agreement with Mrs. Kailash Suneja (hereinafter called the petitioner). The apparent consideration stated in the agreement to sell is Rs. 79,99,390 inclusive of Rs. 34,99,390 towards unearned increase. On July 7, 1993, the owner and the petitioner sought permission from the appropriate authority, i.e., respondent No. 1, in Form No. 37-I as required by law on July 9, 1993; the appropriate authority, the first respondent issued notice to the owner asking for the following information and details : (i) A photocopy of the sanctioned building plan. (ii) A photocopy of completion certificate. (iii) A photocopy of the latest receipt No. 135100 dated September 15, 1992, amounting to Rs. 4,361 on account of the property tax for the year 1992-93; and (iv) A photocopy of the receipt No. 1818 dated March 19, 1993, amounting to Rs. 951.75 for the ground rent paid to the Maharani Bagh Co-operative House Building Society Ltd. (v) A photocopy of the perpetual sub-lease for plot No. C-82 (New No. G-4) duly executed between the Maharani Bagh Co-operative House Building Society Ltd., and Mrs. Quamarain is also being submitted duly signed by the transferor and transferee." On July 26, 1993, the owner submitted the documents to the appropriate authority. On September 29, 1993, the first respondent appropriate authority, issued show-cause notice under section 269UD (1) of the Income-tax Act, 1961, to the owner, the petitioner, the two tenants. It is stated in the show-cause notice that the subject property was compared with the three properties termed as sale instance properties :- 1. G-8, Maharani

Bagh Apparent consideration 1.26 crores. Apparent consideration of subject property is higher by 58% 2. D-18, Maharani Bagh (known as I-15) Apparent consideration 1.11 crores. Apparent consideration of subject property is higher by 22% 3. N-62, Panchsheel 1.91 crores. Apparent consideration 1.91 crores. Apparent consideration of subject property is higher by 60 % How the value of the subject property is determined will be clear from the following table :- Subject property Ist sale instance property Sale agreement 9-7-93 Apparent sale consideration Deckared kabd rate works out at Rs. 21,821 per sq. mt. value. To be increased at 1 % per month for 24 months 24% Sale deed dated 25-6-91, 24 months earlier sale agreement. Has no basement 10% to be deducted Thus value to be has basement potential Added is 14% (24%-10%) If 14% is added the land rate of subject property would come to Rs. 21,821 x 14% Rs. 24, 875 or Rs. 25,000 per sq. mt. Value of land Rs. 1.30 crores Depreciated value of the structure Rs. 9,35,758 Total value of the subject property Rs. 1,39,33,758 The property is tenanted Depreciated value for 6 years at 8 % is calculated at : Rs.87,78,267 (Rs. 1,39,33,758 x .63)

(a) Thus the value of the subject property is Rs. 87,78, 267

(b) To this rent for 6 year is added Rs. 1,42,092 Has barsati potential of the area is 149.90 sq. mts Has no barsato potential Rs. 37,27,500

(c) This is to be added. The value of the subject property is fixed at Rs. 1,25,42,859 or Rs. 1,25,45,000 This is 58% more than the apparent consideration of the subject property (Rs. 799,99,390) Subject property D-18 (known as I-15), Maharani Bagh. 2nd sale instance Sale agreement Sale deed 1-12-1992 Rs. 1.11 crores. Adjusted declared 500 sq. yds. Or 418 sq. land rate works mts. Per sq. mt. Value to be increased at 1 % per month 7 months earlier to sale agreement For 7 months +7% FAR(not so much as the 2nd instance FAR (140-100) 28% Side open (not available/which is available in 2nd instance) 5% has no basement potenial

-10 +7% -43%

-36% Declared land rate deducting 36% 29,587 x .64 = Rs. 18,950 per sq. mt. Value of the land of the subject property 52 x 18,950 Rs. 98,54,000 Tenanted Depreciated value 9,33,758 of the structure Rs. 1,07,87,758 Depreciated value Rs. 57,96,287 at the rate of 8% (Rs. 1,07,87,759 x .63) Rental increase fo 6 years Rs. 1,42,092.00 =Rs. 28,21,655 Barsati potential 148.90 sq. mt. x 18.950 Total value of the Rs. 97,60,034 subject property 22% higher than to AC Subject property 3Rd sale instance Sale agreement 9-7-1993 N-G2, Panchseel Park 800 sq. yds having FAR Land rate declared works out at Rs. 28,455 per sq. mt. 29-4-1993 sale agreement consideration Rs. 1,56,00,000 If the rate of increase of 1 % Rs. 35,02,220 Per month 4 months + 4% time gap Rs. 35,02,220 Rs. 1,91,02,220 Nol open area Falling open area -5% No base potential Basement available 10% +4% - 15 = -11 The land rate works out at Rs. 25,333 (28,455 x .89 Land rate of subject property (ground floor 1st floor) 520 sq. mts. =25 x 520 =1,313,73,150.00 = 1,31,73,150 = 1,31,73,150 Depreciated value of the structure = 9,33,758.00 Rs. 1,41,06,918.00 Depreciated value at the rate of 8% Rs. 88,87, 358 Barsati potential 148.90 sq. mts. Value 148.90 x 25,333 Rs. 37,72,083.00 Value of the subject property Rs. 88,87,238.00 Rs. 37,72,083.00

Rs. 1,42,092.00 Rs. 1,28,01,533.00 This is higher by 60% What has been done by the appropriate authority is 1% is added for every month as if every month there is increase of 1% in the property. The basement potential of the properties considered and barsati potential is taken into account. Taking into account the subject properties tenanted, 6 years deferred value at 8% is calculated and 6 years rent is added to the value arrived at by the above process. On October 14, 1993, the owner, the petitioner sent replies to the appropriate authorities. The petitioner stated in the reply that the two floors are under the occupation of the tenants and the comparable instances have to be identified on the proximity from time angle and (2) to proximity from situation angle. In the case of tenanted properties, the sole permissible method of arriving at fair market value is the rent capitalising method. The method of valuation adopted by the appropriate authority is wrong and is not in accordance with the principles laid down by courts. For the purpose of calculating deferred value, 14 years must have been the period. The owner stated that the tenants had also filed statements which would show that the tenants are bona fide tenants in occupation of the property for a long time. The owner also sought to rely on the passage from Parks on Valuation at page 123 first edition, the learned author has observed that the hypothetical or reversionary method of valuation is not in order. Attention in support has been invited by the learned author to an old case of Government of Bombay v. Merwanji Moncharji [1886] 10 LR 907 (Bom). The owner also challenged the fixation of depreciation of the building at Rs. 9,33,750. The subject properties are located at the end of the colony. The appropriate authority was wrong in taking into account the sale instance properties. It is also stated that the third instance property (Panchsheel Park) which is situate far from the colony and that is not a tenanted property. It was submitted that the consideration stated in the agreement represents the fair market value and there was no intention of evasion of tax. Therefore, the no objection certificate should be granted. It was also stated in the affidavit filed by Hemant Sarangi, Under Secretary, Central Board of Direct Taxes in C. B. Gautams case , that the following types of properties could not ordinarily be purchased by the Central Government : 1. Cases of doubtful or disputed titles. 2. Transaction by and with the Government. 3. Properties with bona fide tenancies of long standing. 4. Properties with too many restrictions on users. On October 21, 1993, the owner had submitted his statement about the offer made by Mr. P. K. Ganeriwal, one of the tenants in the property, to purchase the property and it is stated that it is not genuine and that is an irrelevant fact. The other tenant, Amarjeet Singh, stated in his objection petition dated October 16, 1993, that his tenancy rights should not be affected by the purchase. Again on October 19, 1993, the tenant, Amarjeet Singh, stated that he appeared before the appropriate authority and mentioned about Suit No. E-389 of 1991 filed against him by the owner and he had expressed displeasure over the way in which Mr. Upadhaya, member of the appropriate authority, acted. The first respondent appropriate authority passed the order of compulsory purchase on October 25, 1993. The basis of the order is that comparing the apparent consideration of the subject property with three sale instance properties the apparent consideration is grossly undervalued and,

therefore, the appropriate authority was obliged to pass the order. The facts as mentioned in the show-cause notice are adopted in the order impugned. The appropriate authority has also referred to the offer made by Mr. P. K. Ganeriwal, a tenant, and ultimately the appropriate authority came to the conclusion that the apparent sale consideration of the subject property is lower by more than 15 per cent. than the fair market value of the property. The appropriate authority has not given a finding that the under valuation was made with the sole object of evading tax. The petitioner has challenged this order. In the writ petition it is stated that the method adopted by the appropriate authority in arriving at the fair market value was not permissible in law. The normal method of valuation should have been adopted if rent capitalisation is not acceptable to the appropriate authority; (2) The appropriate authority did not give reasonable opportunity giving details about the comparable tenancy, state of the building, year of construction, the basis of rate adopted for land and other relevant data taken into account by the appropriate authority not given to the petitioner; (3) the sale instance properties are not comparable, not proximate from situation angle; (4) none of the sale instance properties are tenanted; (5) In the case of tenanted property the sole permissible method of arriving at the market value is the rent capitalisation method; (6) encumbrance of tenancy is very material because section 16(6) of the Delhi Rent Control Act, 1958, prohibits a purchaser from filing a suit for eviction within five years from the date of purchase. The assumption that the potential of the terrace would enhance the value is erroneous while the tenant in the first floor is in enjoyment of the terrace; (7) The depreciation value of the structure at Rs. 9,33,758 is on the high side. Very material facts had not been considered in this behalf; (8) The sale instance of S-39A, Panchsheel Park is comparable because it is similar to subject property, both are of 800 sq. yds. and both are fully tenanted. The property at S-39A, the position was (1) F.A.R. is 140 whereas the subject property is 100; (2) the property is situate on a 150' wide road whereas subject property is situated on a 30' wide road. NOC was issued to S-39A, Panchsheel Park, for Rs. 70 lakhs plus unearned increase. And if this is taken into account, the aggregate value of the subject property works out at Rs. 77.7 lakhs ignoring the tenancy of one floor. If this is compared, the fair market value of the subject property would be far less than the apparent consideration. In the affidavit filed by the Central Board in Gautams case , it is stated that the properties of bona fide tenancies of long standing should not ordinarily be purchased. During the course of the proceedings, it was brought to the notice of the petitioner by the appropriate authority that a tea company of Calcutta and one Mr. Jeff from abroad had made offers for purchasing the property. The petitioner was not furnished with any documentary evidence. The aforesaid persons appear to be the nominees of the tenant, P. K. Ganeriwal. Amarjeet Singh, the tenant of the first floor, made it clear in his letter dated October 16, 1993, that he is a tenant of the first floor and terrace above. He stated : "The sale instance of S-39A, Panchsheel Park, relied upon by petitioner, was arbitrarily dealt with. Without any basis/working the land rate of this property was worked out to Rs. 30,347 per sq. mtr. and therefore, was stated to be of no help to petitioner. Relying upon the

other instance of property at 56, Jor Bagh, New Delhi, which was tenanted and the tenant was paid a sum of Rs. 65.61 lakhs for vacating, petitioner submitted that it will have to make such payments to tenants for getting the subject property vacated. However, this submission was negated by observing that no judicial notice of such a position can be taken as no such payment is stipulated in the agreement for sale and purchase of subject property. The contention that deferment factor for tenancies should be taken as 14 years and not 6 years was rejected for the reason that after initial lock-in period of five years for a new buyer, the property may be vacated within a period of about one year by a mutual agreement. Further, it was observed that there is no subsisting lease deed as on date in respect of either of the two tenants of the subject property. With regard to value of structure taken at Rs. 9,33,758 it was stated to be worked out as per plinth area rate and that depreciation at 1.5 per cent. per annum has been allowed for 26 years, since the structure is 26 years old. The contention that possibility of utilisation of terrace rights of first floor is remote, as the same is in occupation of tenant on first floor was rejected for the reason that terrace on the first floor has not been let out to the tenant on the first floor. In respect of objection to offers, made by a tea company of Calcutta and non-resident Indian to purchase the subject property directly from respondent authority at a price higher than the apparent consideration, it was stated in the order that the two offers are not being made the basis for making this purchase order and are referred only to support the point that the sale consideration of the subject property is lower by 15 per cent. from the fair market value of the property." According to the petitioner, the discount of 8 per cent. for 6 years on account of subject property being tenanted is unrealistic, imaginary and arbitrary. The tenants on the ground floor and the first floor are there for a long time. The tenant in the ground floor is from 1979 and the first floor from 1967. The suit for eviction with reference to first floor of Amarjeet Singh, which was filed in 1977, was decided in his favour in 1986. The discount of 8 per cent for 6 years was given without any rational basis. The basement potential is not at all real but is imaginary and arbitrary. It is further stated that the basis of calculation for determination of fair market value is vitiated by the following facts : "The value of land operation to ground and first floor should be 535.12 sq. mts. instead of 520 sq. mts. F.A.R. of ground floor and first floor is 80 out of total 100 and 80 per cent of 668.9 sq. mts. comes to 535.12 sq. mts, and not 520 sq. mts. Consequential additional for barsati floor potential should have been made with reference to land area 133.78 sq. mts. as against 148.90 as calculated by the appropriate authority." The value of construction at Rs. 9,35,758 after giving depreciation of 1.5 per cent. for 26 years (age of the building) is low. Minimum should have been 5 per cent. Determination of cost of construction on the basis of plinth area is not done. Subject property is situate at the dead end of the road and 5 per cent. discount ought to have been given. Discount for basement of 10 per cent is low in the present situation when getting space in Delhi is very difficult. A specific request was made to the appropriate authority to furnish data with reference to properties cleared within the last one year in the same locality or other surrounding areas, with reference to tenanted properties

and that was not given. The method adopted by the appropriate authority is arbitrary and hit by article 14 of the Constitution of India. Respondent Nos. 1 and 2 filed a counter affidavit traversing the allegations in the writ petition. In paragraph 1, the nature of the property and consideration are referred to in the following terms : "A statement in Form No. 37-I was filed under rule 48L of the Income-tax Rules, 1962, on July 7, 1993, which was accompanied by an agreement to sell dated July 1, 1993. The apparent consideration agreed between the transferor Mrs. Khatoon Quamarain and the transferee Mrs. Kailash Suneja, in respect of property No. G-4, Maharani Bagh, New Delhi (old No. C-62) was Rs. 45 lakhs plus ULI amounting to Rs. 34,99,390 payable to the DDA. Thus the effective apparent consideration for which the property was agreed to be transferred was Rs. 79,99,390 (Rs. 45,00,000 + Rs. 34,99,390). The property in question was occupied by Shri P. K. Ganeriwal as tenant on the ground floor and Sardar Amarjit Singh as tenant on the first floor. The property in question had a plot area of 668.09 sq. mts. (800 sq. yds.) on which a double-storeyed house comprising the ground floor and the first floor along with two servant quarters on the garage block had been constructed." It is further stated in the show-cause notice that the subject property was compared with the sale instances of similar properties located in similar localities, G-8 Maharani Bagh which is situated in the same locality, I-15 Maharani Bagh, which is also situated in the same locality and N-62, Panchsheel Park, situated in a locality comparable to Maharani Bagh. What is stated in the show-cause notice is repeated. The purchase order was passed on October 25, 1993, after considering the sale instances. It is asserted that the appropriate authority is under no obligation to the petitioner to enable him to prepare his case. About the tenancy, it is stated :- "The averments made in these two sub-paras. are not admitted. Although a new buyer of a property covered under the Rent Control Act cannot file a suit for eviction for five years as per section 14(6) of the Delhi Rent Control Act, a new buyer can, after the expiry of five years, and within a period of one year thereafter, have the property vacated from a tenant by means of mutual compromise and it may not be necessary to approach a court of law for getting the property vacated. It is worth mentioning that there was no subsisting lease deed in respect of either of the two tenants of the subject property, while determining the market value of a tenanted property governed by the Rent Control Act, the adoption of a deferment factor is an accepted practice of valuation." This reasoning itself is not enough to find out the approach of the appropriate authority to the question. It is stated in the counter, that during the course of hearing the petitioner was confronted with two letters, one received from Bhubhandhar Tea Company, Calcutta, who were willing to purchase the property for a sum of Rs. 61,45,009 plus unearned increase and other charges. There was also an offer from Satish Jha, NRI, who was willing to purchase the subject property for a sum of Rs. 61 lakhs plus unearned increase and stamp charges. According to respondents Nos. 1 and 2, the basis of purchase order was on a comparison of three sale instances mentioned in the show-cause notice. Reference is made to the representation made by the tenants which is not very much relevant at this stage. The appropriate authority

has disputed the method of valuation suggested by the petitioner. Respondents Nos. 1 and 2 have also chosen to disallow the discount claimed by the petitioner. The appropriate authority maintained the same stand that is taken by it in the show-cause notice. The petitioner filed a rejoinder to the counter affidavit and the rejoinder was filed on April 5, 1994. It is not necessary to refer to the averments in the rejoinder because the petitioner has repeated the averments in the writ petition. Mr. Syali, learned counsel for the petitioner, relied upon the judgment of the Supreme Court in C. B. Gautams case , and submitted that the appropriate authority had not at all discharged this burden and, therefore, the purchase order is liable to be quashed. Learned counsel relied upon the passage of the judgment of the Supreme Court in State of Madhya Pradesh v. D. K. Jadav, AIR 1968 SC 1186, 1190, wherein Supreme Court had held : "It is well settled that where the jurisdiction of an administrative authority depends upon a preliminary finding of fact the High Court is entitled, in a proceeding for a writ, to determine, upon its own independent judgment, whether or not that finding is correct. The matter has been very well put by Farwell, L.J. in Rex v. Shoreditch Assessment Committee, [1910] 2 KB 859 at page 879 as follows : The existence of the provisional list is a condition precedent to their jurisdiction to hear and determine, and as the claimant is entitled to require them to hear and determine, they cannot refuse to take the steps necessary to give rise to such jurisdiction; if they do, their refusal may be called in question in the High Court. No tribunal of inferior jurisdiction can, by its own decision finally, decide on the question of the existence or extent of such jurisdiction; such question is always subject to review by the High Court, which does not permit the inferior Tribunal either to usurp a jurisdiction which it does not possess, whether at all or to the extent claimed, or to refuse to exercise a jurisdiction which it has and ought to exercise. Subjection in this respect to the High Court is a necessary and inseparable incident to all Tribunals of limited jurisdiction; for the existence of the limit necessitates an authority to determine and enforce it; it is a contradiction in terms to create a Tribunal with limited jurisdiction and unlimited power to determine such limit at its own will and pleasure-such a Tribunal would be autocratic, not limited-and it is immaterial whether the decision of the inferior tribunal on the question of the existence or non-existence of its own jurisdiction is founded on law or fact; a court with jurisdiction confined to the city of London cannot extend such jurisdiction by finding as a fact that Piccadily Circus is in the ward of Chepe. The same principle was enunciated by the Court of Appeal in White and Collins v. Minister of Health [1939] 2 KB 838. The question debated in that case was whether the High Court had jurisdiction to review the finding of the administrative authority on a question of fact. It appears that Part V of the Housing Act, 1936, enabled the local authority to acquire land compulsorily for the provision of houses for the working classes but section 75 of the Act provided that nothing in the Act was to authorise the compulsory acquisition of land which at the date of compulsory purchase forms part of any park, garden or pleasure ground or is otherwise required for the amenity or convenience of any house. In accordance with the provisions of this part of the Act, the Ripen Borough Council made an order for the com-

pulsory purchase of 23 acres of land, it being part of an estate in Yorkshire called Highfield consisting of a large house and 35 acres of land surrounding it. The owners served notice of objection to the order as being contrary to section 75 and the ground of objection was that the land was part of a park and was required for the amenity or convenience of the house. The Minister of Health directed a public inquiry and after holding the inquiry and taking evidence, the Chairman duly made his report to the Minister who thereupon confirmed the order. It was held by the Court of Appeal that the High Court had jurisdiction to review the Ministers finding and since the land in question was part of the park of Highfield, the order of compulsory purchase was quashed. At Page 855 Luxmoore L.J. stated : The first and the most important matter to bear in mind is that the jurisdiction to make the order is dependent on a finding of fact; for, unless the land can be held not to be part of the park or not to be required for amenity or convenience, there is no jurisdiction in the borough council to make, or in the Minister to confirm, the order. In such a case it seems almost self-evident that the court which has to consider whether there is jurisdiction to make or confirm the order must be entitled to review the vital finding on which the existence of the jurisdiction relied upon depends. If this were not so the right to apply to the court would be illusory." Learned counsel referred to Smt. Rajshuri v. CWT , CGT v. Executors and Trustees of the Estate of Late Sh. Ambalal Sarabhai and CT v. Shivaoni and Co. . Learned counsel relied upon Century Spinning and Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council , Babubhai Muljibhai Patel v. Nandlal Khodidas Barot submitted that filing of a suit is not an effective remedy. Learned counsel for the respondents Mr. Rajendra and Mr. Midha never put forth the argument that the petitioners should be driven to the filing of suits for getting the reliefs prayed for in the writ petition. What the learned counsel contended was that the order of compulsory purchase cannot be challenged at all. Therefore, it is not necessary to go into the question, whether the petitioners in the writ petitions would be entitled to file suits in civil courts challenging the order of compulsory purchase made by the appropriate authority. We may also note that under section 293 of the Income-tax Act, 1961, the jurisdiction of the civil court is barred and that section reads as under : "293. No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act, and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act." Therefore, the question whether the filing of a suit is an effective alternate remedy would not arise at all for consideration. Learned counsel Mr. Syali submitted when the fair market value has not been arrived at adhering to the principles acceptable in law, no question of presumption of tax evasion would arise. C.M. No. 1988 of 1994 : This application is filed by Bhupender Tea Co. Ltd., who is one of the persons who offered to purchase the property for Rs. 61,45,009 plus unearned increase and stamp charges. We do not want to go into the merits of the claim of the applicant. The applicant has no locus standi to file the petition. Accordingly, C.M. No. 1988 of 1994 under order 1, rule 10, CPC, is dismissed. C.W. No. 4153 of 1993 : There

are eight petitioners. The fourth respondent is Arjun Anand, who is the owner of the property bearing No. 25, Friends Colony West, hereinafter referred to as the subject property. On February 1, 1991, there was an agreement to sell between the fourth respondent and the petitioners and the apparent consideration was Rs. 1.75 crores. On February 4, 1991, the petitioners and the fourth respondent filed in Form No. 37-I for issuance of no objection certificate. On April 18, 1991, the purchase order was passed by the appropriate authority. On the same day, the appropriate authority called upon the fourth respondent to surrender possession of the property. C.W. No. 1508 of 1991 was filed in this court challenging the purchase order. On March 1, 1993, this court allowed the writ petition, in view of the judgment of the Supreme Court in C. B. Gautams case . It is claimed by the petitioners that on March 9, 1993, counsel for the petitioners appeared before the appropriate authority and made a request for an inspection of the file. On March 15, 1993, an application to the appropriate authority to issue no objection certificate was made along with an affidavit of Sanjay Gupta. On the same day, the fourth respondent also filed an application for issue of no objection certificate stating that the transaction was a bona fide one and there was no under valuation. Apprehending that the appropriate authority might not give sufficient opportunity, the petitioners filed C.M. No. 3797 of 1993, for a direction to the appropriate authority that the petitioners and the fourth respondent should be given an inspection of the file, copies of the valuation reports and the entire correspondence received from the Members of Parliament and the then Finance Minister recommending the purchase of the property. On May 11, 1993, an order was passed by this court recording the undertaking given by the learned counsel for the Revenue that the appropriate authority would act in accordance with law. On May 19, 1993, there was a phone call from the Chairman, appropriate authority, that the appropriate authority would be inspecting the property. Allegations of collusion between the Chairman and one of the tenants are made in the petition. On May 21, 1993, a show-cause notice is given by the appropriate authority which was served on the petitioners at 6 P.M. on that day. In paragraph 4 of the show-cause notice it is stated that one Vinod Kumar Jain requested for hearing as he was a tenant in the premises. In paragraph 6, the basis for the show-cause notice is given as under : “In the case of subject property, the apparent consideration is Rs. 1,75,00,000. The plot area is 3595.32 sq. mts. including 830.95 sq. mtrs. declared as excess land under ULCR Act. The net plot area comes to 3595.32-830.95 = 2764.37 sq. mtrs. If salvage value of Rs. 1,64,445 is considered, the achieved land rate works out to Rs. 1,75,00,000 - 1,64,445 = 1,73,35,555 divided by 2764.37 = Rs. 6271 per sq. mtr. We may compare the sale instance of property at 60, Friends Colony (East) which was agreed to be sold on December 5, 1990, for apparent consideration of Rs. 2.65 crores. If the depreciated value of structure of sale instance is taken at Rs. 11,60,000 the land rate per sq. mtr. works out to Rs. 2,65,00,000 (-) 11,60,000 = 2,53,40,000 divided by 1173.91 = Rs. 21,586. If adjustment on account of time gap of +2 %, side open +1O %, potential for basement +1O% in the sale instance and nearness to railway track - 5% and size of plot - 5% is taken into account, the rate per sq. mtr works

out to Rs. 24,180. This gives land value of subject property as Rs. 2764.37 x 24180 = Rs. 6.68 crores. In view of the fact that the subject property is tenanted, its value is deferred for 5 years at 8% interest and the present value would work out to Rs. 4.55 crores to which Rs. 1,64,000 salvage value is to be added. This brings value of the subject property to Rs. 4.564 crores which is 160% above the apparent consideration." The following statements were made before the appropriate authority :- "(1) The proceedings before the appropriate authority are judicial in nature. (2) The appropriate authority is obligated to follow judicial procedure like a court though summary in nature like small cause court following the principles laid down in CPC and Evidence Act. (3) The appropriate authority is mandated to act judicially and is accountable for its acts which must be done and exercised judicially and not arbitrarily. (4) The difference between the apparent sale consideration and the fair market price to the extent of 15% or more did not automatically prove that there was under valuation so as to attract the rigour of section 269UD to pass purchase order. (5) The difference between the apparent consideration and fair market value to the extent of 15 % or more is merely presumptive of an attempt being made to evade tax but the said presumption is rebuttable and the seller and the purchaser are entitled to show to the appropriate authority that there exists several circumstances and factors in which the property was agreed to be sold at a lesser price than the fair market value and have a right to give evidence to rebut the presumption. (6) The mandatory and precedent condition which must be satisfied before exercising the power to pass the purchase order is that there must exist an intention and act to evade tax and that black money i.e., additional consideration other than the apparent consideration must pass beneath the table. In case of non-existence of this precedent condition, no purchase order can be passed, notwithstanding the apparent consideration being less than the fair market value. (7) Since the imputation of tax evasion arises where an order for compulsory purchase is made and such an imputation could be made against him, he must be given an opportunity to show cause and prove that the alleged under valuation in the agreement for sale was not with a view to evade tax. (8) Another precedent condition is that the apparent sale consideration has been intentionally understated, i.e., a deliberate understatement of the value of the property to evade tax. (9) The apparent sale consideration of the property in question is higher than the fair market value assessed/determined by any norm, method or standard. In the alternative, even if it be assumed for the sake of argument that the apparent consideration was lower than the"fair market value" even then a variety of compelling circumstances as given in the affidavit of his client by way of evidence (which stands uncontroverted) existed under which the property was sold at Rs. 1,75,00,000 considering the best/maximum price he could get for a tenanted property. (10) There was not an iota of evidence or any circumstance suggesting evasion of tax or a deliberate understatement of the value of property. (11) The unrebutted and uncontroverted facts and evidence is on the record produced by the transferor, his client, that there is no understatement of the value of the property. (12) Even otherwise the facts and circumstances existed under which his client sold the property for Rs. 1.75

crores particularly when he was getting a rental income of the property to the extent of Rs. 4,000 per month and he was residing in a tenanted house where he was paying about Rs. 8,000 per month as rent and he had no other house in Delhi and no business premises wherein he could carry on his business and that he was also paying very heavily for more than Rs. 14,000 (Rs. fourteen thousand only) per month as rent for the business premises and was in dire need of finances to carry on his business gainfully and successfully. (13) His client had no hope of getting the property vacated and that Shri Vinod Jain was a hard litigant and was a very rich and big industrialist wielding great influence in political circles and bureaucrats and various other facts and circumstances have been disclosed in his affidavit under which the apparent consideration is much more than the fair market value. (14) The fair market value of a tenanted property is to be determined on the basis of capitalisation of rental income." About the sale instances cited, it was submitted that there could be no comparison between the subject property and property bearing No. 60, Friends Colony, because 60, Friends Colony, was a vacant property, the actual physical and vacant possession of the property was handed over/delivered to the purchaser and the sale consideration was for vacant property while the suit property was a tenanted property and that Vinod Kumar Jain was raising disputes with ulterior motives. The appropriate authority did not give an opportunity to file reply to the show-cause notice and the reply, when it was given, was refused to be received by the office at the instance of the Chairman. It is further stated in the petition that on May 28, 1993, the purchase order was passed. It is further stated in the petition that there were dissimilarities between the subject property and 60, Friends Colony, and there was absolutely no basis of determination of fair market value. The petitioner referred to the decision of the Orissa High Court in Joseph Valloran v. CIT and Smt. S. Neelaveni v. CWT . It is submitted that the observation of the appropriate authority that the tenants can be easily evicted is wholly fallacious and that would completely vitiate the order. It is further stated by the petitioners that the appropriate authority should have resorted to the fixation of fair market value on the basis of capitalisation of rent for some years. The appropriate authority erred in assuming that the sale instance, 60, Friends Colony, was a good guide in determining the fair market value. It is further stated that the adjustments adopted by the appropriate authority were wholly arbitrary and they were made just for the purpose of passing the impugned order. The petitioners also stated that the appropriate authority arbitrarily refused to consider the sale instance, No. 2, Barakhamba Road. The petitioners assert that there was no finding by the appropriate authority that there was intentional gross understatement of the value of the property and there was tax evasion by the party and unless there was such a finding, order of compulsory purchase cannot be made. The petitioners further stated that the appropriate authority illegally and in utter contravention of the norms and standards for determining the fair market value erroneously held that since the tenancy of the tenant was on a month to month basis, therefore, the deferment factor of 5 years was reasonable to arrive at the fair market value of the suit property by calculating interest at 8% per annum while comparing the instance

of 60, Friends Colony. The petitioners further stated : "The deferment factor of 5 years was based on no evidence and not on any principle but was based on conjectures and surmises, whim and caprice maliciously entertained by the appropriate authority for oblique motives and purposes. The deduction at the rate of 8% by way of interest for 5 years had no basis and no principle. The market rate of interest is 24 % and not 8% and no prudent purchaser can risk his money at 8% interest in purchasing a litigated or tenanted property and even otherwise would get a return of Rs. 4,000 p.m. as rent meaning thereby that he would get only Rs. 2,40,000 as rent in 5 years on his investment of Rs. 4.55 crores as wrongly and maliciously observed/held by respondents Nos. 1 and 2 and not at the rate of 8% p.a. as falsely and maliciously observed by respondent No. 2 with no hope and certainty to get the vacant possession of the suit property by getting the tenant evicted through the process of the court after 5 years." The petitioners also asserted that in all other cases of tenanted property the method of valuation adopted by the appropriate authority was the capitalisation of rent for 20 years and NOC had been granted in all such cases. According to the petitioners, in the following cases, that method was adopted and NOC was granted : S.R. No. No. No. No. Property Property Property Area Area Area Date of agreement to sell Date of agreement to sell Date of agreement to sell Consideration Consideration Consideration Remarks Remarks Remarks 1. 1. 3139/ 21-1-93 3139/ 21-1-93 41-B Kotawali Road, New Delhi 41-B Kotawali Road, New Delhi 4100 sq. yds. 4100 sq. yds. 14-1-1993 14-1-1993 68,00,000 68,00,000 1. Three small portions tenanted since 1970 at Rs. 770 p.m. Rs. 550 p.m. and Rs. 500 p.m. Rest of property with the vacant possession. 1. Three small portions tenanted since 1970 at Rs. 770 p.m. Rs. 550 p.m. and Rs. 500 p.m. Rest of property with the vacant possession. 2. 2. 3071/23-11-92 3071/23-11-92 172, Jorbagh New Delhi 172, Jorbagh New Delhi 375 sq. yds. 375 sq. yds. 20-11-1992 20-11-1992 50,00,000 50,00,000 2. Ground floor at Rs. 1,100 p.m. since 7-12-1976. First floor at Rs. 375 p.m. since 1959 Barsati floor vacant. 2. Ground floor at Rs. 1,100 p.m. since 7-12-1976. First floor at Rs. 375 p.m. since 1959 Barsati floor vacant. 3. 3. 2960/24-8-92 2960/24-8-92 21, Community Centre, Basant lok, vasant Vihar New Delhi. Commercial plot 21, Community Centre, Basant lok, vasant Vihar New Delhi. Commercial plot 127.46 127.46 10-8-1992 10-8-1992 90,00,000 90,00,000 3. Ground floor tenanted to Chemical De Universe pvt. Ltd. at Rs. 9,500 p.m. Rs. 11,525 increased in April 1983, and again increased to Rs. 14,400 in April 1987 and again increased in April, (b) First floor I.T.C Ltd., at Rs. 21,592 p.m. since March 1980 3. Ground floor tenanted to Chemical De Universe pvt. Ltd. at Rs. 9,500 p.m. Rs. 11,525 increased in April 1983, and again increased to Rs. 14,400 in April 1987 and again increased in April, (b) First floor I.T.C Ltd., at Rs. 21,592 p.m. since March 1980 4. 4. R-2873/ 11-6-92 R-2873/ 11-6-92 203, Golf Links, New Delhi 203, Golf Links, New Delhi 375 sq. yds. 375 sq. yds. 31-5-1992 31-5-1992 50,00,000 50,00,000 4. Ground floor at Rs. 1,150 p.m. since 1975. First Floor at Rs. 950 p.m. since 1978. 4. Ground floor at Rs. 1,150 p.m. since 1975. First Floor at Rs. 950 p.m. since 1978. 5. 5. 182, Golf Links, New Delhi 182, Golf Links, New Delhi 575 sq. yds. 575 sq. yds. 15-10-1991 15-10-1991 1,42,00,000

1,42,00,000 Ground floor ten- anted to Sh. Yasho-vardhan K. Zaveri since October 1991 at Rs. 6,000 p.m. first and 2nd Barsati floor vacant. Ground floor ten- anted to Sh. Yasho-vardhan K. Zaveri since October 1991 at Rs. 6,000 p.m. first and 2nd Barsati floor vacant. 6. 6. 46, Ring Road, Lajpat Nagar III, 46, Ring Road, Lajpat Nagar III, 760 sq. yds 760 sq. yds 17-7-1990 17-7-1990 95,00,000 95,00,000 Rented for more. than Rs. 3,500 p.m New Delhi. Rented for more. than Rs. 3,500 p.m New Delhi. 7. 7. 3,Raj Narain Road, Civil Lines 3,Raj Narain Road, Civil Lines 792 sq. yds. 792 sq. yds. 21-5-1990 21-5-1990 48,78,000 48,78,000 Tenanted to Sh. J. C Chandok and Family for more than Rs. 3,500 p.m. Tenanted to Sh. J. C Chandok and Family for more than Rs. 3,500 p.m. 8. 8. R-1880 R-1880 A-46, Gulmohar Park, New Delhi. A-46, Gulmohar Park, New Delhi. 300 sq. yds 300 sq. yds 21-12-1980 21-12-1980 23,00,000 23,00,000 Fully single storeyed building tenanted to Mr. Pradeep Dutta since 1978 on a monthly rent at Rs. 1,500 p.m. fair market value was worked out in this case at Rs. 35 lakhs by A.A. and yet NOC was granted because the basis of rent capitalisation was later on adopted. Fully single storeyed building tenanted to Mr. Pradeep Dutta since 1978 on a monthly rent at Rs. 1,500 p.m. fair market value was worked out in this case at Rs. 35 lakhs by A.A. and yet NOC was granted because the basis of rent capitalisation was later on adopted. 9. 9. 45, Ring Road, Lajpat Nagar III 45, Ring Road, Lajpat Nagar III 760 sq. yds. 760 sq. yds. 15-10-1992 15-10-1992 95,50,000 95,50,000 Only ground floor tenanted at Rs. 2,500 p.m. upper floor vacant. Only ground floor tenanted at Rs. 2,500 p.m. upper floor vacant. 10. 10. B-I, Northern Scheme B-I, Northern Scheme 1157 sq. yds. 1157 sq. yds. 29-10-1992 29-10-1992 1,10,00,000 1,10,00,000 At Rs. 2,500 p.m. first and Barsati tenanted. Ground floor vacant. At Rs. 2,500 p.m. first and Barsati tenanted. Ground floor vacant. 11. 11. B-l Block Northern Extension B-l Block Northern Extension 1, 2563 sq. yds. 1, 2563 sq. yds. 27-10-1992 27-10-1992 2,20,00,000 2,20,00,000 At Rs. 8,750 p.m. first floor tenanted Scheme since 1991 to Puja Inter national Pvt. Ltd. while ground floor vacant. At Rs. 8,750 p.m. first floor tenanted Scheme since 1991 to Puja Inter national Pvt. Ltd. while ground floor vacant. 12. 12. Krishna Bhawan, H-Block, Connaught Krishna Bhawan, H-Block, Connaught 1800 sq. yds. 1800 sq. yds. 30-11-1992 30-11-1992 1,55,00,000 1,55,00,000 Rent p.m. Rs. 13,845 since 1970. Place Rent p.m. Rs. 13,845 since 1970. Place In paragraph 51 of the grounds the approach of the appropriate authority is challenged by the petitioners in the following terms : "That the appropriate authority before passing the purchase order dated April 18, 1991, had got the valuation report prepared from the departmental valuer and according to the departmental valuer and according to the said valuation report, the fair market value of the suit property was worked out at Rs. 1,11,63,234 but when the then Finance Minister vide his note dated April 9, 1991, appended on letter dated March 19, 1991, directed the appropriate authority to pass the purchase order in respect of the suit property at the instance of Shri Vinod Jain and some Members of Parliament, another valuation report was procured and falsely manipulated according to which the alleged fair market value of the suit property was worked out at Rs. 4,77,67,461. As already submitted in the previous writ petition, though

the then members of the appropriate authority had already made an inspection of the suit property and on that basis, the valuation report was asked for from the departmental valuer who after considering all the facts and circumstances of the case assessed/ determined the fair market value of the suit property at Rs. 1,11,63,234 but after the receipt of directions of the then Finance Minister vide his note dated April 9, 1991, a second inspection was made by the then Members of the appropriate authority on April 14, 1991, for the purpose of manipulating and fabricating another valuation report from the Departmental valuer to tailor the purchase order which was required to be passed as directed by the then Finance Minister at Rs. 4,77,67,461. The said valuation report was ex facie illegal, wrong, manipulated and mala fide got prepared for ulterior motive and to supersede the earlier valuation report genuinely and correctly prepared at Rs. 1,11,63,234. In the present show-cause notice, the said illegal and malicious valuation report valuing the suit property at Rs. 4,77,67,461 has been repeated and made the basis for passing the impugned purchase order." The petitioners challenged the impugned order referring to the reasoning given by the appropriate authority with reference to 48, Friends Colony which was relied on by the petitioners. In paragraph 73 of the grounds, the petitioners made an attempt to highlight how the appropriate authority had acted in an arbitrary fashion : "That the mala fides, the arbitrary discrimination and the deliberate adoption of a wrong method of determining fair market value of the suit property on the part of the respondents Nos. 1 and 2 shall be evident from one of the remanded cases (remanded by the High Court after C. B. Gautams case , viz., the case of property bearing No. 37/73, Punjabi Bagh, New Delhi, having Case No. R-656 of the appropriate authority that when instance case was confronted to the parties and full details of construction, covered area and the rate applied with recommended cost index were provided, the following errors/omissions were found and were accordingly pointed out in the valuation of the instance case as valued by the Department valuer : (i) The covered area taken by the appropriate authority was itself wrong to the extent of about 1300 sq. ft. (ii) The framed structured building was evaluated by the appropriate authority as load bearing building white it was not so. (iii) The basic rate applied as per CPWD norms was wrong. (iv) The cost index was taken/adopted, wrongly, with the above mistakes pointed out with reasoning, the land rate arrived at from the instance case was reduced by more than 20 per cent. which result in the issuance of NOC for the said property and but for this, purchase order for its alleged under valuation of apparent consideration by more than 15 per cent. would have been passed. The petitioners submit that respondents Nos. 1 and 2 acted illegally, discriminately and in violation of principles of natural justice in not giving the valuation report to the petitioners. The non-supply of the material placed on the file to the parties but considered by the appropriate authority amounts to non-providing a reasonable opportunity of hearing and in fact and law is in utter disregard of the principles of natural justice and terms of C. B. Gautams case ." In paragraph 75 of the grounds the petitioners have projected the wrong approach made by the appropriate authority : "That at the time of hearing, it was pointed out to the appropriate authority that the instance relied

upon of 60, Friends Colony, had been wrongly stated in the show-cause notice and relied upon by the respondents. When the attention of the members was drawn to the fact that the said property was agreed to be sold in September, 1961, for Rs. 2.40 crores while on December 5, 1990, it was agreed to be sold at Rs. 2.65 crores and that the purchaser after having realised that he had paid a much higher price for the said property, resiled back from the agreement and preferred the earnest money of Rs. 25 lakhs paid by him to be forfeited and the entire premises and assumptions made in the notice were incorrect, and the said instance case could not be made the basis for assessing the fair market value of the suit property. It was also pointed out that the appropriate authority knew this fact very well that the earlier agreement of December, 1990, was for Rs. 2.65 crores and the purchaser cancelled the agreement and preferred the earnest money forfeited and the subsequent agreement with another purchaser in September 1991, was for Rs. 2.40 crores and granted the NOC yet in the show-cause notice it was falsely alleged that the instance property was agreed to be sold in December 1990 for Rs. 2.60 crores and deliberately suppressed the fact of the subsequent events that took place so the instance case should not be made basis. The members of the appropriate authority and in particular respondent No. 2 to the above submissions had no answer and wrongly and rudely remarked that he was concerned with the earlier agreement and not with the subsequent one and asked petitioners counsel to state his points further and not to talk about it and refused to consider the most material facts, and rudely and contemptuously scuttled the submissions. The petitioners submit that respondents Nos. 1 and 2 besides the above, totally ignored the relevant facts including the drawback of the instance taken. The very fact that NOC was issued after 9 months for Rs. 2.40 crores makes the value as on the date of the agreement of the subject property on February 1, 1991, at Rs. 2 crores only on the basis of the method of valuation which the appropriate authority in other case has been adopting relating to drawback since the very inception of its constitution in 1986." About the offer from third parties and how the appropriate authority has assumed things without any justification is stated by the petitioners in paragraph 87 of the grounds : "That in the previous purchase order dated April 18, 1991, though it was observed by the appropriate authority that the offers of price more than apparent consideration cannot be considered because the appropriate authority can neither sell the property directly nor can get the cheque of the kind sent encashed but the appropriate authority arbitrarily and for ulterior motives and purpose discriminated against the petitioners case and singled it out arbitrarily and passed the impugned purchase order on the basis of offer made by Bishwanath Traders, the proprietor of which is the father-in-law of the younger brother of Shri Vinod Jain the tenant. Even with regard to the present impugned purchase order, respondent No. 2 procured a letter from Shri Vinod Jain offering to purchase the suit property for Rs. 4.5 crores. The petitioners submit that the offer of Bishwanath Traders and Investment Ltd., in the case of the previous purchase order and also now the offer of Shri Vinod Jain were and are wholly bogus and a manipulation, ruse and a pretext for the appropriate authority to acquire the suit property under section

269UD of the Act. It may be stated that Shri Rajiv Gupta, advocate, in the case of the property bearing No. 42-44, Sunder Nagar, New Delhi, sent his offer much higher than the apparent consideration nut the appropriate authority refused to consider the said offer as it had done so in all other cases, with the consequence that the appropriate authority granted no objection certificate on the basis of the apparent consideration. In all these cases, whenever a higher offer has been made than the apparent consideration to the appropriate authority, the appropriate authority has always ignored such offers and the cheque sent by the voluntary purchasers but in the present case, the previous purchase order and the present purchase order have been passed considering and on the basis of the bogus offers made by Vishwanath Traders and Shri Vinod Jain respectively as stated above." On these averments, the petitioners sought to get the impugned order quashed. In the counter-affidavit filed by the appropriate authority, the allegations made in the petition are denied. In paragraph 12 of the counter, it is stated that all the three members acted in unison and all the relevant aspects were consideration by them. In paragraph 17, it is stated : "A show-cause notice dated May 21, 1993 (after the inspection of the subject property on May 19, 1993), was given to the affected parties, namely, transferor, transferee and the tenant fixing the hearing for May 26, 1993. In the said show-cause notice, details of a sale instance, namely, 60, Friends Colony (East) were given and comparison was made between apparent consideration of subject property 25, Friends Colony (West). In the sale instance of 60, Friends Colony, the sale consideration was Rs. 2.65 crores for plot area of 21173.91 sq. metres as per agreement of sale dated December 5, 1990. After deduction of value of structure, land rate per sq. metre worked out to Rs. 21,586 in the sale instance. However, land rate of subject property, after similar adjustment came to Rs. 6,271 per sq. metre. Even after adjustment of (+) 2% for side open, (+) 10% potential for basement, (-) 5% for nearness to railway track, (-) 5% for size of plot are given, market rate per sq. metre works out to Rs. 4,180 which gives land value of Rs. 6.68 crores for 2764.37 sq. metres of land of subject property (after deduction 830.95 sq. metres excess land under ULCR Act, out of total area of 3395.35 sq. metres). As the subject property was tenanted, deduction was allowed of Rs. 2,023 crores and net value arrived at Rs. 4.55 crores. Adding salvage value of Rs. 1.64 lakhs, the market value was computed at Rs. 4,564 which was 160% above the apparent consideration of Rs. 1.75 crores." This is only a repetition of what is stated in the show-cause notice. About the subject property being under tenancy, it is stated in paragraph 24 :- "In the purchase order that May 28, 1993, it was also brought out that the lease agreement of the tenant Sh. Vinod Kumar Jain dated December 1, 1983, was for a period of five years with effect from January 1, 1984, and that the said lease agreement had expired on January 1, 1989, and had not been renewed and, thereafter, the tenancy was on month to month basis after January 1, 1989." It is asserted by respondents Nos. 1 and 2 that the petitioners have no locus standi. It is stated in paragraph 28 : "It is further submitted that the intending purchaser has only a right to be heard. It was held in Rajata Trusts case [1992] 193 ITR 220 (Kar), that a person who had entered into agreement for purchase of property is not a

person interested in the property within the meaning of section 269UA defining person interested and only persons claiming or entitled to claim an interest in the consideration payable as a result of the property vesting in the Central Government are persons interested. It was held that neither by reason of section 269UD (2) nor section 269UL (3) could a transferee contend that he has secured an interest in the immovable property, contrary to the settled law as adumbrated in section 54 of the Transfer of Property Act, and various rulings of the Supreme Court. Merely because section 269UD(2) says every other person whom the appropriate authority knows to be interested in the property, it does not bring a transferee who has no interest in the property and in whose favour no interest is created by reason of the contract for sale, into the picture." The petitioners filed a rejoinder traversing the allegations in the counter-affidavit. On March 30, 1995, Mr. Sanjay Gupta filed an affidavit on behalf of the petitioners stating that in respect of property bearing No. 9, Kasturba Gandhi Marg, where the apparent consideration was Rs. 7.20 crores and the application in From No. 37-I was filed on November 28, 1994, no objection certificate was granted and the fair market value of the property was assessed by the appropriate authority at Rs. 4,77,67,138 as against the apparent consideration of Rs. 7.20 crores. A photo copy of the no objection certificate dated February 21, 1995, was also produced by the petitioners. This is only to show how the appropriate authority acted in an indiscreet manner. Learned senior counsel, Mr. L. R. Gupta, cited a number of cases to give an outline of the scope of the power of the appropriate authority under Chapter XX-C. Learned senior counsel submitted that before issuing a show-cause notice the appropriate authority should have reasons to believe that there has been an attempt to evade tax. Learned senior counsel referred to ITO v. Lakhmani Mewal Das , Ganga Saran and Sons Pvt. Ltd. v. ITO . He also submitted that the valuation report by itself cannot lead to a reasonable belief of concealment of income and he referred to the judgment of the Supreme Court in Barium Chemicals Ltd. v. Company Law Board . He also referred to Smt. Amala Das v. CIT , to show that the valuation report is nothing but an opinion. He also referred to Durga Sharan Udho Prasad v. CIT [1976] 103 ITR 271 (Patna), All India Lakshmi Commercial Bank Officers Union v. Union of India and CIT v. Arun Mehra . Learned senior counsel Mr. L. R. Gupta also dwelt at length on the question of burden of proof and he referred to the following decisions : 1. K. S. Nanji and Co. v. Jatashankar Dossa . 2. A. Raghavamma v. A. Chenchamma . 3. Ramji Dayawala and Sons (P.) Ltd. v. Invest Import . 4. Smt. Prem Lata v. Arhant Kumar Jain . 5. Harmes v. Hinkson AIR 1946 PC 156. 6. Kumbhan Lakshmanna v. Tangirala Venkateswarlu . We did not find it necessary to refer in detail to the facts in the above cases because the question in this batch of cases is to be decided in the light of the judgment of the Supreme Court in C. B. Gautams case , and the questions is whether the appropriate authority has violated the basic principles in determining the fair market value of the subject property, for the view that there has been an under valuation with a view to evading tax. It is common ground that as per the dictum laid down by the Supreme Court it is the duty of the appropriate authority to act in accordance with the well known principles

in this behalf. Learned senior counsel referred to the following cases to bring to our notice the scope of section 269C : 1. CIT v. Arun Mehra . 2. IAC of I. T. v. National Flag Perfumery Works . Learned senior counsel submitted that the initiation of proceedings for compulsory purchase must be passed on clear evidence and cannot be on assumptions. According to him, the fair market value of a property should be on well established legal principles and misapplying the legal principles would amount to no fixation of the fair market value in the eyes of law. He referred to Subbas Malharirao Kachure v. IAC of IT . He submitted that the appropriate authority failed to keep in mind the principle that under valuation and the presumption of tax evasion are two different concepts and the authorities cannot proceed on surmises. He referred to Sarabhai M. Chemicals Pvt. Ltd., v. P. N. Mittal, Competent Authority, IAC of I.T. , Joseph Vallooran v. CIT , Tube Mill (India) Pvt. Ltd., v. IAC of IT . Elaborating on the points as to how the appropriate authority should appreciate the principles of valuation and how the expects them to act, learned senior counsel referred to CWT v. V. C. Ramachandran . In that case the court took the view that the appropriate method of valuation is to capitalise the annual rent by certain years of purchase in case the property is tenanted. Learned senior counsel also referred to CED v. Radha Devi Jalan . Referring to Jaswant Rai v. CWT , learned senior counsel submitted that the benefit of the method which is most favourable to the assessee should be allowed and the choice should be left to the assessee. In Joseph Vallooran v. CIT , it is held that the burden lies on the Revenue to prove under section 269C that the apparent value adopted in the sale deed fell short of the fair market value by more than 15 per cent. The Orissa High Court has also stated as to what is the market value. He also referred to Debi Prosad Poddar v. CWT , wherein the Calcutta High Court held in respect of property in the possession of tenants that the appropriate method would be capitalising the annual rent of certain number of years purchase. He also referred to CIT v. Smt. Ashima Sinha . Learned senior counsel referred to CIT v. Smt. Vimlaben Bhagwandas Patel, Smt. Kamlaben Kanjibhai Patel , which was in Chapter XX-A of the Income-tax Act, 1961. The Gujarat High Court held at page 136 : “The conditions precedent for the exercise of jurisdiction to initiate acquisition proceedings are - (i) transfer of immovable property worth more than Rs. 25,000 in value; (ii) fair market value of the property exceeding the apparent consideration by 15 per cent.; (iii) ulterior motive of tax evasion or concealment of income for such untrue statement of apparent consideration in the instrument to transfer of such property; (iv) recording of reasons by the competent authority.” The Gujarat High Court has also noted the penal provisions in the Act and also the nature of the power. The court observed (headnote) : “Having regard to the nature of the power which is penal, and, also having regard to the nature of the proceedings which are quasi-criminal, the competent authority must be held to be a quasi-judicial authority. In an inquiry under Chapter XX-A, the principle of natural justice must be followed. It is axiomatic to say that the rules of natural justice are not inflexible rules nor is there any strait-jacket formula in that behalf. By and large, it can be said that in an inquiry under Chapter XX-A, the transferor and/or transferee

as well as the occupant and any other known interested persons should be told the nature of allegations against them including the material collected so far by the competent authority, and be furnished copies of the statements recorded and those of the documents collected by the competent authority on which he intends to rely so as to give the person interested or affected, an opportunity to state his case and to correct or controvert the material sought to be relied upon. In the perspective of acquisition proceedings under Chapter XX-A of the Income-tax Act, which are penal provisions having far-reaching repercussions, the competent authority must be satisfied and assured by cogent, reliable and relevant evidence that the fair market value of the property in question exceeds the apparent consideration by a prescribed margin. It would be too hazardous to prefer one of the recognised methods of valuation which may be advantageous to the cause of the Revenue and arrive at an estimation of fair market value of a property on the basis thereof. Such a lopsided approach on the part of the competent authority would not be in consonance with the burden of proof required to be discharged in such quasi-criminal proceedings. It would be virtually acting on too slender a material since the decision of the competent authority to acquire would expose not only the transferee to the consequences of being deprived of the property but also the transferor to the liability of capital gains under section 52 of the Income-tax Act." The court also observed (page 164) : "In the context of section 269C of the Income-tax Act, the competent authority must have reason to believe about the ulterior motive of the transferor of tax evasion or tax reduction or of the transferee about the concealment of income which he should disclose for tax purposes. This is an objective fact about which the competent authority must be satisfied besides another objective fact that the fair market value of the property in question exceeds by the prescribed margin the apparent consideration thereof." The court also held that the objector can prove that the consideration has not been untruly stated by proving that the fair market value does not exceed the apparent consideration by 25 per cent. and the consideration was fixed not with any ulterior motive of tax evasion. The court also noticed that the competent authority did not furnish to the transferee the valuation report of the valuation officer in spite of repeated requests. The learned senior counsel also referred to CIT v. Panchanan Das . The court held that the rent capitalisation method should be adopted when there are tenants and there is no question of adding up the valuation arrived at by the rental method with any deferred value. Learned senior counsel also referred to CIT v. New India Construction Co. for the same purpose. The Income-tax Appellate Tribunal quashed the proceedings under Chapter XX-A taking the view (page 73) : "That a building with vacant possession and a building with tenants are two different things altogether, so far as the market value is concerned. In the case of a building with tenants specially in an area where rent control statutes prevail. The prospects of getting a good price for the building were held to be far from bright. On the other hand, a building with vacant possession offers immediate and attractive options either as a capital investment or as a business venture. The market value of the two types of buildings was held to be not comparable." The Department filed an appeal to this court and this court

upheld the order of the Tribunal holding that the proper course was to have resorted to the method of capitalisation of rental value of multiplying a number of years yield and that the value adopted by the transferors valuer could not be treated as under valuation. Learned senior counsel referred to CIT v. Inderjit Singh . A Division Bench of the High Court of Punjab and Haryana took the same view that the capitalisation method should be adopted where there are tenants in the property. He also referred to CIT v. Sumatilal Chhotalal Shah where it was held that the burden of proof about the fixation of fair market value in proceedings for acquisition of property under Chapter XX-A of the Income-tax Act is on the Revenue. The court also took the view : "The proceedings are penal in nature and the burden of proof about the fair market value of the property is on the Revenue. It has to be established by the Revenue that the sale consideration is less by the prescribed margin than the fair market value and it is only then the presumption arises about tax evasion. It is equally true that the onus would shift to the transferor or transferee or any other interested person only when the presumption prescribed under section 269C(2) arises." The view is followed by the same High Court in CIT v. Amrit Sports Industries . He referred to CIT v. Prem Narain Tandon . The court observed (page 363) : "The provisions of Chapter XX-A of the Income-tax Act affect the property right of a citizen. These provisions are stringent which result in an appropriation of property by the State. The authorities administering these laws should not lightly invoke these provisions : when proceedings for acquisition of property of a citizen are initiated by the competent authority, the provisions of the Act should be strictly followed." The court also observed : "The mode of determining the value of the building on the basis of annual rental value is well recognised. Even the Legislature has prescribed this method under the Wealth-tax Rules. The Tribunal, in our opinion, was right in determining the market value of the property on the basis of the annual rental value." Learned senior counsel referred to Mani Singh Avtar Singh v. IAC of I.T. (Acquisition Range) . Unique Associates Co-operative Housing Society Ltd., v. Union of India . The Bombay High Court also held that the burden lies on the Revenue to show that there is understatement of the consideration and the second condition is that the assessee had actually received more than what is declared by him. He also referred to Jehangir Mahomedali Chagla v. M. V. Subrahmanian, Addl. First Assistant Collector Estate Duty , CIT v. Arun Mehra , Subbas Malharirao Kachure v. IAC of I.T. and 166 ITR 485 (All) (sic). Learned senior counsel also referred to CIT v. Balram Prasad wherein the Allahabad High Court took the view that the burden is on the Revenue to establish that the fair market value is in excess by 15 per cent. than the apparent sale consideration and that the understatement was made with the object of evasion of tax and the assessee actually received more than what was declared in the document. The Revenue has to establish that these two conditions are satisfied, following the dictum of the Supreme Court in K. P. Varghese v. ITO , wherein the Supreme Court posited (page 614) : "Merely by showing that the first condition is satisfied, the Revenue cannot ask the court to presume that the second condition too is fulfillled, because even in a case where the first condition of 15 per cent. difference

is satisfied, the transaction may be a perfectly honest and bona fide transaction and there may be no understatement of the consideration ... It is well-settled rule of law that the onus of establishing that the conditions of taxability are fulfillled is always on the Revenue and the second condition being as much a condition of taxability, the burden lies on the Revenue to show that there is an understatement of the consideration and the second condition is fulfillled ... This burden may be discharged by the Revenue by establishing facts and circumstances from which a reasonable inference can be drawn that the assessee has not correctly declared or disclosed the consideration received by him and there is an understatement or concealment of the consideration in respect of the transfer." Learned senior counsel also referred to Smt. Sabita Mohan Nagpal v. CWT , Malabar Hill Co-operative Housing Society Ltd., v. Union of India . Learned senior counsel referred to CIT v. Duncans Agro Industries Ltd. where this court had laid down that the provisions of Chapter XX-A are in the nature of penal provisions and are to be strictly applied. This court also observed that various factors are to be taken into consideration for fixing the fair market value. He also to referred to Dwarka Dass v. CWT . Learned senior counsel referred to Indian Dyestuff Industries Ltd., v. IAC of I.T. . The observed (page 490) : "In the context of section 269C of the Income-tax Act, the competent authority must have reason to believe about the ulterior motive of the transferor of tax evasion or tax reduction or of the transferee about the concealment of income which he should disclose for tax purposes. This is an objective fact about the competent authority must be satisfied besides another objective that the fair market value of the property in question exceeds by the prescribed margin the apparent consideration thereof ... conditions mentioned in section 269C(1) and section 269D(1) should be fulfillled before proceedings can be initiated ... (ii) excess fair market value of the property over the apparent consideration by 15 per cent.; (iii) ulterior motive of tax evasion or concealment of income for such untrue statement of apparent consideration in the instrument of transfer of such property." The court observed "the authority must have reason to believe about the ulterior motive of the transferor of tax evasion or tax reduction or of the transferee about the concealment of income which he should disclose for tax purposes. This is an objective fact about which the competent authority must be satisfied". Learned senior counsel referred to Union of India v. Smt. Vidya R. Bijur . The court observed following C. B. Gautams case : "The provisions of Chapter XX-C can be resorted to only where there is a significant under valuation of the property to the extent of 15 per cent. or more in the agreement of sale, as evidenced by the apparent consideration being lower than the fair market value by 15 per cent. or more. Although a presumption of an attempt to evade tax may be raised by the appropriate authority concerned in a case where the aforesaid circumstances are established, such a presumption is rebuttable ... The very fact that an imputation of tax evasion arises where an order for compulsory purchase is made and such an imputation casts a slur on the parties to the agreement to sell leads to the conclusion that, before such an imputation can be made against them, they must be given an opportunity to show cause that the under valuation in the agreement for sale was not with a

view to evading tax." The court also observed (page 808) : "That the party aggrieved in the proceeding before the appropriate authority acquires knowledge of the reason and, in a proceeding before the High Court or the Supreme Court (since there is no right of appeal or revision), as an opportunity to demonstrate that the reasons which persuaded the authority to pass an order adverse to his interest were erroneous, irrational or irrelevant, and (ii) that the obligation to record reasons and convey the same to the party concerned operates as a deterrent against possible action by the quasi-judicial or the executive authority invested with judicial powers." Learned senior counsel referred to Vimal Agarwal v. Appropriate Authority [1994] 210 ITR 16, wherein the Bombay High Court held "that the onus of establishing that the under valuation is with a view to evade tax is on the Revenue. An imputation of tax evasion arises in a case where an order of compulsory purchase is made which casts a slur on the parties to the agreement. Such an imputation cannot be made mechanically without due regard to the explanation of the affected parties. The presumption of under valuation in the case of under valuation of 15 per cent. or more being a rebuttable one, the evidence led by the intending seller or purchaser assumes great importance. The court also took note of the limited time available to the appropriate authority and observed that it cannot be construed to confer power on the appropriate authority to pass an order without carefully consideration the facts and circumstances set out by the intending seller or purchaser and analysing the comparable cases cited by such persons". The court further observed (page 29) : "The very historical setting in which the provisions of Chapter XX-C were enacted suggest that it was intended to be resorted to only in cases where there is an attempt at tax evasion by significant under valuation of immovable property agreed to be sold ... reasons must be germane to the object for which Chapter XX-C was introduced in the Income-tax Act, namely, to counter attempts to evade tax." The same proposition that the burden is on the Revenue to satisfy the two important conditions is accepted by the Rajasthan High Court in CIT v. Raja Narendra . The court observed (page 255) : "... unless there is evidence that the consideration actually received by the assessee was more than what was disclosed or declared by him, no higher price can be taken to be the basis for computation of capital gains. The onus is on the Revenue to prove that ... a particular higher amount was in fact received, must be based on such material from which such an irresistible conclusion follows." Learned senior counsel submitted that in fixing the fair market value the appropriate authority had not followed the basic principles of valuation and, therefore, the order is vitiated. Learned senior counsel dealing with the question of locus standi relied upon the judgment of the Karnataka High Court in Appropriate Authority v. Mass Traders Pvt. Ltd. wherein the court took the view that the proceedings under Chapter XX-C are quasi-judicial in nature and both the vendors and the intending purchaser are entitled to show cause and are entitled to be heard. The Karnataka High Court disapproved the view taken by the same court in Rajata Trust v. Chief CIT [1992] 193 ITR 220 which held that the purchaser cannot file a writ petition. The Calcutta High Court referred to this aspect of the matter and observed that the purchasers have locus standi

to challenge the order of the appropriate authority. In C.W. No. 3489 of 1989 a Division Bench of this court expressed disagreement with the judgment of the Karnataka High Court in Rajata Trust v. Chief CIT [1992] 193 ITR 220. According to learned senior counsel it is not open to the appropriate authority to urge in the light of the settled legal position that the petitioners have no locus standi to challenge the order. One more aspect which requires to be considered in this case is that the appropriate authority held the auction, the purchaser had deposited the money with the Department and the High Court had confirmed the auction. Learned senior counsel submitted that the Supreme Court, no doubt, confirmed the purchase but that was only subject to final decision in the writ petition. The Supreme Court did not intend to dismiss the writ petition on the ground that the auction had been confirmed by the Supreme Court. A perusal of the order of the Supreme Court would also show that their Lordships of the Supreme Court were not pleased to deal with the merits of the case and the highest bid was confirmed by their Lordships. It is well known that whatever happens during the pendency of any proceeding is subject to the ultimate decision reached by the court in the main case. Therefore, no elaborate exposition of law is required for the purpose of finding out where their Lordships of the Supreme Court intended to dispose of the writ petition finally while confirming the highest bid. Their Lordships had confirmed the highest bid because in the event of the writ petition being dismissed by this court the Department could straightaway take further proceedings on that basis. Their Lordships also did not think it fit to withdraw the writ petition to the file of the Supreme Court and their Lordships had not been pleased to observe that the writ petition would stand disposed of in view of the confirmation of the highest bid by their Lordships. In the light of this admitted position, it is not open to the appropriate authority to contend that in view of the order passed by the Supreme Court confirming the bid nothing survives in the writ petition and the writ petition is liable to be dismissed. We are unable to accept the submission made on behalf of the Revenue. Their Lordships of the Supreme Court, it is beyond any doubt from a perusal of the order, did not dispose of the writ petition. The confirmation of the bid was only subject to the ultimate decision in the writ petition. Therefore, the Revenue cannot rely on that fact to non-suit the petitioners in this writ petition. The tenant has filed an application C.M. No. 3199 of 1994 to implead himself as a party in the writ petition. He cannot claim himself to be a person interested in the subject-matter. He is neither a necessary nor proper party. We have no hesitation in dismissing the application. C.W. No. 4589 of 1994 : In this writ petition, the petitioner, Chauhan Builders and Constructions Pvt. Ltd., earned into an agreement with respondents Nos. 3, 4 and 5. The subject property is A-6, Chirag Enclave, New Delhi. The area of the plot is 1,468 sq. mts. The construction is a 1 1/2 storeyed building on an extent of 4,300 sq. ft. The apparent consideration is Rs. 2.70 crores plus other expenses including unearned increase. On April 29, 1994, the parties filed the application in Form No. 37-I On July 6, 1994, show-cause notice under section 269UD was issued. 2-3 sale instances are mentioned in the show-cause notice. Regarding the first sale instance, it is stated in the show-cause notice : “Your

attention is invited to agreement of sale dated October 20, 1993, in respect of immovable property located at 4, Palam Marg, Vasant Vihar, New Delhi, which was agreed to be sold for Rs. 6,76,78,884 inclusive of unearned increase. If the salvage value is taken at Rs. 2,61,760 of this sale instance property, the land rate declared comes to Rs. 41,284 per sq. metre. If adjustment on account of time gap of (+) 6 per cent. less side open of the subject property (-) 5 per cent. and assumed difference on account of location 20 per cent. (total-19 per cent.) is made, the unit land rate works out to Rs. 41,284 x 0.81 = 38,440 per sq. metres. On this basis, the value of the subject property works out to Rs. 1,468 x 33,440 = Rs. 4,90,89,978. If the salvage value of Rs. 86.060 is added the total value of the subject property comes to Rs. 4,91,67,030 as against the apparent consideration of Rs. 3,25,36,567 which is 51 per cent. above the apparent consideration." Regarding the second sale instance, it is stated : "Your attention is also invited to another sale instance of immovable property bearing No. N-119, Panchsheel Park, New Delhi, having plot area of 1,200 sq. yards on a 45 feet wide road which was agreed to be sold for Rs. 3,25,00,000 (+) UEI of Rs. 52,54,050 (total apparent consideration Rs. 3,77,54,050) as per agreement dated September 29, 1993. This sale instance property is only one side open and is facing park. The declared land rate of this sale instance property with FAR of 100 comes to Rs. 37,520 per sq. meter if the salvage value of the sale instance property is taken at Rs. 1,06,080, (Rs. 3,25,00,000 (+) 52,54,050 - 1,06,080, divide 1,003.4) For arriving at fair land rate adjustment of (+) 6.5% on account of time gap. FAR (+) 14 per cent. (116-100 divide 116), extra side open (+) 5 per cent. colony difference of 10 per cent. and sale instance property facing park (-) 5 per cent. (total (+) 10.5%) is made and the land rate works out to 37,520 x 1,105 = 41,459.5 or say Rs. 41,460. Therefore, the land value of the subject property works out to 41,460 x 1,468 = 6,08,63,280." It is stated that the total value of the subject property would come to Rs. 6,09,49,340 as against the consideration of Rs. 3,25,36,567 which is 87 per cent. higher than the apparent consideration. Regarding the third sale instance it is stated : "Your attention is also invited to another sale instance of immovable property located at A-95, Neeti Bagh consisting of plot area of 857.77 sq. yards on 45 wide with only two sides open for an apparent consideration of Rs. 2,10,00,000 (+) UEI of Rs. 35,79,296 (total A.C. Rs. 2,45,79,296) as per agreement dated October 28, 1993. The declared land rate of this sale instance property works out to Rs. 34,172 per sq. metre (Rs. 2,10,00,000 (+) 35,79,269 (-) 71,740, divide 717.18, if the salvage value of the structure of the sale instance property is taken at Rs. 71,740. For finding out present land rate of the sale instance property, adjustment on account of time gap (+) 6 per cent. FAR (-) 14 per cent. location difference on account of the subject property being on wider road (+) 10 per cent. (total + 30 per cent.) has to be made and the land rate works out to Rs. 34,172 x 1.30 = Rs. 44,424 per sq. metre. On this basis the land value of the subject property comes to Rs. 44,424 x 1468 = Rs. 6,52,13,844. If the salvage value of the subject of Rs. 86,060 is added the total value comes to Rs. 6,52,99,904 as against the apparent consideration of Rs. 3,25,36,567 which is almost 100 per cent. higher than the apparent consideration." On July 15,

1994, an explanation was given by the petitioner and the vendor is disputing the method of valuation arrived at by the appropriate authority. It is stated in the show-cause notice that the building was constructed in the year 1970-71. The possession of the property is with one of the co-owners and the other two co-owners did not have any access to the property. The sale transaction could materialise because of the efforts of the purchaser who had been able to bring all the vendors together and this factor has to be taken into consideration. The subject property is located in Chirag Enclave, adjacent to the locality of Palam Posh Enclave and Greater Kailash Enclave-I and facing the colony of Kalkaji and Chitranjan Park. Therefore the colony is comparable to either adjoining colonies or the colonies facing the subject property. It is further stated in the reply that the comparable properties should be similar in size, nature, having similar characteristics and in similar locality. Referring to the decision in CIT v. Duncans Agro Industries Ltd. , evaluation of fair market value ignoring comparable instances of sale in the same area is erroneous. It is further stated that the first sale instance property No. 4, Palam Marg, Vasant, Vihar, is situate in a very superior colony and comparing the subject property with that property and making adjustments is not at all permissible in law. The second sale instance property No. N-119, Panchsheel Park, is also not comparable. The third instance property A-95, Neeti Bagh, is also not comparable as it differs in size, number of storeys and the FAR. According to the petitioner and the vendors, the three sale instances are situate in posh colonies in South Delhi and the DDA had categorised the above said referred colonies in the bracket of highest rates and Chirag Enclave have been categorised as belonging to lower category for the purpose of fixing the rates for unearned increase. It is also stated that the appropriate authority had in its possession sufficient instances of comparable cases but deliberately had failed to take them into account. It is further stated that on January 25,1994, Bharat Petroleum, a Government of India undertaking purchased the house where the area of the plot is 500 sq. yds. The market value would work out at Rs. 3,14,86,400 as detailed below : “Working of fair market value on the basis of instance at B-13, Greater Kailash Enclave-I, New Delhi. Date of agreement : 17-01-1994 Land area : 500 sq. yds. (418.06 sq. mtrs) Consideration : Rs. 1,55,00,000 plus UEI UEI : Rs. 20,90,000 approx. Total consideration : Rs. 1,75,90,000 Value of structure : Rs. 13,25,000 Value of land : Rs. 1,62,65,000 Land rate derived : Rs. 38,905 per sq. mts. Adjusted for FAR (1.16 : 1.90) : (-) 39 per cent. Adjusted for co-ownership (as per clause-3) : (-) 10 per cent. Adjusted for time gap : For 3 months, 3 per cent. Land rate achieved : Rs. 21,099 per sq. mtr. Fair market value on this basis of the subject property : Rs. 3,08,41,200 Plus value of building : Rs. 6,45,000 Total value : Rs. 3,14,86,200 The sale consideration of the subject property would come to Rs. 3,25,37,000 which is lower than the apparent consideration of that property. This calculation is adopted only as per the method adopted by the appropriate authority. The other instance given in the explanation is with reference to B-6, Panchsheel Enclave, i.e., on May 31, 1993. This property is located on the same road. The valuation as per the method adopted by the appropriate authority would be Rs. 3,18,82,600. The calculation is as follows :”Working

of fair market value on the basis of instance at B-6. Panchsheel Enclave, New Delhi." Date of agreement : 27-5-1993 Land area : 800 sq. yds. (668.9 sq. mtrs) Consideration : Rs. 1,60,00,000 plus UEI UEI : Rs. 34,94,000 approx. Total consideration : Rs. 1,94,94,000 Value of structure : Rs. 5,16,000 approx. Value of land : Rs. 1,89,78,000 Land rate derived : 28,372 per sq. mtrs. Adjusted for FAR (1.6=1.90) : (-) 26 per cent. Adjusted for co-ownership (As per clause 3) : (-) 10 per cent. Adjusted for time gap : For 11 months 11 per cent. Land rate achieved : Rs. 21,279 per sq. mtr. Fair market value on this basis of the subject property : Rs. 3,12,37,600 Plus value of building : Rs. 6,45,000 Total value : Rs. 3,18,82,600." The third sale instance given in the explanation is with reference to B-4, Greater Kailash I situated on the same road. The value would come to Rs. 2,93,20,300 as per the details below : "Working of fair market value on the basis of instance at B-4 Greater Kailash Enclave I, New Delhi" Date of agreement : 12-5-1994 Land area : 500 sq. yds. (418.06 sq. mtrs.) Consideration : Rs. 1,16,00,000 plus UEI UEI : Rs. 20,90,000 approx. Total consideration : Rs. 1,36,90,000 Value of structure : Rs. 5,16,000 approx. Value of land : Rs. 1,31,14,000 Land rate derived : Rs. 31,512 per sq. mtrs. Adjusted for FAR (1.6=1.90) : (-) 39 per cent. Adjusted for co-ownership (As per clause 3) : 10 per cent. Adjusted for time gap : For 11 months, 11 per cent. Land rate achieved : Rs. 19,537 per sq. mtre. Fair market value on this basis of the subjected property : Rs. 2,86,80,300 Plus value of building : Rs. 6,45,000 Total value : Rs. 2,93,25,300." On July 28, 1994, the appropriate authority passed the order of compulsory purchase. In the impugned order the reasoning given in the show-cause notice is adopted. The appropriate authority having stated in the show-case notice that considering first sale instance property No. 4 Palam Marg, the apparent consideration of the subject property shown in the sale agreement is less than 51 per cent., now by adopting some adjustments, without accepting the contentions of the petitioner it is stated that the apparent consideration of the subject property is less by 32.5 per cent. Whatever may be the nature of the reasoning or the adjustments made by the appropriate authority when there is no definite rule or norms, the authority cannot arrive at a value by making adjustments in an arbitrary fashion. Dealing with the sale instances given by the petitioner, the appropriate authority had rejected them by a process of reasoning which cannot at all be accepted. A perusal of paragraphs 9, 10, 11, 12 and 13 which are given below would show that the reasoning given by the appropriate authority is not in accordance with the established principles : "Learned representative has also relied on certain other sale instances. One such instance is of property B-6, Panchsheel Enclave, New Delhi. This sale instance property had plot area of 668.9 sq. metres. Even though the sale instance was undervalued, the appropriated authority considered it not a fit case for several other reasons, e.g., this property was located at the face of the fly over, the title was not very clear inasmuch as mutation was not done in the names of the transferor and there was a nullah just a little away from the subject property. No such depreciating factors are present in this case. Therefore, the comparison with property at B-6, Panchsheel Enclave, New Delhi, is not justified. Learned counsel has also tried to rely on the sale instance of the property located at

B-13, Greater Kailash Enclave-I and B-4, Greater Kailash Enclave, New Delhi. Both these properties are of only 418.6 sq. metres. For arriving at a proper valuation, adjustment of as much as (-) 39 per cent. has been made in FAR only. It is a fact that all properties which are undervalued are not purchased unless the difference is more than 15% between the apparent consideration and the value of such properties. Even such which are understated by more than 15 per cent. need not be purchased if the appropriate authority is of the view that it will not be expedient to do so by the Central Government. In the case of these two properties in Greater Kailash Enclave, it is clear that they are located much below the main road level. No adjustment has been made by learned representative for this purpose. Besides, both the properties of Greater Kailash Enclave are of small plots and there is a high demand for higher plots on Outer Ring Road in South Delhi. Therefore, these sale instances are held as not comparable. It has been also argued as per the written submission dated July 22, 1994, that the subject property was vacated by the tenants on October 31, 1992. Therefore, the owner cannot sell the property for a period of 3 years as the tenant can claim the restoration of his tenancy rights. As the period of 18 1/2 months remained unexpired on the date of agreement to sell, therefore, interest of Rs. 83,25,000 be considered. The claim appears to be misconceived. Learned representative has not filed any judgment of the court and any other relevant papers. Only a copy of letter dated October 11, 1985, has been filed. This does not give the invited (sic) to section 19(2) of the Delhi Rent Control Act, 1958. This reads as under : (2) Where a landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises, having been so occupied are, at any time within three years from the date of obtaining possession of the Controller under sub-section (1) or the possession of such premises is transferred to another person for reasons which do not appear to the Controller to be bona fide, the Controller may, on an application made to him in this behalf by the evicted tenant within such time as may be prescribed, direct landlord to put the tenant in possession of the premises or to pay him such compensation as the controller thinks fit. It is interesting to note that section 19 relates to recovery of possession for occupation and re-entry. The purpose behind the provision contained in section 19 appears to be that a person who gets possession of his property for his bona fide use should not let out to a person other than the earlier tenant. No evidence in this case has been placed whether sale is also covered under section 19(2) of the Act because letting out is different than sale of the property. A copy of letter described as undertaking dated April 18, 1994, has been filed from the transferee which specifically mentions that : We have examined the title and authority of the owners of property bearing No. A-6, Chirag Enclave, New Delhi and are satisfied ourselves with regard to the authority and power of the owners to sell and transfer the said property. It means that if any permission was required, that has already been obtained. It also means that such permission may not be required in the case of sale. Therefore, the plea raised by learned authorised representative is not relevant at all and has to be rejected."

This is challenged in the writ petition stating that the apparent consideration as agreed was without any intention of evading tax and it was done in the normal course. There are absolutely no materials to form any opinion about this aspect of the case. The apparent consideration of the subject property is Rs. 3,65,81,149 and not Rs. 3,25,75,000 as assumed by the appropriate authority. The sale instances cited are not at all comparable with the subject property and they do not provide proper indices of the fair market value of the subject property. The adjustment for plus and minus factor cannot make totally incomparable properties comparable. The position of the parties and the difficulty of the other co-owners in getting possession and, therefore, they were inclined to sell the property had not been considered in their proper perspective. The determination of fair market value on the basis of sale instances cited by the appropriate authority is wholly illegal. The fact that the appropriate authority had not been following the same standard is highlighted in the writ petition in the following terms : "The reasoning that for arriving at fair market value on the basis of instances relied upon by petitioner adjustment of as much as (-) 39 per cent. has been made in FAR only. It is submitted that adjustment of 39 per cent. in FAR cannot be the reason of ignoring the instances cited by the petitioner because the appropriate authority itself has been making of 40 per cent. and even more. In respect of property No. F. 12A, Kailash Colony, the appropriate authority vide its notice bearing No. AA/R-3677 of 1994-95/132 dated May 6, 1994, proposed 40% adjustment in FAR. In respect of property at 20, Hanuman Road, New Delhi adjustment as high as 68% was proposed vide notice bearing No. AA/R-3245 of 1993-94/349 dated June 21, 1993. The true copies of aforesaid notice are attached to this petition and collectively marked as annexure P-9. In view of aforesaid practice of the appropriate authority in providing adjustment in FAR, the adjustment of 39 per cent. made by petitioner for arriving at fair market value was not uncommon and as such, cannot be the ground for ignoring the sale instances which otherwise are comparable." Annexure P-9, referred to above, reads as under : GOVERNMENT OF INDIA, OFFICE OF THE APPROPRIATE AUTHORITY, INCOME-TAX DEPARTMENT, Janpath Bhawan, 8th Floor, "B" Wing, New Delhi-110 001. No. AA/R 3677 of 1994-95/132 Dated May 6, 1994.

To

(1) Mrs. Samarjeet Sandhu,

W/o Late Sh. G. S. Sandhu, Transferors

R/o HS-36, 1st Floor,

Kailash colony, New Delhi.

(2) Lt. Gol. M. S. Dhillon,

R/o F-12A, Kailash Colony,

New Delhi.

Transferors

(3) Mrs. Amarjeet Lehal

W/o Sh. Harmeet Singh Lehal

R/o 65, Fielding Road

Acton London (U.K.)

Transferors

(1) Sh. Om Prakash

Khandelwal

(2) Smt. Geeta Khandelwal

R/o 2/101, Roop Nagar Delhi-7

Tranferees

Dear Madam/Sirs,

Subject : Show-cause notice under section 269UD(1) of the Income-tax Act, 1961, in respect of property No. F-12A, Kailash Colony, New Delhi-48.

Under the instructions of the appropriate authority, Delhi I am to state as under :

That the statement in Form No. 37-I, under Rule 48L of the Income-tax Rules, 1962, in respect of the subject property was filed in the appropriate authority along with an agreement to sell on February 23, 1994. The statement was signed by (1) Mrs. Samarjeet Sandhu, Lt. Col. M. S. Dhillon and Mrs. Amarjeet Lehale, as transferors and by Sh. Om Parkash Khandelwal and Smt. Geeta Khandelwal as transferees. The apparent consideration appears to be understated. You are also informed that a property at A-40, Kailash Colony, was sold as per sale agreement dated February 13, 1993, situated at a colony road with one side open. The plot area of this property is 877.915 sq. mtr. and the sale consideration was Rs. 1.5. crore. After deducting the salvage cost of the structure estimated at Rs. 1,07,60,000, the land rate for this property works out to Rs. 16,971 per sq. mtr. Making adjustments for the time-gap of 12 months at 1 per cent. ((+) 12 per cent), the FAR (+) 40 per cent as the FAR of the subject property is 140 whereas of the sale instance property quoted above, it is only 100, side open (+) 5 per cent. (the subject property has two sided open whereas the sale instance) is one side open), the net adjustments come to (+) 57

per cent. On the basis of this sale instance, the land rate for the subject property works out as : Rs. 16,971 x 1.57 = Rs. 26,644 per sq. mt. Therefore, the land value works out to : Rs. 26,644 x 422.23 sq. mtr = Rs. 1,12,49,896 Add : Salvage cost of structure estimated 54,000 1,13,03,896 which is 25 per cent above the apparent consideration of Rs. 90 lakhs. It may be mentioned that according to clause (3) of the agreement to sell, filed along with section 37-I, the time for performance of the agreement is six months, therefore, the apparent consideration has to be suitably discounted in that case. The difference between the FMV and the effective discounted apparent consideration would still increase further. Therefore, the apparent consideration appears to be very much understated. You are, therefore, hereby given an opportunity of being heard and to show cause as to why a pre-emptive purchase order under section 269UD (1) of the Income-tax Act may not be passed. For this you may appear before the appropriate authority on May 18, 1994 at 11.30 a.m. either personally or through your authorised representative. You are also requested to produced before the appropriate authority on the aforesaid date and time, the original title deed/s of the property together with photo copies thereof, for verification and return in the case of failure to arrange representation on the aforesaid date and time, necessary orders will be passed in accordance with law on the basis of material already available on record without any further reference to you." Mr. Rajiv Sahai, Dy. Commissioner of Income-tax, filed counter-affidavit traversing the allegations in the writ petition. In the counter-affidavit it is stated that the unearned increase was Rs. 55,36,567. It is stated that the apparent consideration comes to Rs. 3,25,36,567. The stand taken in the show-cause notice and the impugned order is maintained in the counter. The petitioner filed rejoinder to the counter-affidavit. Mr. Syalli, learned counsel for the petitioner, submitted that the fixation of fair market value by the appropriate authority was illegal and once the very basis of the fixation cannot be supported in law the issuance of show-cause notice itself is not sustainable. Mr. Rajendra, learned senior standing counsel for the income-tax, submitted that the order passed by the appropriate authority is perfectly in order and the appropriate authority had taken into account the relevant aspects in the behalf. At the time of the arguments on March 26, 1996, Mr. Rajendra, learned counsel produced the letter dated July 25, 1995, from the DDA to the office of the appropriate authority which is in the following terms : “Kindly refer to your letter/D.O. No. AA/R-3786/1995-96/303 dated July 21, 1995. It is stated that the earlier demand of Rs. 95,81,149 may please be treated as withdrawn as the payment has not been received in this department. Moreover, the earlier demand sent was also provisional and the validity as deemed sale permission has expired. The final amount of unearned increase can be worked out on the basis of actual transaction price as reflected in the disposal cost of the property. Therefore, you are requested to intimate the details of final transaction including transaction value, structure value and date of disposal.” This only shows that the unearned increase has not been definitely fixed by the DDA. C.W. No. 3139 of 1993 : Dr. A. K. Garg and his wife Dr. (Mrs.) Neelu Garg are the petitioners. They are doctors by profession. They are working in Saudi Arabia. They wanted to

settle down in India and were in search of a suitable accommodation in or about the year 1989, they came to know that the first respondent Kailash Nath and Associates were putting up a multistoreyed apartment at Feroze Shah Road in the name of Adishwar Apartments. There was an arrangement for the purchase of a flat in the complex. The total consideration agreed was Rs. 18 lakhs plus other incidental charges. The cost worked out at Rs. 1,200 per sq. ft. On April 11, 1989, the petitioner paid a sum of Rs. 5,20,005 to the first respondent towards the purchase money. On March 7, 1989, an agreement to sell was entered into for the purchase of flat No. 7 on the 11th floor plus a garage. The first respondent agreed to give possession within three years, i.e., by March 6, 1992. On June 19, 1989, the petitioners wrote to the first respondent seeking information about the progress of the work. On July 7, 1989, the first respondent builder informed the petitioners that the authorities had not sanctioned the plans. Again on September 10, 1990, the first respondent wrote to the petitioners stating that the N.D.M.C. had not sanctioned plans beyond 7th floor. The petitioners came down to India to finalise the transaction and met the first respondent. It was at that time the first respondent offered to sell a flat in Nilgiri Apartments, Barakhamba Road. The petitioners accepted the proposal. On April 27, 1991, the first respondent builder confirmed that it would sell a flat in Nilgiri Apartments, Barakhamba Road. On June 25, 1991, an agreement was executed between the petitioners and the first respondent for the purchase of the flat bearing No. 2 on the 4th floor in Nilgiri Apartments, Barakhamba Road for a consideration of Rs. 29 lakhs plus 15 per cent. extras and the final consideration would come to Rs. 34 lakhs. In addition to the above, the petitioners were obliged to pay under the contract the ground rate, house tax, municipal tax and mutation charges. What is stated by the petitioners in the writ petition is to be noticed : "It is pertinent to mention here that with regard to earlier agreement the petitioners have furnished requisite information under section 269UD(1) and the authorities have issued no objection certificate. Thus the rate approved by the Income-tax Department comes to Rs. 1,200 sq. feet in the year 1988. Since the petitioners were not getting the flat after negotiations respondent No. 1 agreed to change the booking from 34, Feroz Shah Road, New Delhi, to Nilgiri Apartments. The petitioners agreed to pay Rs. 34 lakhs for 1,800 sq. feet along with other usual charges. Correspondence including a copy of the letter dated April 27, 1991, by which respondent No. 1 confirmed the change of flat from earlier one to present one. By this time, the money put in by the petitioners with the respondent No. 1 would have risen to more than Rs. 7.5 lakhs and since the money was in foreign exchange it would have been more than Rs. 15 lakhs by that time since the value of the foreign exchange appreciated considerably. After agreeing to this, the petitioners paid further sum of Rs. 10 lakhs approx. and further agreed to pay the amount as under : (a) Amount already paid by way of deposit towards provisional booking of space prior to the date of signing this agreement. Rs. 15,00,000 (Rupees fifteen lakhs only) (b) Rs. 3,00,000 (Rupees three lakhs only) in August, 1991. (c) Rs. 3,00,000 (Rupees three lakhs only) in November, 1991. (d) Rs. 3,00,000 (Rupees three lakhs only) in February, 1992. (e) Rs. 4,00,000 (Rupees four lakhs

only) in June, 1992. (f) Rs. 1,00,000 (Rupees one lakhs only) in July, 1992. (g) Balance payable at the time of handing over the possession of the residential flat and garage to the buyer(s). It was further agreed between the parties that the amount earlier paid i.e., Rs. 5,20,005 for the flat situated at 34, Ferozshah Road, would be adjusted for this flat." On June 26, 1991, the application in Form No. 37-I was filed by the parties before the appropriate authority. On July 1, 1991, the valuation officer of the Income-tax Department called upon the first respondent builder to produce documents regarding the property. The first respondent did not bring to the notice of the appropriate authority about the earlier transaction. On August 23, 1991, purchase order was passed by the appropriate authority. Challenging the purchase order C.W. No. 2836 of 1991 was filed by the first respondent builder and C.W. No. 980 of 1992 was filed by the petitioners. On March 1, 1993, this court following the judgment of the Supreme Court in C. B. Gautams case [1993] 199 ITR 530 quashed the order dated August 23, 1991, and remitted the matter for reconsideration by the appropriate authority. On May 10, 1993, the appropriate authority issued show-cause notice to the first respondent and the petitioners stating : "You are also informed that the apparent consideration as disclosed in the Form No. 37-I filed by you is low if compared to other sale transactions in the same complex. Flat No. 4 on the third floor of the same complex (R-2439) was agreed to be sold for Rs. 30 lakhs as per agreement to sell dated May 30, 1991. The actual built up area of flat was 1,341 sq. ft. which gives unit rate of Rs. 2,834 sq. ft. Even after making adjustment for time gap + 1 per cent. and floor level difference - 1 per cent. the rate remains the same. The actual area of the subject property is 1,411 sq. ft. On that basis, the value of subject property works out to Rs. 2,834 x 1411 = Rs. 39,98,774.00 or say Rs. 39.99 lakhs. The value so worked out on the basis of comparative sale instance is in excess by about 20 per cent. of the apparent consideration. Besides, the subject property is located in the front block whereas the property of the sale instance is in the rear block." On May 18, 1993, the petitioners filed the explanation recounting the facts culminating in the execution of the agreement. In paragraph 4 of the explanation, the petitioner stated : "It is further pertinent to note that in 1989 no objection letters were issued by your honour in respect of a couple of flats like Flat No. 2 on 3rd floor for 1,800 sq. ft. (vide NOC No. AA/1988-89/R-1650/184 dated August 7, 1989) at a sale consideration price of Rs. 20,50,000. Therefore, even if an appreciation rate of 12 per cent. per annum (as indicated in your notice) is taken into account the fair market value of our flat would be Rs. 25.42 lakhs which is far below the apparent consideration as mentioned above." The petitioners clearly mentioned how the consideration was worked out by the parties : "That as per the terms and conditions of the agreement filed with your honour, the total cost of the flat to the vendee works out to Rs. 39,90,600 as detailed under : (Rs.) (Rs.) A. Apparent consideration 29,00,000 B. 15 per cent. extra as per clause 3 on page 7 of the agreement 4,35,000 C. Escalation as per clause 6 on page 8 of the agreement 2,00,000.00 D. L. & D.O. Charges as per clause 7 on page 9 of this agreement. 18,000 E. Fire Fighting Charges as per clause 17 on page 13 63,000 F. Electricity Sub-station Charges as per clause 17 on

page 13 54,000 G. Charges for unfiltered water live as per clause 17 on page 13 18,000 H. Marble Charges as per clause 18 on page 13 of the agreement. 36,000 I. Security Deposit as per clause 16 on page 12 5,000 J. Interest on Rs. 5,20,000 at 18 per cent. from the date of payment to date of agreement, i.e., June 25, 1991 (as per encl. I) 2,61,600 39,90,600 The petitioners explained that if the increase of value in U.S. dollars vis-a-vis Indian currency is taken into account from the dates of respective advance payments up to the date of the agreement, the petitioners would spend an extra amount of Rs. 2 lakhs (The dollar rate in 1988 was Rs. 16 whereas in 1991 the same was Rs. 22). On May 28, 1983, the appropriate authority passed the purchase order taking the same view as in the show-cause notice. In paragraph 6, it is stated by the appropriate authority :"We have carefully considered the various submissions made on behalf of the transferors and the transferees. We are unable to accept in full the contention of the learned representative with regard to the value of the car parking space because car parking space does not have the same rise in cost as the main flat. Therefore, the value of the car parking space is estimated at Rs. 1,00,000. On the basis, the per sq. ft. rate of the sale instance works out to Rs. 2,860." The view taken by the appropriate authority is that the subject flat is located in the front block of the complex whereas the sale instance flat is in the rear block of the complex and, therefore, the value of the subject flat can reasonably be expected to be higher by five per cent. that is the rate could be fixed at Rs. 3,000 per sq. ft. Regarding the representation by the petitioners about the rate of interest, the appropriate authority dealt with the same in the following manner : "The assumed interest of Rs. 2,65,000 on Rs. 5,20,000 at the rate of 18 per cent. is also not correct in view of the prevailing fixed deposit bank rate of 10 per cent. at that time. If that rate of interest is taken, it works out to Rs. 1,47,000. The assumption of Rs. 2,00,000, on account of fluctuation in the exchange rate is also not acceptable. It is so because the payment is stated to be in terms of Indian rupees in the agreement. Therefore, the effective consideration works out to Rs. 29,00,000 + 1,47,000 + 4,35,000 = Rs. 34,82,000. This gives a per sq. ft. rate of Rs. 2,468 as against the fair market rate of Rs. 3,000 per sq. ft. arrived at earlier on the basis of sale instance. This is in excess by 21.6 per cent. of the apparent consideration." When the attention of the appropriate authority was drawn to the sale of flat No. 2 in the first floor where no objection certificate was granted by the appropriate authority the appropriate authority rejected the argument by saying : "The learned representative has also placed reliance on the sale instance of flat No. 2 on first floor which was sold for an apparent consideration of Rs. 20,50,000 (The date of filing Form No. 37-I before the appropriate authority is June 14, 1989) and also sale of Flat No. 2 on third floor with an apparent consideration of Rs. 20,50,000 (date of agreement to sell being July 3, 1989). These are cases much prior to the date of agreement of the subject property. Therefore, they do not help the contention of the party if suitable adjustment is made on account of time gap etc." This order is challenged in the writ petition. The petitioners have submitted that the whole approach of the appropriate authority is erroneous in law. There is absolutely no reasoning by the appropriate authority to come to an arbitrary rate of Rs.

3,000 per sq. ft. and there is absolutely no reason to come to any conclusion that there was any tax evasion. The reasoning given by the appropriate authority does not at all appear to be reasonable. When a flat in a complex is offered for sale there are so many factors and unless there are some materials with the appropriate authority for fixing the valuation of the flat the fair market value of a flat consisting of several flats in a complex cannot be on the basis of subjective satisfaction of the appropriate authority. If that is so in a democratic country like ours there is no room for rule of law. We have no hesitation in coming to the conclusion that the order of the appropriate authority is absolutely arbitrary and it cannot at all be sustained. Mr. Soli Sorabjee, learned senior counsel for the petitioner, in addition to the arguments on merits, submitted that the appropriate authority had not complied with section 269UG of the Income-tax Act, 1961, by paying the amount within the time prescribed. We do not go into that question as we quash the order on other grounds. C.W. No. 3726 of 1994 : The suit property is the first floor of the house No. N-84, Greater Kailash-I, New Delhi, the consideration is Rs. 24 lakhs. On April 23, 1994, the agreement to sell was between the petitioner and respondents Nos. 3 and 4, Mr. K. S. R. Chari and Smt. Maithili Chari, respectively, who are permanently residing in Bangalore. The purpose of the sale by the third respondent was that he was 75 years old. He retired from the Government service as Secretary, Government of India. He wanted to settle down in Bangalore after selling the subject property. After the agreement for sale with the petitioner, the third respondent had entered into an agreement to sell a property in Bangalore. On April 26, 1994, the application in Form No. 37-I was filed with the appropriate authority for the issuance of no objection certificate. On July 5, 1994, the appropriate authority issued show-cause notice to respondents Nos. 3 and 4 and the petitioner. The appropriate authority came to the conclusion that by virtue of a comparison of the subject property with S-237, Greater Kailash-I the apparent consideration is 40.43 per cent. less than the fair market value and on a comparison with the second sale instance property E-547, Greater Kailash-II, the fair market value of the subject property is less than 75.99 per cent. Regarding the first instance sale property, the view of the appropriate authority is expressed in the following terms : "Your attention in invited to the sale of first floor of property at S-237, Greater Kailash-I, with a built-up area of 1,200 sq. feet which was agreed to be sold for an apparent consideration of Rs. 24,00,000 as per agreement dated November 26, 1993. This property was also on a 40 feet wide road with only two sides open, therefore, if adjustments on account of time gap of + 5 per cent. and additional side open of + 5 per cent. (total + 10 per cent.) is made the adjusted rate works out to Rs. 2,000 x 1.10 = Rs. 2,200. On this basis the value of the subject property works out to 1532 x 2200 = Rs. 35,70,400 as against disclosed apparent consideration of Rs. 24,00,000 and is 40.43 per cent. than the apparent consideration disclosed." Regarding the second sale instance property, the appropriate authority expressed its view stating :- "Your attention is also invited to another sale instance of residential flat on first floor of property at E-547, Greater Kailash-II, New Delhi which was agreed to be sold for Rs. 65,00,000 as per agreement to sell dated December 6, 1993. This

sale instance property was also on a plot area of (sic) sq. yards on a 40 feet wide road with only 2 sides open. The declared built up area rate of the sale instance property consisting of 2,570 sq. ft. was at Rs. 65,00,000 divided by 2,570-Rs. 2,347 per sq. ft. If adjustment on account of + 4 per cent. and side open of + 5 per sent. (total 9 per cent.) is made, the adjusted built area works out to Rs. 2,529 x 1.09 = 2756.6 say Rs. 2,757 per sq. feet. On the basis of this sale instance the value of the subject property works out to Rs. 1,532 x 2,757 = Rs. 42,23,724 as against apparent consideration of Rs. (sic) lakhs higher by 75.99 per cent. of the disclosed apparent consideration." On May 17, 1984, the transferors and the transferee sent their explanation. It is stated that the building was constructed with a very poor specification and a poor structural design and look and, therefore, is not at all comparable with newly constructed flats. The transferors made advertisements in the newspaper 3 or 4 times and there was no good response. The transferor, Mr. K. S. Chari, Retd. Secretary form the Government of India become a consultant to the World Bank in United Nations after retirement in the year 1977 and he wanted to settle down in Bangalore. They were in need of money and they wanted the payment to be made on or before March 31, 1994. They further stated : "The main condition of the transferors was, therefore, that they needed about 75 per cent. payment up to 31st March and would sign the agreement only when 75 per cent. payment is received. The transferee made the payment of Rs. 5,10,00,000, i.e., more than 20 per cent. of the consideration on March 22, 1994, still the transferors refused to sign the agreement. The transferee made further payment of Rs. 11,00,000 making the total to Rs. 16 lakhs up to April 11, 1994, i.e., 2/3rds of the total consideration still they did not sign the agreement unless they received further Rs. 90,000 on April 23, 1994 and got the assurance in writing with interest clause for the balance Rs. 1,00,000 within 30 days. This being a peculiar transaction cannot be compared with newly constructed normal flats available for sale with sufficient margin of time for making payment. Therefore, the date of transaction of the sale is March 22, 1994, when more than 20 per cent. payment was made." They also brought to the notice of the appropriate the last date for making payment for the Bangalore flat by March 31, 1994, which was extended just by 10 days. The flat is being sold to its immediate neighbour on the second floor with whom the transferors had good relationship and the transferors could also save commission to the extent of 3 per cent. About the accommodation available, nature of construction and the electricity available, it is stated : "The flat under sale has only two bathrooms and one store as against three bathrooms mentioned in the agreement to sell. One bathroom was converted into store and there are no fittings, wash basin or W.C. which the honourable members must have noticed at the time of inspection. This bathroom was converted into store also because of the reason that there is no window, exhaust or ventilation to this bathroom as is evident from the copy of plan available in the file. Besides, the flat has mosaic flooring generally and at one or two places where marble has been used that is of 1" x 6" adana pieces of very low quality of Rs. 10 per sq. ft. The fittings are all aluminium fittings, without tubs and printed tiles. The tiles used are 4" x 4" white tiles used generally in DDA flats or Government

constructions. The transferors have to remove few geysers and other fittings as per the understanding. Besides, there are lot of complaints of leakage and regular complaints of ground floor occupants." They also brought to the notice of the appropriate authority that the flat was constructed on the terrace rights and, therefore, the owner of the ground floor had not allowed any access to the front lawn and the real court yard and there was no parking inside the building, even a scooter or motor cycle cannot be parked. In the show-cause notice it is stated that the area of the flat is 1532 sq. ft. whereas the actual area was 1402 sq. ft. Therefore, the rate per sq. ft. works out at Rs. 1712 per sq. ft. and not Rs. 1,560 as mentioned in the show-cause notice. About the first sale instance property, it is stated : "The instance compared in the show-cause notice at S-237, Greater Kailash-I, New Delhi is much superior construction with servant quarter and car parking. Moreover, the usable area of the flat is also better and higher. Because of load bearing walls of subject property lot of space has been wasted in 9" brick walls. We could manage the working drawings of the property at S-237, Greater Kailash-I, New Delhi, and it is very interesting to note that the bedroom usable area of S-237 G.K. - I is 180 sq. ft., 155.75 sq. ft. and 154 sq. ft. 140.25 sq. ft. and 135.85 sq. ft. in the subject property. The smallest bed room of S-237 is the biggest bed room of the subject property. The toilet sizes are 41.93 sq. ft., 39.37. and 39.87 sq. ft. as against 27.95 sq. ft. 23.50 sq. ft. and 42.5 sq. ft. in the subject property case. All the toilets are well ventilated in S-237 whereas one toilet is without even a window and size of 23.5 sq. ft. could not be used as toilet, so has been converted into store. The overall usable area of S-237 G. K-I excluding walls and passages is 1014.92 sq. ft. whereas it is only 968.58 sq. ft. in the subject case." It is also that the specification in that property is kota stone with marble strips in drive-ways, complete white marble flooring everywhere in the flat and no mosaic is used in the whole building. The doors and windows are of teak woods with brass fitting and there is also servant quarter. Therefore, according to the explanation there is no comparison at all with the subject property. About the second sale instance, it is stated : "The second instance quoted in the show-cause notice is not at all relevant. The locality is different, the flat is brand new constructed with specification of five star hotel and year of construction is 1993. Besides, it was purchased by Bharat Petroleum and the transaction involves a few factors which cannot be highlighted. Therefore, to make comparison with the said flat at Greater Kailash-II is not relevant, particularly when the sufficient instances are available in Greater Kailash-I. As per the rulings of the courts only similar and identical and comparable sale instances must be used for arriving at the fair market value." The explanation would further state that the appropriate authority had received a sale instance factor E-23, Greater Kailash on March 31, 1993 (vide R. No. 3220), the ground floor of this property was sold for Rs. 17,55,000. The area is 1250 sq. ft. The rate works out at Rs. 1,400 sq. ft. When adjusted with time gap, it gives rate of Rs. 1,572 which is lower than the subject property, Therefore, it was stated that the appropriate authority should drop further proceedings. On July 28, 1994, the appropriate authority passed the order of compulsory purchase. Regarding the advertisement made by

the transferors, the appropriate authority has stated : "We find from the newspaper cuttings of"Hindustan Times" of 17th March, 1994, 20th March, 1994, and 23rd March, 1994, that the advertisement reads as under : Greater Kailash corner/1st floor area 300 without basement, 3 bed rooms, drawing-dining. The above advertisement does not even specify whether the subject property was in Greater Kailash-I or in Greater Kailash-II. Further, this advertisement does not mention the expected price for the property nor the covered area. We also do not know what was the response of such advertisements and whether any willing purchaser contacted the transferor and if so, the price for which he was prepared to purchase the property. No evidence has been filed before us showing the response to these advertisements and accordingly the contention that in spite of advertisements no willing buyer was prepared to pay more than the apparent consideration finally agreed has to be rejected." The reasoning is not at all correct. The view by the appropriate authority that no evidence has been filed showing the response of the advertisements cannot at all be sustained because no one normally keeps the record of the response and there is no reason to reject the case of the petitioners. Regarding the payment made to the vendor in Bangalore it is stated : "As a matter of fact about 70 per cent. of the payment was received by the transferors only by 23rd April, 1994, and if the advance payments for the subject property were to be utilised by them for making payment at Bangalore, they could have done so only within the extended period by 1Oth April, 1994. Since the advance payment aggregating to a sum of Rs. 17,00,000 (5,10,000 + 11,00,000 + 90,000) was received by the transferors for the subject property only by April 23, 1994, no direct nexus can be established between the receipt of 70 per cent. of the apparent consideration for the subject property and the payment that was required to be made for purchase of the property at Bangalore. However, since the payment to the extent of 70 per cent. had been received in this case by the transferors by 23rd April, 1994, as advance, as against the prevalent practice of receiving 15 per cent. to 20 per cent. as advance only, the interest on the excess payment of about Rs. 13,40,000 has to be taken into account, which works out to about Rs. 33,000 for the period of three months calculated at the rate of 10 per cent. which is very nominal considering the apparent consideration of Rs. 24,00,000 for which the subject property was agreed to be sold." This reasoning also is no reason at all. Regarding the point that the property was agreed to be sold to the person residing on the second floor, the appropriate authority expressed the view : "The contention that the subject flat was sold by the transferors to their immediate neighbour residing on the second floor of the same building with whom they had personal relations, and therefore, a nominal discount should be allowed is also rejected because this was a purely commercial transaction and such transactions are governed by business prudence and are not influenced by any extraneous considerations. Exception, however, is made only under section 269UD of the Income-tax Act where such transactions are made between the relatives on account of natural love and affection." The appropriate authority had completely ignored the realities of situation. Regarding the user the appropriate authority has observed : "The contention that the subject property did not have three bath rooms as

mentioned in the agreement to sell and in fact it had only two bath rooms, the third one having been converted into a store room because in the third bath room there was no window or other ventilation, is also not sustainable because on inspection of the property we found that in fact there were three bath rooms. The third bath room has sufficient ventilation through the other bath room having a common wall and the water connection and pipes were also found to exist and, therefore, this could also be converted into a bath room by installing the required sanitary fittings." If the approach of the appropriate authority is adopted in the way it is done, on the subjective satisfaction of the appropriate authority any property could be compulsorily purchased. Regarding the nature of the construction and the life of the building, the appropriate authority gives a very curious reasoning : "While the ground floor of the subject property might have been constructed on load bearing walls in the year 1962 on which the first floor is stated to have been built in 1986, the contention that the property constructed on load bearing walls has a life of about 60 years, out of which in the present case 30 years had already expired leaving an unexpired life of only 30 years is neither relevant nor material because the cost of construction of a property is a very insignificant part of the total value of the property, as the plot of land accounts for more than 90 per cent. of the total value of the property. Besides in actual fact properties built on load bearing walls far outlive their life of 60 years if properly maintained." About the point of non-availability of parking space and the servant quarters, the appropriate authority has expressed : "The next contention that the subject property had no parking space whatsoever and further that it did not have a servants quarter is factually correct, but this fact had duly been taken into account while working out the value of the subject property. Even in the sale instance property at S-237, Greater Kailash-I, there is no garage, but only an open car parking space and a servants quarter on the terrace floor, which is unauthorised. Since the sale instance property at S-237, Greater Kailash-I, also does not have a garage and the servants quarter is unauthorised and since the value of the subject property has been worked out, having regard to the fact that there is no parking space and no servants quarter, the value of the subject property as compared to the sale instance property at S-237, Greater Kailash-I, does not call for any further reduction." This is not one of the methods for comparing the value of the property. About the usable area, the appropriate authority would further observe : "The contention that the usable area of the sale instance property at S-237, Greater Kailash-I, is greater than the usable area of the subject property, because considerable space has been wasted in the subject property, on account of the load bearing walls of the subject property has been found to be factually incorrect. It is also not correct to say that each of the three bed rooms in the sale instance property at S-237, Greater Kailash-I, and two of the three toilets in the sale instance property are bigger in size, than each of the three bed rooms in the subject property and two of the three toilets in the subject property. The contention that the overall usable area in the sale instance property is 1014.92 sq. feet, as compared to the overall usable area of 968.69 sq. feet in the subject property has also been found to be incorrect. As per the plan approved by the

MCD and submitted along with the application in Form No. 37-I in the case of the subject property as well as in the case of the sale instance property at S-237, Greater Kailash-I, it has been found that the actual usable area in the subject property including the passage is 1064.40 sq. ft. as compared to the usable area of 830.69 sq. ft. including passage in S-237, Greater Kailash-I." Regarding the specification, the appropriate authority observed : "We may state that the difference in the value of the property on account of inferior or superior specifications is negligible as the cost of the structure is a very insignificant part of the total value of the property, the land value accounting for more than 90 per cent. of the total value of the property." The appropriate authority rejected comparison with E-280 Greater Kailash-II. On this process of reasoning the order for compulsory purchase was made. In the writ petition what is stated in the explanation is reiterated. We are of the view that the appropriate authority has not adopted any standard for ascertaining the fair market value of the subject property. Therefore, the show-cause notice itself is bad in law. C.W. No. 3884 of 1994 : In this writ petition, Mr. R. C. Chawla and his daughter, Ms. Suchitra Chawla, are the petitioners. The subject property, is C-590, defense Colony, New Delhi. On May 6, 1994, the agreement for sale was entered into between Mr. J. S. Sawhney and Mr. R. C. Chawla. The area of the property is 325 sq. yds. with built up single storey consisting of three beds D/D along with garage block. The consideration mentioned is Rs. 80 lakhs plus conversion charges of Rs. 1,03,798. On May 6, 1994, the petitioners paid conversion charges for converting the property into freehold amounting to Rs. 1,04,111. On May 10, 1994, the third respondent purchased a house bearing No. A-12, Sector 36, Noida, on receipt of substantial consideration from the petitioners. The third respondent vacated the subject property on May 12, 1994. On May 15, 1994, the third respondent gave possession of the property to the petitioners. On May 22, 1994, a public notice was issued by persons allegedly stated to be the co-owners objecting to the transfer. On May 27, 1994, the suit was filed in the District Court, Delhi. On May 31, 1994, an application in Form No. 37-I was filed before the appropriate authority. On August 9, 1994, a show-cause notice was issued by the appropriate authority. Two sale instances of property are given; (1) C-77, defense Colony, and (2) C-86 defense Colony. About the first sale instance property C-77, the details mentioned are : Plot area : 271.70 sq. mts. 22-12-1993 : Sold for Rs. 99 lakhs including conversion charges. Time gap 4 months at 1 per cent. increase : Plus 4 per cent. Subject property not facing park : (-) 5 per cent. Land rate works out : Rs. 35,480 To this has to be added salvage value of the structure of the subject property : Rs. 44,660 Now the land value : 271.73 x 35,480 = 96,40,980 Add 44,660 The total comes 96,85,640. The apparent consideration of the subject property is thus 20% less than the fair market value. About the second sale instance property Plot area : 271.73 sq. mts. Consideration : 125 lakhs Date of agreement : 19-7-1994. Salvage value of the structure : Rs. 1 lakh. Declared land rate works out at : Rs. 45,634 Time gap at 1% p.m. : 1 1/2 per cent. The property facing park : -5 per cent. (Total minus 6.5%) Land value of the subject property at this rate would work out to : Rs. 42,668 As per this calculation the fair market value : 271.73 x 42668 =

1,15,94,175 Thus the apparent consideration of the subject property is less than 43.6 per cent. the fair market value of the property. On August 18, 1994, the explanation was given by the transferors and the transferees. Regarding C-86, it is stated that there are three independent rooms over the garage and it is a 2 1/2 storeyed building and construction is new one. Regarding C-77, it is stated that it is a complete two storeyed building and the accommodation available is double what is available in the subject property. The subject property is facing the servant quarters and the garages of the house which are situated in E Block. The subject property is 32 years old and is in a dilapidated condition. In the ground floor there are two bed rooms with drawing, dining, kitchen and on the first floor there is only one bed room with drawing and dining. On August 18, 1994, a further reply was sent by Mr. R. C. Chawla stating that title of the transferor J. S. Sawhney is in dispute. A public notice dated May 22, 1994, was enclosed by him and he brought to the notice of the appropriate authority the pendency of Suit No. 224 of 1994 in the court of Shri P. K. Dham, Additional District and Sessions Judge, Delhi, and that the alleged co-owners had obtained order of stay. He also brought to the notice of the appropriate authority clause 2 of the agreement wherein the litigation was anticipated by the parties. On August 24, 1994, Mr. R. C. Chawla sent another reply wherein he stated that he had come across a few cases where with reference to properties situated in defense Colony, the appropriate authority had issued no-objection certificates : "D-313 : This property is situated on a land admeasuring 325 sq. yds. and is facing a park. Application in Form No. 37-I, was filed in May 1994. The basis of valuation of that the construction is 2 1/2 storeys - well built up with six bed rooms, the value of the salvage would be 5 lakhs and the basis of land value is calculated as follows : Rs. 90,00,000 divide 271.73 = 31,281.05 (-) Rs. 5,00,000 salvage value Rs. 85,00,000 divide 271.73 = 31,281.05 (-5) Rs. 31,281.05 x (-5%) = 29,717.00 park facing. The value of the basic land value amount of Rs. 29,717.00 which is comparable to our land value and the permission for this was granted by the appropriate authority. C-530 defense Colony : This property is situated on a corner plot and the land is 360 sq. yds. This property faces open ground and the house is 1 1/2 storeys with the three bed rooms, drawing, dining and two study-rooms with attached bath-rooms. The permission for this was applied in October/November, 1993, for Rs. 93 lakhs. The value was calculated as follows : Rs. 93,00,000 the value can be calculated as follows : Rs. 93,00,000 divide 301.00 = 30,897.01 If addition of (+5%) for time-gap is made (+) then Rs. 1,544.86. The adjusted value comes to = Rs. 32,441.86

The deduction for corner plot (-5%) = Rs. 1,622.09

The adjusted value is = Rs. 30,819.77

C-538 defense Colony :

This property is ad-measuring 271.73 sq. mtrs. and was filed on November 1993 for Rs. 88,00,000. It has got 3 bed rooms, drawing/dining and separate garage block for which a salvage value will be around Rs. 2,00,000.

Basic value Rs. 88,00,000 divide 271.73 = Rs. 32,385

Salvage value Rs. 2,00,000 divide 271.73 = Rs. 31,650

If no adjustment an amount of time-gap of (+7%), the value shall be Rs. 33,865.50 per sq. mtr.

Registered No. 3792, dated 26-5-1994, C-253, defense Colony, New Delhi

This is again 325 sq. yards, south facing, double storeyed house, which was filed for an apparent consideration of Rs. 88,00,000 where the house had three bedrooms attached bath, drawing, dining. The value shall be :

Rs. 88,00,000 divide 271.73 = Rs. 32,285.08

(-) Rs. 3,00,000 (salvage value)

Rs. 85,00,000 divide 271.73 = Rs. 31,281.06

The apparent consideration on an adjustment of (+3%) time-gap is made shall be Rs. 32,225.00 per sq. mtr."

He emphasised the fact that C-86, referred to in the show-cause notice, is a centrally airconditioned property with two-storeyed construction, with a terrace garden, having six bed rooms and a separate garage block, three kitchen with imported fittings. He also relied upon NOC granted by the appropriate authority on May 6, 1994, with reference to 182, Golf Links, New Delhi, to show how the appropriate authority had acted in an arbitrary way. The appropriate authority passed the order of compulsory purchase on August 31, 1994, maintaining the same position in the show-cause notice and without considering in a proper way the representation made by the writ petitioners. In the writ petition what is stated in the explanation and further explanation is reiterated and it is submitted that the appropriate authority had not acted in accordance with law in fixing the fair market value and that vitiates the entire proceedings. The petitioners filed C.M.P. No. 8279 of 1994 seeking to place on record certain facts. It is stated in the petition that the subject property belonged to the late Col. Y. S. Sawhney. He died in May 1992, as a bachelor. The third respondent, J. S. Sawhney, inherited the property, he being the only surviving brother. The step brother of the late Y. S. Sawhney and the children of his pre-deceased elder brother had filed a Suit No. 224 of 1994 in the court of the Additional District and Sessions Judge, Delhi. They had withdrawn that suit and they had instituted Suit No. 2079 of 1994 in this court propounding a will alleged to have been executed by Y. S. Sawhney. It is also stated that with reference to house No. 11, Road No. 78, Punjabi Bagh, New Delhi, while comparing the property with property No. 21 of 1977, Punjabi Bagh, New Delhi, had given deduction of 10 per cent. on account of litigation in order dated October 12, 1994. The petitioners in the application have also prayed for summoning of the file in Suit No. 2079 of 1994 in this court. The appropriate authority has filed a reply to the writ petition traversing the allegations in the writ petition. It is stated in paragraph 4 of the grounds in reply that the averments made are

denied. Even otherwise, as per the calculations submitted by the petitioners themselves there is a difference of 16.33 per cent in the apparent consideration to the fair market value. Regarding the property No. 78, Golf Links, it is stated that it is of no relevance. The petitioners filed a rejoinder affidavit disputing the averments in the counter. Mr. Arun Dua son of the late Mr. B. S. Dua had filed an application to implead himself as a party in the writ petition stating that he and Rajinder Singh Sawhney and others had filed a suit for permanent injunction in the lower court restraining the respondents from selling, transferring and alienating the property. According to him, the late Col. Y. S. Sawhney had executed a will. The date of the will is not mentioned and it is stated that the suit filed in the lower court has been withdrawn. A suit for partition has been instituted in this court. Whatever the nature of the dispute between J. S. Sawhney and others Arun Dua cannot seek to implead himself as a party in this case. He is not a necessary party to the writ petition. Therefore, the application of Arun Dua to implead himself as a party is dismissed. A perusal of the petition and the counter and other documents in this case would show that the appropriate authority has not at all applied the principles applicable for fixing of fair market value. Therefore, the order of the appropriate authority cannot at all be sustained. C.W. No. 5613 of 1993 : Chiranji Estates Pvt. Ltd., has filed this writ petition challenging the order of the appropriate authority dated November 26, 1993. On August 28, 1993, there was an agreement for sale between the third respondent, Ved Prakash Marwah, and the writ petitioner for purchasing Plot No. 3, Block A, East of Kailash admeasuring 306 sq. mts. the consideration fixed is Rs. 70 lakhs. On August 30, 1993, there was an application to the appropriate authority in Form No. 37-I. On September 6, 1993, there was a supplementary agreement. On September 6, 1993, the appropriate authority wrote to the petitioner asking it to furnish certain particulars. On November 4, 1993, the appropriate authority issued a show-cause notice. The appropriate authority based its show-cause notice on the following facts to come to the conclusion that the apparent consideration is less by 56.60 per cent. of the fair market value : "If compared to sale transactions of similar properties in this locality, the apparent consideration disclosed appears to be low. Your attention is particularly invited to sale of immovable property E-326, East of Kailash, New Delhi, with a plot area of 200 sq. yards or 167 sq. metres which was agreed to be sold for apparent consideration of Rs. 51,00,000 + conversion charges as per agreement dated May 23, 1993. This sale instance property also consisted of land with building consisting of basement, ground floor and second flour. If the salvage value of the sale instance property is considered at Rs. 55,720 and the conversion charges are considered at Rs. 42,421, the unit land rate works out to Rs. 30,419 per sq. metre (51,00,000 + 42,421 = 51,42,421 -55,720 = 50,86,701 - 167.22 = 30,419 per sq. metre). This sale instance property required to be further enhanced by + 16.75 per cent. on account of time gap + 3 per cent. FAR + 18.75 per cent. and location on account of park -5 per cent. (total 16.75 per cent.) After this adjustment, the land value of the subject property on the basis of sale instance property comes to Rs. 30,419 x 116.75 = Rs. 35,514 per sq. metre. On this basis, the land value of the subject property

works out to Rs. 35,514 x 306 = 1,08,67,284. The amount of Rs. 93,600 being the estimated salvage value of the subject property has to be further added. After addition of this amount, the total value of the subject property works out to Rs. 1,08,67,284 + 93,600 = 1,09,60,884 which is higher by 56.60 per cent. than the disclosed apparent consideration of Rs. 70,00,000." The subject property is compared only with one sale instance property. The petitioner filed the explanation on November 14, 1993. It is stated in the reply about E-326, East of Kailash, and the following objection is mentioned : "The property at E-326, East of Kailash, admeasures 167 sq. mtrs. The building standing on this property is fairly decent and of recent origin. In view of this vital fact the value of the building as on date of agreement would be Rs. 10 lakhs. In that way the cost of land would be reduced to Rs. 41 lakhs and the unit cost of the land would work out to Rs. 24,520 sq. mtr. The unit cost of the land thus arrived at would have to be subjected to the following adjustments :- (i) Time Gap - Sale instance was 1/2 on May 23, 1993. The subject property is of August 28, 1993. There is gap of three months. A 1 per cent. variation per month is permissible. That would give a total variation of 3 per cent. 3 per cent. (ii) The FAR of the property at E-326, East of Kailash is 160. The FAR of the subject property is 190. This would require an adjustment of 18.75 per cent. 18.75 per cent. (iii) The property at E-326 is facing a park. The subject property does not face any park. So deduction is at 5 per cent. (-) 5 per cent. (iv) The subject property is facing the Nullah. Deduction for the detriment, therefore, at 5 per cent. (-) 5 per cent. (v) The subject property is surrounded by jhuggies and jhompries and Amar Colony which is not a high profile colony. As compared to E-326 which is facing Greater Kailash I on the one side and Nehru Place on the other side a deduction of 10 per cent. is fair and due. (-) 10 per cent. (vi) Subject property is bigger in size as compared to the sale instance. Thus its potential to attract buyers is comparably less. (-) 10 per cent. (vii) The sale instances is of the property where greater coverage is permissible on the ground. The coverage area is 50 per cent. according to the DDA Rules. Therefore, scope of expansion is 17.1 per cent. less for which due deduction ought to be permitted. (-) 17. 1 per cent. 26 approx. In paragraph 7 of the reply it is stated that property C-111, East of Kailash, was transferred by way of collaboration agreement in January, 1993, at Rs. 24.50 lakhs where the area of the site is 250.48 sq. mts. The unit cost in the case of land works out at Rs. 20,000 per sq. mt. and No objection has been granted by the appropriate authority. It is stated that the transaction is a genuine one and no objection should be granted. A further representation was given stating that three properties had been cleared by the appropriate authority, i.e., (i) A-32, East of Kailash, 355 sq. yds. unit cost Rs. 18,000 per sq. mt. (ii) C-III East of Kailash, 300 sq. yds. unit cost Rs. 2,000 per sq. mt. (iii) D-137 East of Kailash, 486 sq. mt. unit cost Rs. 22,500 per sq. mt. On November 26, 1993, the appropriate authority passed the order which is challenged. The appropriate authority had followed the same reasoning as mentioned in the show-cause notice and had tried to find out some reason to conform to the same. In paragraph 7, the appropriate authority stated thus :-"On the date of hearing the transferee also relied upon the sale instance at

D-137, East of Kailash, New Delhi, which was sold in the last quarter of 1992 and had a plot area of 486.28 sq. metres and FAR of 190, the same as in the case of subject property. The land rate in respect of this sale instance after adjustment was arrived at Rs. 22,500. It was submitted that the declared land rate of Rs. 22,570 in respect of the subject property compared favourably with this sale instance also. It has been further stated in the written submissions dated November 14, 1993, that the property in C, D and E Blocks are superior to the properties in A Block as the properties in C, D and E Blocks do not have a cluster of jhuggies and jhompries around them or a nullah facing them. Lastly, it has been stated that since the transferor is a distinguished and meritorious officer of the I.P.S. and had worked as an advisor to the Jammu and Kashmir Government he could not be expected to indulge in clandestine deals. It has also been submitted that while making a comparison like should be compared with like and the comparable cases should be in reasonable proximity and should provide similar amenities and advantages. In paragraph 8, it is stated : "We have gone through the written submissions dated November 14, 1993, submitted by the transferee carefully and have also considered the submissions made on behalf of the transferee on the date of hearing. We accept the proposition that while making a comparison like should be compared with like and this order of pre-emptive purchase is being passed keeping in view the general proposition that like should be compared with like. Further it is difficult to accept as a general proposition the contention that the properties in C, D and E Blocks in East of Kailash are superior than those in A-Block. We are also conscious of the status and standing of the transferor who was a meritorious officer of the Indian Police Service, although this factor is extraneous to the issue being dealt with by us." Regarding the adjustments, the following reasons are given by the appropriate authority : "As regards the adjustments it may be stated that an adjustment of +3 per cent. on account of time-gap, adjustment of + 18.75 per cent. on account of the FAR and an adjustment of (-) 5 per cent. on account of park was already proposed in the show-cause notice dated November 4, 1993. Further, an adjustment of (-) 5 per cent. on account of the subject property facing a nullah across the main road is also being given now. Further, an adjustment of (-) 10 per cent. is also being given now as claimed by the transferee as the subject property is bigger in size as compared to the sale instance property at E-326, East of Kailash, New Delhi. The transferee in his written submissions has claimed an adjustment of (-) 10 per cent. as the subject property is surrounded by jhuggies and jhompries and further has claimed an adjustment of (-) 17.1 per cent. as in the sale instance property greater coverage of 60 per cent. is permissible on the ground as compared to the coverage of 50 per cent. permissible in the case of the subject property. The adjustment of (-) 10 per cent. on account of the subject property being surrounded by jhuggies and jhompries cannot be given as on site inspection of the property made by us, it was noticed that there were in fact no jhuggies and jhompries and what are described as jhuggies and jhompries are actually pucca brick double-storeyed construction and even this construction is at a reasonable distance from the subject property. Therefore, no allowance on this score can be

given. As regards the adjustment of (-) claimed on account of greater coverage permissible on the ground in respect of the sale instance property at E-326, East of Kailash, New Delhi, we are of the view that no such adjustment is called for and as a matter of fact an adjustment of (+) 18.75 per cent. on account of FAR is required which has already been given. Thus, the adjustments which can be given are only on account of time gap, FAR, location, nullah and plot size of the subject property. The adjustments to be allowed on account of these factors works out to (+) 18.75 per cent. (+) 3 per cent. (-) 5 per cent. and (-) 10 per cent. The net adjustment accordingly works out to (+) 1.75 per cent. which gives a land rate of Rs. 25,702 per sq. mtr. as against the declared land rate of Rs. 22,570 per sq. mtr. Accordingly, we adopt a land rate of Rs. 25,700 per sq. mtr. and on this basis, the land value of the subject property works out to Rs. 78,64,200 to which the depreciated cost of the structure of Rs. 9,92,618 is to be added which gives the market value of property as Rs. 88,56,818. The difference between the apparent consideration and the fair market value accordingly works out to 26.52 per cent." About C-111, East of Kailash, it is stated that property sought to be transferred by collaboration agreement are not comparable to those which are transferred by outright sale. As regards property A-32, East of Kailash, it is stated : "This property was in occupation of one Sh. D. N. Katyal. The agreement to sell in respect of this property also provided that the purchaser shall be liable to take physical possession of the plot from Sh. D. N. Katyal at his own cost. Even if Sh. D. N. Katyal was in occupation of the property No. A-32, East of Kailash, New Delhi, as a licensee, the purchaser purchased this property along with the occupation of Sh. D. N. Katyal whom he had agreed to evict at his own cost. This factor clearly distinguishes property No. A-32, East of Kailash, New Delhi, from the subject property in which there is neither a bona fide tenancy nor an occupancy of a third party. The apparent sale consideration of property No. A-32, East of Kailash, would have been much higher but for the possession of the property by Sh. D. N. Katyal. Therefore, the sale instance of A-32, East of Kailash cited by the transferee is not comparable to the subject property." The appropriate authority dealt with the sale instance cited by the writ petitioner with reference to property D-137, East of Kailash, which had been agreed to be sold for an apparent consideration of Rs. 1,12,50,194 including unearned increase as per agreement to sell dated October 13, 1992, a peculiar reasoning is adopted by the appropriate authority to say that the fair market value of the subject property is 37 per cent. higher than the sale instance property : "This property was on a plot of 468.22 sq. mtrs. which was a much bigger plot as compared to the plot area of 306 sq. mtrs. of the subject property. If the subject property is compared to the property at D-137, East of Kailash, New Delhi, the unit land rate of the sale instance property is to be enhanced by 10 per cent. on account of time gap and has to be further enhanced by at least 10 per cent. on account of the smaller plot size of the subject property and on account of approach to service lane in the case of property No. D-137, East of Kailash, New Delhi. The declared land rate of sale instance property No. D-137 after deducting salvage value works out to Rs. 23,419 per sq. metre. On this basis, the unit land rate of the subject property

would work out to Rs. 28,103 per sq. mtr. (Rs. 23,419 x 20 per cent.). The total value of the subject property on a comparison with D-137, East of Kailash, New Delhi, would thus work out to Rs. 95,92,136 (85,99,518 + 9,92,618). The fair market value of the property so worked out is higher than the apparent consideration by 37 per cent. Thus, even on comparison with D-137, East of Kailash, New Delhi, the apparent consideration is lower by 37 per cent." It may be noticed from the above that it is admitted by the appropriate authority that adjustments can be given only on account of time gap, FAR, location, nullah, and plot size of the subject property. If the same thing is adopted in all cases one can appreciate the view of the appropriate authority. A consideration of the orders passed in the batch of writ petitions would show that the appropriate authority has never been consistent. In the writ petition the averments made in the reply and the view taken by the appropriate authority are repeated and, therefore, it is unnecessary to deal with the averments in the writ petition. In reply also the appropriate authority has maintained the same reasoning that is given in the impugned order. C.W. No. 4357 of 1993 : In this writ petition the order for compulsory purchase dated May 28, 1993, is challenged. On May 21, 1987, respondents Nos. 5 and 6 Smt. Jeet Kaur and Mr. Mohan Singh, respectively, agreed to sell to the first petitioner, Express Towers (P.) Ltd.; the second petitioner, Mr. R. C. Goel, is the director of the first petitioner, property No. B-7/118, Safdarjung Enclave Extension for a consideration of Rs. 23,50,000. The area of the land is 375 sq. mts. The construction consists of a single storeyed house including a double-storeyed outhouse covering area of 2,300 sq. ft. On May 27, 1987, the parties filed the application in Form No. 37-I for issuance of a no objection certificate. On July 10, 1987, the appropriate authority passed the order for compulsory purchase. Challenging that order the petitioners filed C.W. No. 2275 of 1987 in this court. On March 1, 1993, a Division Bench of this court allowed the writ petition in view of the judgment of the Supreme Court in C‘. B. Gautams case [1993] 199 ITR 530. On May 3, 1993, the petitioners applied to the appropriate authority requesting it to furnish the reasons for not issuing the no objection certificate. On May 11, 1993, the appropriate authority issued a show-cause notice. The basis of the show-cause notice is : “You are also informed that the apparent consideration disclosed by you in Form No. 37-I is low if compared to other sale transactions of similar property in that area during that period; it may be recalled that immovable property located at B-7/118, Safdarjung Enclave Extn., New Delhi, is a single storey main building with double storey outhouse on a free-hold plot of land measuring 375 sq. mtrs. (450 sq. yds.) on the basis of declared consideration after excluding the estimated value of construction of Rs. 3,41,000 at the rate of Rs. 5,357 per sq. mtr. The land rate per sq. mtr. in respect of immovable property B-1/16, Hauz Khas, New Delhi, which was one side open and the sale took place in February, 1987, worked out to Rs. 9,813 per sq. mtr., the per sq. mtr. land rate in respect of immovable property sold on April 10, 1987, located at J-10, Green Park, New Delhi, near historical monument worked out to Rs. 7,267 after adjustments on account of FAR time gap and location, the net land rate works out to Rs. 7,752 and Rs. 8,357 per sq. mtr., respectively; there is yet another sale instance of

immovable property located at B-2/2, Safdarjung Enclave, New Delhi, admeasuring 376.25 sq. mtrs. which was sold on February 18, 1987. This property is a leasehold one but even then the land rate worked out to Rs. 8,350 per sq. mtr. after an adjustment of land tenure (lease-hold and free-hold) FAR time gap and location the net land rate works out to Rs. 7,432 per sq. mtr. If the average of these three sale instances is taken into account the land rate works out to Rs. 7,850 per sq. mtr. Therefore, on this basis, the land value works out to Rs. 7,850 x 375 = Rs. 29,43,750. If the value of structure of Rs. 3,41,000 is further added the total value so worked out comes to approximately Rs. 32,85,000 against the declared consideration of Rs. 23,50,000 which is an excess by 28.5 per cent." On May 18, 1993, the petitioners and respondents Nos. 5 and 6 filed the explanation about the situation of the property. It is stated : "That the locality where the said property is situated is known as Safdarjung Enclave Extension, New Delhi. It is submitted that this locality was not developed by a government agency or by any private colonizer. It is a part of old village known as Arjun Nagar, which grew in an unplanned manner with unauthorised constructions around by all sorts of people and mostly by labour and wage earners. In the days of emergency, the said area was demolished for planned development but it could not be taken up as the successor Janata Government reversed the decision and handed over the area to the respective parties holding possession before demolition. However, some developments were undertaken by the DDA to improve roads, etc. So the locality consists of all sizes of plots varying from 36 sq. metres. to 500 sq. mtrs. with small approach roads surrounded by old Arjun village and labour jhuggies. That the property under reference was owned by Sardar Mohan Singh. Due to adverse political atmosphere the transferors were anxious for expeditious disposal of his properly and to leave the country to join his daughter living abroad. In pursuance of his planning he was making desperate efforts to sell the property. But because of defective situation, small approach roads, sub-standard habitation, labour jhuggies around and over and above unhealthy surroundings of the village, there was no preference by the buyers for purchase of the said property. At the relevant time, adjoining plots were occupied by jhuggi dwellers on both the sides of the plot in question. These jhuggies still exist at the site. A photo taken of the site is produced for kind perusal. A site plan copy is also enclosed." In the explanation the difference between Safdarjung Enclave Extension and Safdarjung Development Enclave is pointed out. In the explanation, the details about the property sold in the locality in or about 1987 are given below : Property Average land rate (Rs.) (Rs.) 1. Vacant plot of land No. B-7/26 This is an open plot of land of 70 sq. mtrs-sold for Rs. 2,40,000 vide sale deed dated 13-2-1987, registered as document No. 1177 in Book No. 1, Vol. No. 5731 on pages 188-196 sellers Allied Builders (P.) Ltd. and purchasers - Mrs. Parmila Bhandari. 3,429 2. Vacant plot No. B-7/68 Area 100.7 sq. mtrs sold for Rs. 4,25,000, vide sale deed registered as document No. 5586, Vol. 5878 on pages 94-101 dated 3-7-1987, seller Shri S. D. Sharma and purchaser Shri Vijay Kumar Gupta 4,220 3. Vacant plot No. B-7/103 Area 174.8 sq. mtrs sold for Rs. 9,10,000, vide registered sale deed being document No. 1050, Book No. 1, Volume No. 6034 at pages 49-65, seller

Smt. Chander Kali, purchasers Rajhans Developers (P.) Ltd. dated 17-2-1988. 5,200 It is submitted that in this case proceedings were initiated under Chapter XX-C of the Income-tax Act by the appropriate authority and on being satisfied with the value, proceedings were dropped. Copies of notice and order of the appropriate authority are enclosed. 4. Vancant plot No. B-7/26 (Rs.) Plot area 70 sq. mtrs sold for Rs. 3,15,000 on 28-2-1988 4,500 5. Vacant plot No. B-7/119 Area 238 sq. mtrs. sold for Rs. 17,00,000 on 13-10-1992 7,142 About the sale instance property, it is stated in the explanation : "B-1/66, Hauz Khas, New Delhi Firstly, this is situated in a different posh colony. The property is of 163 sq. mtrs sold on February 1987, giving land rate at Rs. 9,741 as per show-cause notice. While the adjoining property No. B-1/17 Hauz Khas, was area 196.66 sq. yds sold on 21-1-1987, for Rs. 12,50,000 giving rate of Rs. 6,377. Similar is the position of other instances cited by the cell, they differ in their situation, size, etc., In any case, it is submitted that these instances are not appropriate for the purposes particularly when sale instances of the same locality are available. It is submitted that the sale consideration as recorded in the agreement to sell represents the fair market value and is not a fit case where the provisions for pre-emptive purchase of property by the Central Government are attracted." On May 28, 1993, the order of compulsory purchase was passed. Dealing with the sale instance quoted by the petitioners, the appropriate authority stated : "Before dealing with the submissions on behalf of the transferee it will be relevant to note that the subject property is 375 sq. mtrs or 450 sq. yds. Therefore, it is not appropriate to compare it with sale instances of 70 sq. mtrs., 100.7 sq. mtrs, 174.8 sq. mtrs. 70 sq. mtrs. mentioned at Sl. Nos. 1, 2, 3, & 4 of the preceding paragraph. So far as sale of adjoining plot No. B-7/119 of 238 sq. mtrs. is concerned, the transferee, it is regretted, has not properly stated the facts. The sale deed in respect of"1/2 undivided share was sold on 31-7-1992. The property was tenanted and the monthly rent as per sale deed was only at Rs. 600.00. The remaining 1/2 undivided share out of the said property was sold on 13-10-1992. Even at that time, property was tenanted with a monthly rent of Rs. 600.00. Besides, the sale in respect of this property was not scrutinised by the appropriate authority as the apparent consideration in sale deeds dated July 31, 1992 and October 13, 1992, were below Rs. 10 lakhs and therefore no statement on Form No. 37-I was filed." It could be seen from the reasoning of the appropriate authority how the adjustments could be elongated and reduced, depending upon the subjective satisfaction of the appropriate authority from the way in which the appropriate authority had dealt with the sale instance property B-2/2, Safdarjung Enclave. The appropriate authority stated : "In respect of property No. B2/2, Safdarjung Enclave, an adjustment of +22 per cent. on account of land tenure (the subject property being free-hold and the sale instance property being lease-hold), +3 per cent. on account of time gap (the sale instance was on 18-2-1987), 31 per cent. on account of FAR (1.625) and -10 per cent. on account of location (sale instance being on main road was made and net adjustment of -16 per cent was arrived at. Therefore, the rate arrived at worked out to Rs. 8,350 X 0.8 percent = Rs. 7,014 per sq. metre. On this basis, the value of land works out to Rs.

7,014 X 375 = Rs. 26,30,250. The total value after addition of depreciated value of structure comes to Rs. 26,30,250 + 3,41,000 = Rs. 29,71,250 even without considering other two sale instances given in the show-cause notice. The value so worked out is 26 per cent., in excess of the apparent consideration (Rs. 29,71,250 - 23,50,000 = 62,12,500 X 100) 23,50,000 On the facts stated above the apparent consideration is clearly understated. It is not necessary to expatiate on the scope of adjustments because there is no law governing the adjustments. In the writ petition, the order is challenged on various grounds and we need not deal with all the points and it is enough to highlight the broad challenge made by the petitioners. It is submitted that the appropriate authority did not disclose to the petitioners how it fixed 22 per cent. as the rate for conversion of the leasehold plot into freehold plot by adding the same in the sale price of the sale instance property B-2/2, Safdarjung Enclave, which is a leasehold property to bring it at par with the subject property to arrive at the rate of Rs. 7,014 per sq. mt. It is submitted that the formula evolved by the Government of India for conversion rate leasehold into freehold is 10.4 per cent. and, therefore, there was an error on the part of the appropriate authority. The appropriate authority had not given the basis on which it had arrived at the cost of the super structure at Rs. 3,41,000 while as per the calculation of the petitioners the value of the super structure comes to Rs. 1,25,000. The appropriate authority had also not conveyed in what manner it had calculated + 10 and +31 per cent. for location, FAR, etc. The appropriate authority had acted contrary to the established principles by comparing the subject property with properties situate in colonies like Hauz Khas, Green Park or Safdarjung Enclave which were fully developed more than 10 years prior to the agreement in 1987. The appropriate authority had not also not considered the existence of jhuggies and the irregular size of the plot in this area and the vendors were anxious to sell the properties as they wanted to go abroad to live with their daughter in their old age. On October 13, 1993, the petitioners filed C.M. No. 7857 of 1993 for the amendment of the writ petition seeking leave to add certain grounds of challenge. It is stated in the amendment petition that the appropriate authority had not taken into account the cost of land fixed by the DDA while fixing the market value. In the year 1987 the cost of land fixed by the DDA for Safdarjung Enclave was Rs. 4,500 per sq. mtr. and as on April 1, 1992, the land-rate fixed by the DDA with regard to leasehold property was Rs. 5,175. The petitioners filed C.M. No. 2043 of 1994 again for the amendment of the writ petition on the basis of the order passed by the appropriate authority on November 5, 1993, rejecting the petition filed by the petitioners under section 269UJ of the Income-tax Act, 1961. The appropriate authority filed a reply to the amended writ petition reiterating the stand taken by it in the show-cause notice and the impugned order. Regarding the adjustments of + 22 from leasehold to freehold the appropriate authority would state :"As regards the contention now raised regarding conversion charges

of leasehold land into freehold on the basis of notification dated February 14, 1992, issued by the Ministry of Urban Development, the same cannot constitute the basis for any rectification. Firstly, this contention was not raised at the time of hearing on May 18, 1993, during the course of proceedings under section 269UD. Besides, this notification cannot be relied upon and made the basis for arguing that an adjustment of only plus 10 per cent. is called for for converting leasehold land into freehold as against the adjustment of plus 22 per cent. made by the appropriate authority on this score. Secondly, this notification is for a limited period up to March 31, 1994, for regularising land deals prevalent in Delhi." From a reading of the order of the appropriate authority and the show-cause notice, we are clear that in assessing the fair market value of the property, well established principles had been ignored. Therefore, there was absolutely no basis in law for the appropriate authority to issue the show-cause notice and the order of compulsory purchase. Learned senior counsel, Mr. Madan Bhatia, besides challenging the order on the merits after a very great research and industry and on well thought out lines of reasoning formulated points which were very instructive, apart from being very interesting and learned. He submitted the right to acquire property is part of personal liberty under the Constitution and that cannot be taken away by resorting to Chapter XX-C, Income-tax Act, 1961. He relied on the following authorities : 1. State of West Bengal v. Subodh Gopal Bose . 2. Kharak Singh v. State of U.P. . 3. Rustom Cavasjee Cooper v. Union of India . 4. Maneka Gandhi (Smt.) v. Union of India . 5. State of Himachal Pradesh v. Umed Ram Sharma . 6. Supreme Court Legal Aid Committee representing Undertrial Prisoners v. Union of India [1994] 6 JT 544 (SC). 7. Shantistar Builders v. Narayan Khimalal Totame . 8. Prabhakaran Nair v. State of Tamil Nadu . 9. Mohini Jain (Miss) v. State of Karnataka . 10. Vincent Panikurlangara v. Union of India . 11. Ramsharan Autyanuprasi v. Union of India . 12. All India Imam Organization v. Union of India . 13. Rajagopal (R.) v. State of Tamil Nadu . Learned senior counsel submitted that unguided power, whoever is the authority to exercise it, is arbitrary and is violative of article 14 of the Constitution of India and in this case it would constitute excessive delegation of legislative power. He relied upon the following decisions of the Supreme Court : 1. Dwaraka Prasad Laxmi Narain v. State of Uttar Pradesh . 2. B. B. Rajwanshi v. State of U.P. . 3. Thakur Raghubir Singh v. Court of Wards . 4. A. N. Parasuraman v. State of Tamil Nadu . 5. S. G. Jaisinghani v. Union of India . 6. State of Punjab v. Ramchander Jagdish Chander Chand . 7. Air India v. Nergesh Meerza . 8. Hari Chand Sarda v. Mizo District Council . 9. Hari Krishna Bhargav v. Union of India . He also submitted that arbitrariness in State action is violative of article 14 of the Constitution of India, when we are governed by rule of law, which should be in accordance with the constitutional parameters. He relied upon the following decisions of the Supreme Court : 1. E. P. Royappa v. State of Tamil Nadu . 2. Dr. Amarjit Singh Ahluwalia v. State of Punjab . 3. Ramana Dayaram Shetty v. International Airport Authority of India . 4. Union of India v. Tulsiram Patel . 5. Olga Tellis v. Bombay Municipal Corporation . 6. Paradise Printers v. Union Territory of Chandigarh . 7. Mahesh Chandra v. Regional Manager,

U.P. Financial Corporation . 8. State of Bihar v. K. K. Misra . Learned senior counsel submitted that the citizen whosoever is aggrieved can challenge not only on the ground that the law should be reasonable but also the order passed on the basis of that law. He relied upon the decision of the Supreme Court in Oudh Sugar Mills Ltd. v. Union of India . He next submitted that the mode of determination of market value is part of procedure which should be in accordance with law and he referred to sections 277 and 295 of the Income-tax Act, 1961, and the Income-tax (Seventh Amendment) Rules, 1986, and submitted that if the procedure is not in accordance with law, the ultimate order is vitiated and it is null and void. He relied upon the following authorities apart from relying upon Blacks Law Dictionary : 1. A. K. Gopalan v. State of Madras . 2. P. Vajravelu Mudaliar v. Special Deputy Collector for Land Acquisition . 3. CWT v. Laxmipat Singhania . 4. CWT v. Smt. Taraben R. Patel . 5. Jaswant Rai v. CWT . 6. CIT v. Smt. Vimlaben Bhagwandas Patel . He further submitted that determination of fair market value in law cannot depend on speculative, subjective and fanciful adjustments and that too without any support of law on the point. He relied upon the following authorities : 1. CIT v. Arun Mehra . 2. CIT v. New India Construction Co. . 3. A. Periakaruppan Chettiar (Minor) v. State of Tamil Nadu . 4. Periyar and Pareekanni Rubbers Ltd. v. State of Kerala . He submitted that no authority much less a quasi-judicial authority can confer jurisdiction on itself by deciding a jurisdictional fact without any basis and the orders of the quasi-judicial authorities are subject to judicial review. He placed reliance upon the following judgments of the Supreme Court : 1. Raza Textiles Ltd. v. ITO . 2. Anisminic Ltd. v. Foreign Compensation Commission [1969] 1 All ER 208 (HL). 3. Union of India v. Tarachand Gupta and Bros . 4. State of West Bengal v. Mrs. Bella Banerjee . 5. Mrs. Sarojini Ramaswami v. Union of India . 6. Union of India v. Raghubir Singh . 7. Rukmanand Bairoliya v. State of Bihar . 8. Bhagwathula Samanna v. Special Tahsildar and Land Acquisition Officer . We have no doubt that the orders of the appropriate authority are subject to the judicial review and as a matter of fact learned counsel, Mr. Rajendra and Midha, appearing for the Revenue, did not contest that proposition. Learned senior counsel, Mr. Madan Bhatia, almost went to the extent of challenging Chapter XX-C before us. The argument no doubt is attractive and absorbing considering it in the context of the categorical pronouncements by their Lordships of the Supreme Court of India. Even so, when the Supreme Court in C. B. Gautams case [1993] 199 ITR 530, had upheld the constitutional validity of Chapter XX-C, we refrain from entering that arena. We are of the view that the order of the appropriate authority cannot be sustained in law. C.W. No. 3594 of 1990 : In this writ petition, on November 27, 1989, the order for compulsory purchase was made. Respondents Nos. 4 and 5 filed C.W. No. 3459 of 1989. On May 10, 1990, this court passed the following order when they wanted to withdraw : “For reasons stated in the application the same is allowed, the writ petition is dismissed as withdrawn. The interim orders are vacated as of today; the effect of this would be that as if order under section 269UD(1) is deemed to have been passed today for the purpose of limitation and other consequences. Later on, the petitioner had filed

the present writ petition. The third respondent-appropriate authority had filed an application CM No. 6632 of 1993 stating in paragraph 7 :"It is submitted that after the decision of the Supreme Court in C. B. Gautams case [1993] 199 ITR 530, the issue is only of academic interest because the order passed in this case under section 269UD will have to be set aside for passing fresh order after giving proper hearing and communication of a reasoned order." In the show-cause notice the appropriate authority in arriving at the fair market value had not followed the well settled principles. Following the reasoning given by the Gujarat High Court in Krishna Kumar Agarwal v. Appropriate Authority Hindumal Balmukund Investment Co. Pvt. Ltd. v. Appropriate Authority , we don't think it fit to remit the matter back to the appropriate authority. The order is set aside and this writ petition is also allowed. We could look into the decisions rendered by the judges of other High Courts in 1995, 1996 and 1997. We derived benefit from their rich experience and learning and we could see very incisive analysis of law and facts by the learned judges and we are really inspired by the exposition of law by the learned judges. The central theme that runs in all the decisions is the supremacy of the rule of law, the justiciability of the orders of the appropriate authorities and the reasonableness of approach of the appropriate authorities in fixing the fair market value in accordance with the known principles in the field. The message we get from the learned judges, which is clear and pronounced is, that it might have been once upon a time, Rex was Lex but now we are firmly rooted in the dictum that, Lex is Rex. Anagram Finance Ltd. v. Appropriate Authority is a judgment rendered on March 30, 1995, by the Division Bench of Gujarat High Court consisting of C. K. Thakker and Rajesh Balia JJ. In the writ petition, the order dated January 31, 1995, passed by the appropriate authority was challenged in and by which compulsory purchase was made. The Bench noted the contentions on behalf of the petitioner in the following terms (page 24) : "Three-fold contentions have been raised before us by the petitioner. Firstly, it is contended that the petitioner was not afforded adequate opportunity of hearing by not taking proceedings promptly within the time-frame prescribed under the Act and, therefore, the order is vitiated having been made in breach of the principles of natural justice in hot haste at the close of the time barrier. Secondly, it has been contended that the appropriate authority was under obligation to determine the fair market value of the property in question before it could order pre-emptive purchase. Determination of the fair market value of the property sought to be dealt with under Chapter XX-C is a condition precedent before the property can be so purchased and for arriving at a satisfaction as to under statement of apparent consideration. For this purpose, reliance has been placed on the recent decision in the case of Sarwarben Temas Khambata v. Appropriate Authority , being Special Civil Application No. 11697 of 1994 decided on March 8/9, 1995. It was lastly contended that the bare reading of the order precluded the satisfaction that the apparent consideration of the property in question appears to be understated by more than 15 per cent. and is, therefore, a fit case for making pre-emptive purchase under the provisions of Chapter XX-C of the Act and has been arrived at without application of mind inasmuch as, from the order, it

is apparent that the facts which are necessary for arriving at such satisfaction are non-existent." The learned judges observed (page 26) : "We have given our anxious consideration to the contentions raised before us and perused the material placed before us. As will be discussed presently, in our opinion, the last contention of learned counsel for the petitioner is well-founded and the petition should succeed on that count alone. Hence, we do not propose to go into other contentions." The learned judges observed (page 27) : "It is further to be noticed that even where the taking of action depends upon the subjective satisfaction of the authority, the basic requirement is that such subjective satisfaction must be founded on existing material and when a challenge to such subjective satisfaction is raised, the existence of material, which has resulted in such subjective satisfaction is to be shown. A reference in this connection may be made to the decision of the apex court in the case of Barium Chemicals Ltd. v. Company Law Board . Here, it is not a case of subjective satisfaction. Section 269UD(1A) and (1B) of the Income-tax Act, 1961, reads as under : (1A) Before making an order under sub-section (1), the appropriate authority, shall give a reasonable opportunity of being heard to the transferor, the person in occupation of the immovable property if the transferor is not in occupation of the property, the transferee and to every other person whom the appropriate authority knows to be interested in the property. (1B) Every order made by the appropriate authority under sub-section (1) shall specify the grounds on which it is made. It is the requirement of the statute that before making any order for pre-emptive purchase, the appropriate authority has to give reasonable opportunity of being heard to the transferor, the person who is in occupation of the property and the transferee and also to every person whom the appropriate authority knows to be interested in the property and thereafter he has not only to reach his satisfaction but record specific grounds for taking action under that provision. A combined reading of section 269UD(1A) and (1B) of the Act leaves no room for doubt that it is a question of objective decision making process by taking into consideration all the relevant materials which have come before the hearing authority and considering the rival aspects of the matter. Moreover, the requirement of law is to specify the grounds on which the order of the pre-emptive purchase is made. The obligation does not stop by merely rejecting the submissions made before it. The rejection of submissions made by the vendors or the transferee or the persons interested in the property, does not lead to a consequence that grounds for making pre-emptive purchase exist. The sine qua non is that reasons must exist, on the material placed before it, for supporting the action taken for pre-emptive purchase under section 269UD of the Act. The order clearly falls short of this requirement. The order nowhere specifies the grounds on which the appropriate authority has decided to take action under Chapter XX-C while the appropriate authority rejects the submissions made by the objectors against the proposed action, as discussed earlier, the action is not supported by any material on which it can be said that the appropriate authority could reach a conclusion that the estimated market rate or the real consideration of the first floor of a commercial building, similarly situated as the property in question, is more than the apparent consideration disclosed in

the agreement in question by 15 per cent. Therefore, the order must fail on its own reading." Forbes Forbes Campbell and Co. Ltd. v. Nishar Ahmed, IAC by the Division Bench of the Bombay High Court (M. L. Pendse and S. M. Jhunjhunuwala JJ.) and the judgment was delivered on October 12, 1994. In this case before the Bombay High Court the notice issued by the appropriate authority was challenged and the learned judges quashed the notice on the same process of reasoning as adopted by the Gujarat High Court. In all the cases before us in the batch there was no difference in the consideration of the materials by the appropriate authority at the time of the issue of notice and passing final orders. As noticed by the other High Courts, the appropriate authority in these cases had only restated the reasons given in the notice in the purchase order and confirmed it as stated in the notice rejecting the contentions of the petitioners and adopting a reasoning which cannot at all be sustained in law. The appropriate authority, as pointed out by the other High Courts, had stuck to its stand without taking into account the well-settled principles in fixing the fair market value. In Krishnakumar Agarwal v. Appropriate Authority [1966] 217 ITR 274 the Division Bench of the Gujarat High Court consisting of Rajesh Balia and M. B. Shah JJ. rendered the judgment on September 19, 1995. The Bench had followed the judgment of the Division Bench delivered on March 30, 1995 (Anagram Finance Ltd. v. Appropriate Authority . The appropriate authority passed the order of compulsory purchase on April 28, 1995, and that was challenged before the Bench. The order was passed without affording any opportunity to the petitioner against the proposed action of purchasing the property. The court observed (page 279) : "Section 269UD(1B) enjoins a duty on the appropriate authority to specify the grounds on which it decides to pass an order under section 269UD(1). That includes within it an obligation to consider all the relevant materials which are before the appropriate authority in deciding two cardinal premises before it can decide to purchase the property. The foundational facts on which the appropriate authority must be satisfied had been succinctly stated by their Lordships of the Supreme Court in C. B. Gautam v. Union of India . It was said that the provisions of Chapter XX-C can be resorted to only where there is a significant under valuation of the property. Undervaluation to the extent of 15 per cent. or more in the agreement of sale, as evidenced by the apparent consideration being lower than the fair market value by 15 per cent. or more, as spelt out in the Boards circular has been considered to be fair. Secondly, it was held that the very historical setting in which the provisions of this Chapter were enacted indicates that it was intended to be resorted to only in cases where there is an attempt at tax evasion by significant under valuation of immovable property agreed to be sold." The court further observed (page 280) : "The impugned order, in our opinion, does not even whisper about the satisfaction of the appropriate authority about the under valuation being with an intention to evade tax. It must be noticed that the presumption is a rebuttable one and what evidence is required to rebut it depends upon the facts and circumstances of each case. The presumption may even be rebutted, without leading evidence, on the basis of material already available on record. The position regarding discharging the burden to displace the rebuttable presump-

tion has been succinctly explained in CIT v. Vinaychand Harilal . That was a case where there was a statutory provision for raising a presumption against the assessee under the Explanation to section 271(1)(c) about concealment of particulars of income by the assessee, The court said (page 758) : In order to rebut the presumption raised by the Explanation to section 271(1)(c), it is open to the assessee to point to the record of the case and point to materials on the record which would enable him to show that he had not concealed the particulars of his income or furnished inaccurate particulars of his income. The court further observed (at page 762) : It is also not necessary that any positive material should be produced by the assessee in order to discharge this burden which rests upon him. The assessee may claim to have discharged the burden by relying on the material which is on record in the penalty proceedings. A somewhat similar view was expressed by the Rajasthan High Court in Addl. CIT v. Noor Mohd. and Co. : What quantum of evidence would rebut a legal presumption in a given set of facts does not admit of any rigid rule. In the present case, on undisputed facts we find that in order to arrive at the finding of the fair market price of the property in question, the matter was referred by the appropriate authority to the Departments own valuer and according to the valuers report, the very premise of raising a presumption of evasion was not there inasmuch as according to undisputed pleadings, the apparent consideration disclosed in the agreement was equal to the fair market value of the property determined by the official valuer. In the face of a fair market value of the property under consideration itself having been determined, what weighed with the appropriate authority to discard the fair market value of the property under consideration and to fall back on the consideration of SIP and to substitute the consideration of SIP ipso facto without noticing all other material facts as to the fair market value of PUC is not discernible. Thus, it is not only a case of not merely not giving an opportunity of hearing to the affected parties, but it is also a case of non-application of mind on existing material before the appropriate authority within the time frame-work permitted under law, which by itself is sufficient to vitiate the order on the merits. The order also does not conform to the norms required of an order under section 269UD(1) as per the decision of this court in Anagram Finance Ltd. v. Appropriate Authority (Special Civil Application No. 869 of 1995, decided on March 30, 1995) which said (page 28) : A combined reading of section 269UD(1A) and (1B) of the Act leaves no room for doubt that it is a question of objective decision-making process by taking into consideration all the relevant materials which have come before the hearing authority and considering the rival aspects of the matter. Moreover, the requirement of law is to specify the grounds on which the order of pre-emptive purchase is made. That obligation does not stop by merely rejecting the submissions made before it. The rejection of submissions made by the vendors or the transferee or the persons interested in the property, does not lead to consequence that grounds for making pre-emptive purchase exist. The sine qua non is that the reasons must exist on the material placed before it, for supporting the action taken for pre-emptive purchase under section 269UD of the Act. The order clearly falls short of this requirement. In the above facts and circumstances of the present

case, we are not inclined to refer the matter back to the appropriate authority. The petition accordingly succeeds. The impugned order dated April 20, 1995 (annexure"M"), is quashed. Respondent No. 1 will issue the necessary certificates including the no objection certificate within six weeks, from the date of furnishing the certified copy of the order or writ reaching the appropriate authority, whichever is earlier. Rule made absolute with no order as to costs." In Surya Kiran Association v. Appropriate Authority , the Division Bench of the Gujarat High Court (C. K. Thakker and Rajesh Balia JJ.) dealt with the matter and the judgment was rendered on June 26, 1995. In this case the order of the appropriate authority dated April 28, 1995, was challenged. Dealing with the challenge, the court observed (page 34) : "Various contentions were raised by Mr. J. P. Shah, learned counsel for the petitioner. It was submitted that the exercise of the power was beyond jurisdiction as there was no allegation of avoidance and evasion of tax by the parties. In the absence of such allegation, exercise of the power was bad in law. Mr. Shah also submitted that no positive finding has been recorded by the appropriate authority as to how it came to a definite conclusion that the apparent and discounted consideration of the property under consideration was understated by more than 15 per cent. This is a sine qua non or condition precedent for exercise of the power under Chapter XX-C and as the said condition is not fulfillled, the order requires to be quashed. Mr. Shah vehemently contended that the appropriate authority has committed serious error in placing reliance on sale instance property. Considering the location, shape, area, frontage and commercial development of the sale instance property and the property under consideration, no reasonable and prudent man would compare property under consideration with the sale instance property. On all aspects which can be said to be relevant and germane for fixing the market price, the sale instance property was better situated and price of the property under consideration could not have been fixed on that basis. The impugned order, therefore, also requires to be interfered with. Mr. Shah submitted that reliance placed by the transferee on two sale instances were relevant and considering those two sale instances, the authority ought to have held that the apparent as well as discounted consideration of the property under consideration could not be said to be understated by more than 15 per cent." The court further observed (page 35) : "On the facts and in the circumstances of the case, the petition requires to be allowed. Apart from any other reason, in our opinion, the appropriate authority has committed a grave error of law apparent on the face of the record in placing reliance on the sale instance property and in passing the impugned order on that basis. As is clear, while passing the impugned order, the appropriate authority has referred to and relied upon consideration and market price of the sale instance property. However, it is the case of the petitioner that the sale instance property could not be said to be a comparable sale instance. Regarding the situation of the sale instance property and the property under consideration, the appropriate authority observed that both the sale instance property and the property under consideration were situated in a commercial zone. The property under consideration was situated behind Mount Carmel High School in a commercial zone. It was not accepted that there

was no commercial development around property under consideration. In our view, Mr. Shah is right in contending that even if property under consideration is situated in commercial zone, it is indeed a relevant factor whether there is commercial development around property under consideration. Likewise, it is also important to bear in mind whether the frontage available to sale instance property was much more than the one available to the property under consideration. The appropriate authority observed : Though the frontage is narrow, it does not affect the value of the property under consideration substantially compared to the sale instance property ... Mr. Shah rightly contended that it cannot be said that the narrow frontage does not affect value of the property. Regarding shape also, the appropriate authority was not right in not allowing deduction particularly when it did not dispute the submission of the petitioner that the property under consideration was having an odd shape. Again, the appropriate authority has committed an error of law on the face of the record in observing that though the frontage of the property under consideration was narrow on the 30' wide T. P. Road, whereas the sale instance property was having a wide road. It would not affect the value of the property under consideration substantially compared to the sale instance property inasmuch as the sale instance property, due to its proximity to the High Court, suffered from the problem of traffic and vehicular pollution. Ordinarily, wide frontage should be considered as beneficial to the property than narrow frontage. It is true that heavy traffic or vehicular pollution may adversely affect the property but then there must be some material or evidence on record on the basis of which, the appropriate authority may form an opinion by recording a definite finding to that effect. In the absence of such finding or material on record, no inference can be drawn nor conclusion can be arrived at that because of proximity to a particular place, there would be a problem of traffic and vehicular pollution. Despite these facts, the appropriate authority in sub-para (4) of para 5 compared the property under consideration with the sale instance property and no deduction from the rate of the sale instance property was allowed to the property under consideration. The above approach of the appropriate authority cannot be said to be legal and in accordance with law. The appropriate authority has also erred in not relying upon sale instances of sale instance property-1 and sale instance property-2 on which reliance was placed by the petitioner. Sale instance property-1 is situated at the end of C. G. Road which, according to the petitioner is a commercially developed area. The property under consideration is situated on Ashram Road but on to wide T. P. Road taking off from Ashram Road. Similarly, sale instance property-2 is situated on 40' T. P. Road taking off from C. G. Road which is also occupied by the two tenants and it ought to have been considered in its proper perspective. Mr. Shah is right in submitting that the fact that the transfer expenses were to be borne by the purchaser is a relevant fact and it ought to have been given due importance. The authority was not right in observing that it would not affect the value of the property. Apart from the above grounds, in our opinion, Mr. Shah is right in submitting that the satisfaction as contemplated by section 269UD(1) must be based on objective facts. There must be evidence and material to arrive

at the conclusion and satisfaction. Rejection of sale instances and/or grounds and/or reasons put forth by the party is one thing. At the most, it can be said to be a negative finding for not accepting the case of the transferor/transferee. But, the law requires something more. In our opinion, it is incumbent upon the appropriate authority to come to a positive finding and definite conclusion that the property was undervalued. In the absence of such a finding or conclusion, no order under section 269UD(1) can be made. A similar question arose before us in Special Civil Application No. 869 of 1995 -Anagram Finance Ltd. v. Appropriate Authority decided by us on March 30, 1995. Considering the relevant provisions of the Act as also the decision of the Honble Supreme Court in Barium Chemicals Ltd. v. Company Law Board , we observed (at page 28) : The combined reading of section 209UD(1A) and (1B) of the Act leaves no room for doubt that it is a question of objective decisionmaking process by taking into consideration all relevant materials which have come before the hearing authority and considering the rival aspects of the matter. Moreover, the requirement of law is to specify the grounds on which the order of pre-emptive purchase is made. That obligation does not stop by merely rejecting the submissions made before it. The rejection of submissions made by the vendors or the transferee or the person interested in the property, does not lead to a consequence that grounds for making pre-emptive purchase exist. The sine qua non is that the reasons must exist on the material placed before it, for supporting the action taken for pre-emptive purchase under section 269UD of the Act. The order clearly falls short of this requirement. In our opinion, the point is concluded by the above decision also. Since no satisfaction has been arrived at by the respondent on the basis of objective facts and no reasons have been recorded for coming to a positive conclusion as to why there was difference of more than 15 per cent., the order cannot be said to be in accordance with law and must be quashed and set aside." In Natvarlal Dayarjibhai Patel v. Union of India , the same Bench of the Gujarat High Court delivered judgment in a similar matter on July 25, 1995. Here the order of the appropriate authority dated October 27, 1994, was challenged. Dealing with the challenge the court observed (page 231) : "Apart from the above grounds, in our opinion, Mr. Soparkar is right in submitting that the satisfaction as contemplated by section 2F9UD(1) must be based on objective facts. There must be evidence and material to arrive at the conclusion and satisfaction. Rejection of sale instances and/or grounds and/or reasons put forward by the party is one thing. At the most, it can be said to be a negative finding for not accepting the case of the transferor/transferee. The law, however, requires something more. In our opinion, it is incumbent upon the appropriate authority to come to a positive and definite conclusion that the property was undervalued. A similar question arose before us in Special Civil Application No. 869 of 1995, (Anagram Finance Ltd. v. Appropriate Authority decided by us on March 30, 1995. Considering the relevant provisions of the Act as also the decision of the Supreme Court in Barium Chemicals Ltd. v. Company Law Board , we observed as under (page 28 of 217 ITR) : A combined reading of section 269UD(1A) and (1B) of the Act leaves no room for doubt that it is a question of objective decision-making process by taking into consid-

eration all the relevant materials which have come before the hearing authority and considering the rival aspects of the matter. Moreover, the requirement of law is to specify the grounds on which the order of pre-emptive purchase is made. That obligation does not stop by merely rejecting the submissions made before it. The rejection of submissions made by the vendors or the transferee or the persons interested in the property, does not lead to a consequence that grounds for making pre-emptive purchase exist. The sine qua non is that the reasons must exist on the material placed before it, for supporting the action taken for pre-emptive purchase under section 269UD of the Act. The order clearly falls short of this requirement. In our opinion, the point is concluded by the above decision also. Since no satisfaction has been arrived at by the respondent authority on the basis of objective facts and no reasons have been recorded for coming to a positive conclusion as to why there was difference of more than 15 per cent., the order cannot be said to be in accordance with law and must be quashed and set aside." In Hindumal Balmukund Investment Co. Pvt. Ltd. v. Appropriate Authority [1996] 219 ITR 147, the Division Bench of the Gujarat High Court (Rajesh Balia and M. S. Shah JJ.) dealing with the challenge of the order passed by the appropriate authority delivered judgment on September 19, 1995 following their earlier view in the matter and allowing the writ petition quashing the order and directing the issue of no objection certificate. In Laboni Developers v. Appropriate Authority the same Division Bench rendered another judgment on October 19, 1995. The Bench observed (page 292) : "In our view, the appropriate authority has not given any positive finding to the effect that there was an attempt to evade tax or that the apparent consideration was lower than the real consideration. The authority could have raised a presumption about intention to evade tax in the show-cause notice. After hearing the parties, the authority could have held that the presumption was not rebutted and given the finding that the apparent consideration mentioned in the agreement was understated with a view to evade tax. However, since the mandatory requirement of giving such a positive finding is not complied with, in our opinion, the order deserves to be quashed and set aside." In Shriniketan Members Association and Anuj Members Association v. Appropriate Authority , the same Bench of the Gujarat High Court delivered judgment on October 20, 1995. The court followed the judgment in Hindumal Balmukund Investment Co. P. Ltd. v. Appropriate Authority emphasising the points stated earlier in the following terms (page 364) : "It may further be noticed that if in the estimate of the appropriate authority the apparent consideration of the property stated in the agreement to sell is less by 15 per cent. or more of its fair market value, the presumption of understatement having been made with the intention to evade the tax may be raised by it. However, such a presumption is not a statutory presumption which is mandatorily required to be drawn in all cases .... mere finding of understatement, without recording the conclusion of the appropriate authority himself, about a nexus between understatement of consideration and attempt to tax evasion, it is not permissible to raise presumption that the appropriate authority has also found that such understatement was an attempt to evade the tax when such an order is challenged before courts. It is also to

be seen that for element of a nexus being present with the understatement of consideration and attempt to evade tax, it is essential that the apparent consideration is not the real consideration. Therefore, merely on the finding that the apparent consideration is less than fair market value without there being any satisfaction that the apparent consideration is not the real consideration, the nexus cannot be established with an attempt to evade tax. Therefore, it is also necessary in the chain of decision-making not only to arrive at the conclusion of the differentiation between the fair market value and the apparent consideration but it is required that the fair market value of the property concerned is arrived at and a conclusion is reached that the apparent consideration is not the real consideration." After referring to the impugned order therein the Bench observed (page 365) : "There is not a whisper about the satisfaction of the authority as to whether the difference between the apparent consideration and the fair market value is on account of any attempt or intention to evade tax. The order, therefore, clearly falls short of the requirement that the power under section 269UD of the Act is to be exercised only in the case where the appropriate authority has arrived at the finding that the difference between the apparent consideration and the fair market value is with a view to evading tax. In view of the above discussion, the impugned orders dated July 31, 1995, at annexures"F" and "G" are quashed and set aside. Respondent No. 1 is directed to issue no objection certificate as contemplated under section 269UL of the Act within a period of six weeks from the date of furnishing of certified copy of this order or six weeks from the date of receipt of writ of this court, whichever is earlier." In Vijay Kumar Sharma v. Appropriate Authority the Division Bench of the Allahabad High Court dealt with the aspect and that judgment was delivered on September 20, 1994. The order of compulsory purchase was made on March 24, 1993, without affording opportunity to the parties. The court posed the question "we first deal with the question whether the petitioner has been given a reasonable opportunity of being heard before making the impugned order of compulsory purchase of the property in question." The Bench referred to the judgment of the Supreme Court in C. B. Gautams case . The learned judges rested their view on the observations of the Gujarat High Court in CIT v. Vimlaben Bhagwandas Patel (Smt.) , wherein it was observed (page 515) : "In the perspective of this settled legal position of law, we have to examine as to what would be the contents of the principles of natural justice in the inquiry before the competent authority. By and large, it can be said that in the enquiry under Chapter XX-A of the Income-tax Act, 1961, the transferor and/or transferee as well as the occupant and any other known interested person should be told the nature of allegations against him including the material collected so far by the competent authority, and be furnished copies of the statements recorded and those of the documents collected by the competent authority on which he intends to rely so as to give the person interested or affected an opportunity to state his case and to correct or controvert the material sought to be relied upon, and the competent authority should act in a just manner at all stages of such inquiry which would necessarily imply that the authority shall furnish any other additional material which it might have collected after the initiation of

the proceedings in the course of the inquiry to the person interested or affected by the proposed acquisition. . . .” And then the Bench observed that “we are in respectful agreement with the above observation.” The Allahabad High Court set aside the order and quashed the order on the ground that the two months period had expired and, therefore, it was not a fit case for remittal. In Gangadhar alias Tatya Shed Bhawanrao v. Appropriate Authority , the Gujarat High Court had again an occasion to deal with the point. The Bench consisted of B. C. Patel and R. M. Doshit JJ., and the judgment was rendered on March 29 and 30, 1996. The order of compulsory purchase was quashed holding (page 584) : “The sine qua non is that reasons must exist, on the material placed before it, for supporting the action taken for pre-emptive purchase under section 269UD of the Act. The order clearly falls short of this requirement”. In E. Vittal v. Appropriate Authority , a Division Bench of the Andhra Pradesh High Court consisting of Syed Shah Mohammed Quadri and B. Sudershan Reddy JJ. delivered the judgment on June 17, 1996. The order of compulsory purchase was passed on September 25, 1994. The court held (page 777) : “In our view, when the appropriate authority had relied upon the documents to record the finding of understatement of the sale consideration, in all fairness, the copies of the documents should have been furnished to the agreement holders particularly when they have brought to the notice of the authority that in spite of efforts they were not in a position to secure the same. We may observe here that where a statutory authority relies upon a document in a proceeding but denies a copy of the same to the affected party, he violates the principles of natural justice as the opportunity of being heard should be an effective opportunity but not an empty formality. Had copies of those documents been given to the petitioners, they would have been in a position to show that the consideration mentioned therein was overstated or would have brought on record circumstances under which a higher consideration was agreed upon between the parties, which did not represent fair market value. In the absence of the agreements relied upon by the appropriate authority, the agreement holders were handicapped to explain the same. It may be noticed that if the documents relied upon by the appropriate authority are excluded from discussion, there is no material to support the finding of understatement of consideration by more than 15 per cent. in the agreement in question, recorded by the appropriate authority. We, therefore, hold that not providing copies of the agreements which were relied upon by the appropriate authority to record an adverse finding against the agreement holders amounts to denial of opportunity of being heard resulting in violation of the principles of natural justice which would vitiate the proceedings.” In Smt. Varshaben Bharatbhai Shah v. Appropriate Authority , the Division Bench of the Gujarat High Court consisted of B. C. Patel and R. M. Doshit JJ. and the judgment was delivered on February 5 and 6, 1996. The court considered the question about non-observance of principles of natural justice. The court noted (page 830) “The appropriate authority took into consideration the material provided by the Valuation Officer in detail but the same is not supplied to the petitioner.” The court also noted (page 830) : “It is not disputed that the reports in detail are not supplied to the petitioner.” At page 831, the court

posed the question and answered it in the following terms : "Can it be said that sufficient opportunity is afforded even when parties are called upon to contradict the conclusion arrived at for valuation without providing the reports of the Valuation Officer consisting of details of the properties, with detailed measurements and the cost ? Is it sufficient to inform the conclusions based on the report ? As held by a catena of decisions that if the adjudicator is going to rely on any material evidence or document for basing his decision against the individual, then the same must be placed before him for comments and rebuttal. It is regarded as a fundamental principle of natural justice that no material should be relied on against a party without giving him an opportunity of explaining the same. The right to know the materials on which the authority is going to take a decision is a part of the right to defend oneself. Nan-disclosure of evidence to the affected party had been held to be fatal to the hearing proceedings." It is interesting to notice that the Bench had considered earlier cases of the Supreme Court and observed (page 832) : "The apex court in the case of Dhakeswari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775; AIR 1955 SC 65 considered the question amongst others, whether the Tribunal acted without jurisdiction in relying on the data supplied by the Income-tax Department behind the back of the appellant-company, and without giving it an opportunity to rebut or explain the same ? The court considered the case decided by the Full Bench of the Lahore High Court in the case of Seth Gurmukh Singh v. CIT [1994] 12 ITR 393; AIR 1944 Lah 353, wherein it is held that the Income-tax Officer though not bound to rely on evidence provided by the assessee as he considers to be false, yet, if he proposes to make an estimate in disregard of that evidence, he should in fairness disclose to the assessee the material on which he is going to found that estimate and that in case he proposes to use against the assessee the result of any private inquiries made by him, he must communicate to the assessee the substance of the information so proposed to be utilised to such an extent as to put the assessee in possession of the full particulars of the case he is expected to meet and that he should be further given ample opportunity to meet it. In the instant case, the appropriate authority did not disclose to the petitioner the valuation report submitted by its subordinate officer and in the absence of furnishing such a report, it cannot be said to be a real hearing or a fair hearing but can be said to be an empty formality." In Ashis Mukerji v. Union. of India , a Division Bench of the Patna High Court D. P. Wadhwa C.J. (as His Lordship then was) and S. J. Mukhopadhaya J. considered the validity of the order passed by the appropriate authority on July 11, 1996. The Division Bench besides quashing the order of the appropriate authority set aside the order of taking possession of the property and declared that the property shall revest in the writ petitioner. In Mrs. Nirmal Laxminarayan Grover v. Appropriate Authority (Income-tax Department) , the Division Bench of the Nagpur Bench of the Bombay High Court had an occasion to deal with the challenge on the order passed by the appropriate authority. The Division Bench came to the conclusion that in the absence of specific rules and guidelines the appropriate authorities would act only arbitrarily. The passage at page 586 brings home the point : "Moreover, there is no material to show that in a period of one year and

two months, the market value of the land in the Civil Lines area would appreciate and that too to the extent of 12 per cent. per annum. Even the appropriate authority has not followed uniformity in giving such appreciation in land rates in the Civil Lines area itself as in other cases in this group of writ petitions, i.e., Writ Petition No. 715 of 1993, Writ Petition No. 1260 of 1993 and 1264 of 1993 with 2088 of 1993; the appreciation given by it without there being any material on record is 10 per cent. per annum. In fact, in the order passed by the appropriate authority, which is the subject-matter of challenge in Writ Petition No. 1264 of 1993 and the connected Writ Petition No. 2088 of 1993 decided today, the same sale instance which is relied upon by it in the instant case is taken as a comparable sale instance for the suit land in the said case which is also situated in Civil Lines, Nagpur. The rate of appreciation, however, given to the same sale instance is at the rate of 10 per cent. per annum and not 12 per cent." After discussing the sale instance, the court observed (page 592) : "It is thus necessary to see that the Income-tax Department must make genuine efforts to find proper material or proper sale instances which are comparable time-wise and location-wise with the salt transaction of the property in question under the agreement of sale before proposing its pre-emptive purchase, so that the bona fide purchasers are not harassed and the bona fide transactions are not hampered as in the instant case where because of the reliance placed by the appropriate authority upon the sale instance which does not compare with the suit transaction, the parties to the transaction are required to suffer because of the delay in completion of that transaction caused by the court proceedings. The appropriate authority must keep in mind the instructions issued by the Central Board of Direct Taxes referred to above in which the object of compulsory purchase of the immovable properties, which is pointed out, is to prevent proliferation of black money in real estate transactions and evasion of taxes by gross under valuation of the immovable property in question. It is, therefore, necessary that recourse to compulsory purchase of the immovable property in question under Chapter XX-C of the Act should be taken only in clear cases of gross under valuation from which the inference must clearly flow that it is done for evasion of taxes. As regards the principles relating to the comparable sale instances, the said principles are well settled by the judgments of the Supreme Court regarding the determination of market value of the acquired land under the Land Acquisition Act which principles can usefully be resorted to in the determination of the question of gross under valuation of the market value of the property in question which are the subject-matter of compulsory purchase under Chapter XX-C of the Act. As pointed out hereinbefore, the sale instance relied upon by the appropriate authority cannot be said to be a comparable sale instance and, therefore, cannot furnish a good guide for determining the market value of the suit land." The court further observed (page 593) : "There is also force in the contention raised on behalf of the petitioner that in the absence of the particulars of the material or the reason(s) being disclosed in the show-cause notice for entertaining a tentative or a prima facie view that the value of the suit land is grossly understated in the agreement of sale between the parties, the transferor and the transferee have no real opportunity to meet the case of the

appropriate authority or the Income-tax Department concerned in that regard and hence there is non-compliance with the basic principles of natural justice. The show-cause notice issued by the Department for pre-emptive purchase by the Central Government under Chapter XX-C of the Act must disclose how the tentative or prima facie conclusion is arrived at by the appropriate authority that the property sought to be compulsorily purchased is significantly undervalued which means that if any particular sale instance(s) is/are relied upon to show how the property in question is significantly undervalued, it is necessary for the appropriate authority to refer to the said details in the show-cause notice so that the transferor and/or the transferee have real and proper opportunity to meet the case of the Department. It is necessary to see that issuing a show-cause notice is not merely an empty formality which is incorporated in section 269UD(1) of the Act to save it from its invalidity but the opportunity to show cause has to be real and substantial which means that the transferor and the transferee concerned must know as to why the appropriate authority is holding that their immovable property under the agreement of sale is significantly undervalued. When an obligation is cast upon an authority to give a notice to show cause before reaching any final conclusion against the person affected by its action, the purpose and the requirement of such a show-cause notice is twofold (i) the notice must get an opportunity to meet the case against him and (ii) he must have an opportunity to set forth his own case to show why an order adverse to him should not be passed. In this regard, de Smith in his Judicial Review of Administrative Action (Fourth Edition) has observed at page 196 as follows : Natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed, so that they may be in a position - (a) to make representations on their own behalf; or (b) to appear at a hearing or inquiry (if one is to be held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet. It must be then seen that the conclusions of the authority at the stage of giving a show-cause notice are always prima facie or tentative conclusions for, if it is not so, its ultimate order would suffer from its bias, i.e., its pre-determined mind. However, because its conclusions at the stage of show-cause notice are only prima facie or tentative conclusions, it would not mean that they are not required to be disclosed in the show-cause notice. The above stand taken by the respondents in their return is thus wholly misconceived and is untenable. In fact, it betrays the ignorance of the respondents about the basic tenets of the principles of natural justice which we have referred to above as requirements of a proper show-cause notice." Dealing with the contentions on behalf of the Revenue that the inquiry was summary in nature and, therefore, the appropriate authority was justified in adopting its own procedure and methods, the court observed (page 595) : "As regards the other reason given by the respondents for dispensing with the requirement of giving reason(s) or material in the show-cause notice on the basis of which a prima facie or tentative conclusion is reached by the appropriate authority that the property in question is grossly undervalued, viz., that the enquiry contemplated by the Supreme Court before taking action under section

269UD(1) of the Act is a summary or a limited enquiry, it may be seen that when the principles of natural justice are engrafted upon section 269UD(1) of the Act, its basic requirement, as hereinbefore referred to, is that the transferor and the transferee must have a fair and proper opportunity to meet the case of the Department about the under valuation of their property in question and to have also a fair and proper opportunity to put forth their case to show how the consideration agreed to between them represents the fair market value of the property in question or if not so, to put forth reasons therefor. The enquiry envisaged by section 269UD(1) of the Act is summary in nature in the sense that no elaborate procedure of enquiry, i.e., leading elaborate evidence, etc., is contemplated by it. However, surely it cannot mean that because the enquiry is summary in nature its very basic requirement, viz., the observance of the minimal principles of natural justice referred to above is dispensed with. Otherwise, such an enquiry would become an empty formality and would not be meaningful and effective." The court pointed out the duty enjoined on the appropriate authority in the following words (page 595) : "It may be seen that as pointed out hereinbefore in regard to the reasons of time restraint even in a summary or limited inquiry, the appropriate authority or the concerned Income-tax Department has to make and in fact makes an enquiry and collects material on the basis of which it comes to a tentative conclusion on the question whether the property in question is grossly undervalued or not. If such an enquiry is essential even in a summary or limited enquiry, there is no reason why the material collected through such an enquiry should not be disclosed to the transferor and the transferee before taking a final view in the matter. Since the material on the basis of which the appropriate authority holds the prima facie view that the property in question is grossly undervalued has to be thus in its possession before taking action under section 269UD(1) of the Act, the question of time-frame and summary nature of enquiry has no relevance to the question of incorporating in the show-cause notice the particulars of the material in the possession of the appropriate authority on the basis of which it entertains a view that the property in question is grossly undervalued. The petitioner is, therefore, clearly prejudiced in her defense since the relevant material upon which the prima facie view of the appropriate authority that the property in question is undervalued is based is not disclosed in the show-cause notice given to her. The impugned order of the appropriate authority passed pursuant to such a defective show-cause notice is thus illegal and is vitiated for not being in consonance with the basic principles of natural justice. In the light of the view taken by us above, it cannot be held that the appropriate authority has proved by clear and cogent material on record that the suit land is significantly undervalued, which is a criteria laid down by the Supreme Court for compulsory purchase of immovable property under section 269UD(1) of the Act in C. B. Gautams case . The impugned order of the appropriate authority cannot thus be sustained and is liable to be set aside." In Gurbux Gianchand Motwani v. S. C. Prasad , a Division Bench of the Bombay High Court set aside the order of compulsory purchase on the ground of non-application of mind. The Gujarat High Court in Ketki Land Holdings Pvt. Ltd. v. Appropriate Authority , and the Allahabad

High Court in Ajeet Singh v. Appropriate Authority Manik Chand Sethia v. Union of India have taken the same view. On a careful consideration of all the materials available and considering them in the light of the law laid down by the Supreme Court followed by all High Courts, we are of the view that the conclusion is irresistible that the appropriate authority had not at all discharged the initial burden of establishing in all cases that the apparent consideration in the agreement for sale is less than 15 per cent. of the fair market value and there has been an intention to evade tax. We have no hesitation in setting aside the orders passed by the appropriate authority in all the writ petitions and the appropriate authority shall issue no objection certificates to the parties in all the cases, as requested by them in the application in Form No. 37-1. There shall be no order as to costs. Y. K. SABHARWAL J. - The challenge in all these writ petitions is to the legality of orders of pre-emptive purchase made by the appropriate authority (hereinafter referred to as "the authority") in exercise of power under section 269UD(1) of the Income-tax Act, 1961 (for short "the Act"). The facts of each case, the historical background of enacting Chapter XX-C, the relevant statutory provisions, the contentions urged and judgments cited by learned counsel for the parties have been noticed in detail in the judgment of Brother Justice Ramamoorthy and, therefore, I do not consider it necessary to again notice the same in any detail. Thus I would only summarise my conclusions on some of the legal issues involved and briefly deal with the individual cases. First, on legal issues. (1) The condition precedent for passing an order under section 269UD(1) of the Act is under-statement of apparent consideration to the extent of at least 15 per cent. and with a view to evade tax or conceal income. (2) There is a rebuttable presumption of tax evasion where the fair market value of the subject property exceeds the apparent consideration by 15 per cent. (3) The passing of a pre-emptive purchase order under section 269UD(1) of the Act implies tax evasion and imputation of tax evasion adversely affects the reputation and image of the concerned parties and, therefore, the purchase order shall not be made lightly and in routine. (4) The burden lies on the authority to establish that the apparent consideration falls short of the market value by more than 15 per cent. and it never shifts; only the onus continues shifting from one to another. (5) The parties are entitled to be supplied entire material relied upon by the authority including the valuation reports on record. (6) The imputation of tax evasion or concealment of income cannot be mechanically or lightly made without due regard to the explanation of the affected parties and meticulous examination of instances of comparable properties cited by the affected parties and the peculiar circumstances resulting in the reduction of the value of the property. (7) It is impermissible to pass a pre-emptive purchase order where material is placed before the authority showing that there was no occasion for making under valuation of a property with a view to evade tax or conceal income. (8) Since no appeal has been provided for in the Act, the authority is required to be more cautious in its approach while passing a pre-emptive purchase order. (9) The discretion of passing a pre-emptive purchase order is to be exercised by the subjective satisfaction of objective facts. (10) Except in glaring and clear cases of gross under valuation

and large scale tax evasion, a purchase order under section 269UD(1) of the Act in respect of properties with bona fide tenancy of long standing cannot be made. (11) Where the explanation offered in response to a show-cause notice is plausible, the plea that there is no tax evasion deserves to be ordinarily accepted. (12) While exercising powers of judicial review under article 226 of the Constitution of India, though the case is not to be examined as an appellate court, but at the same time it has to be kept in view that a citizen has no alternative remedy. It is permissible to examine whether extraneous matters have been considered by the authority and relevant matters have not been taken into consideration. (13) The constitutional validity of Chapter XX-C of the Act cannot be questioned in view of the decision of the Supreme Court in C. B. Gautams case . (14) The court can also look into the files of the authority to satisfy as to whether the order is perverse or not. (15) Normally such cases where the pre-emptive purchase orders are passed in violation of the principles of natural justice may be remanded for fresh decision by the authority but in cases where reasons given by the authority in the order are found to be erroneous, ordinarily the question of remand would not arise and the said cases would be decided on the basis of the material on record. (16) The mode, manner and method of arriving at a valuation of a property is a part of procedure, which has to be fair, just and reasonable. (17) Ordinarily, for determining the fair market value of a tenanted property no comparison can be made with the sale instance of a vacant property. (18) The offer received in respect of subject property from a third party after the date of the agreement or at the auction of the same property later, cannot ordinarily be taken into consideration for determining its fair market value. (19) General guidelines and criteria to make adjustments on account of time, locations, size of plot, etc., for comparing values of different properties, to determine the fair market value of the subject property, shall be made known to the public and shall not be kept a guarded secret. (20) In determining the fair market value of a property, regard must be had to the field realities, such as long delays taking place in courts in getting possession from bona fide tenants in cases where tenants have protection of rent laws and also in cases where suits for possession are filed under the Transfer of Property Act. (21) The fair market value of a property cannot be determined by theoretical considerations in an abstract manner by applying multipliers and arbitrary adjustments since, as far as possible, the actual value of a property in the market is required to be determined for action under Chapter XX-C of the Act. (22) The element of guess work inherent in most cases involving determining of market value has not to be taken as a factor against the citizens. (23) For determining under valuation and tax evasion, events as on the date of the agreement of sale are to be taken into consideration. (24) Where the seller needs immediate money and agrees to sell his property at a value less than the market value, it would not be permissible to make an order of pre-emptive purchase. (25) The plea of distress sale and at the same time the plea that the property was agreed to be sold at the market value, are not mutually destructive and can be raised as alternate pleas. (26) The failure to tender or deposit the whole or any part of the amount of consideration in terms of section 269UG(1), attracts section 269UH resulting in

the abrogation of the purchase order and re-vesting of the property in the transferor with all consequential results, in accordance with law. Bearing in view the aforesaid principles now I will briefly deal with the individual cases : C.W. No. 5220 of 1993 : In this case property bearing No. G-4, Maharani Bagh, New Delhi, having ground and first floor on plot area of 800 sq. yards was agreed to be sold in terms of the agreement dated July 1, 1993, for the sale consideration of Rs. 74,99,390 inclusive of liability to pay unearned increase amounting to Rs. 34,99,390. The property is in the occupation of tenants. The agreement provides that physical possession of only roof over the first floor would be delivered to the purchaser and for the rest of the property, only constructive possession was agreed to be delivered. The authority has found the property in question to be grossly undervalued. It was not disputed that the tenancies were bona fide and of long standing. It is not a case of setting up of fake tenancies to undervalue the property. It is also not in dispute that in none of the three properties of which sale instances were taken into consideration, there were tenants. The possession of the said properties was with the sellers and it was to be delivered by the sellers to the purchasers. The authority after working out the fair market value of the sale instance properties has discounted the value of the property in question on account of tenancies. The discounted value has been worked out by applying deferment period of 5 to 6 years at the rate of 8 per cent. per annum. As a result of above formula, the value has been discounted by 32 to 37 per cent. and the market value has thus been worked out at 68/63 per cent. of the value of sale instance properties. The authority has also considered two offers made to it though it is claimed that the said offers were not made the basis of the purchase order but it only corroborated other evidence on record showing under-valuations. The agreement in respect of property G-18, Maharani Bagh, being one of the sale instance properties taken into consideration for determining the fair market value of the property, had been entered into on June 25, 1991. On account of the time gap of 24 months, the adjustment of plus 24 per cent. was made. In another sale instance property being G-8, Maharani Bagh, there was basement potential and, therefore, adjustment of minus 10 per cent. was made by the authority on that count. The impugned pre-emptive purchase order is utterly perverse. There is nothing on record to suggest as to what were the special reasons for making a purchase order in respect of almost wholly tenanted property. Assuming there was some justification for the authority to initiate proceedings for the pre-emptive purchase of the property under Chapter XX-C of the Act, the method of valuation of the fair market value had to be just and reasonable. The authority has compared the values of incomparable properties. While considering comparable instances, the instance of tenanted properties had to be taken into consideration and not vacant properties by discounting as was done by the authority for which, in the facts and circumstances of the case, we find no factual or legal sanction. Further, while considering the comparable instances proximity from the time angle has also to be seen. The agreement in respect of property G-8, Maharani Bagh, New Delhi, had been entered into in June, 1991, whereas the agreement for the property in question is dated July 1, 1993. We find no legal basis by adding 24 per cent. on the

hypothetical basis that there would be an increase of 1 per cent. every month. In respect of tenancy one of the pleas taken before us in the affidavit by the respondents is that the purchaser on mutual terms could get the property vacated from the tenant. We may note that the ground floor tenancy was from the year 1979 and the first floor tenancy was from the year 1967. We see no basis for presuming that the tenants would Vacate in 5/6 years. Further, on the facts of the case, neither the offer of the tenants could be taken into consideration for determining the fair market value of the property nor the tenant had any locus standi to urge before us that the pre-emptive purchase order deserves to be made or was rightly made. Further, if, during the pendency of proceedings in a court of law questioning the validity of a pre-emptive purchase order, the property is put to public auction by the Government, the bidders and/or the highest bidder in the auction do not get any vested right to oppose the writ petition. Further, the sale instance of property S-39-A, Panchsheel Park, New Delhi, which was substantially tenanted without any justification, was not taken into consideration, though rent capitalisation method was applied in the said case. No plausible reason has been given why in one case of tenanted property rent capitalisation method was applied to work out the lair market value and in the other case land and building method was applied. The impugned order deserves to be quashed. C.W. No. 4153 of 1993 : In the writ petition the property, in respect of which pre-emptive purchase order has been made, is 25, Friends Colony, New Delhi, with the plot area of 3593.32 sq. mtrs. including 830.95 sq. mtrs declared excess land under the Urban Land Ceiling Regulation Act. The net area of the plot under the property, therefore, 2762.32 is 2,364.37 sq. mtrs. The property was agreed to be sold for an apparent consideration of Rs. 1.75 crores under agreement dated February 1, 1991. The earlier order for pre-emptive purchase made in respect of this property on April 18, 1991, by the authority was set aside by this court on March 1, 1993, in view of the decision of the Supreme Court in C. B. Gautams case the matter remanded to the authority for fresh examination. Thereafter, the show-cause notice dated May 21, 1993, was issued by the authority and the impugned pre-emptive purchase order was made on May 28, 1993. This property is also tenanted. The facts noticed in the impugned order passed by the authority show that from January 1, 1974, the lessee of the property was Jain Shudh Vanaspati Ltd., at a monthly rent of Rs. 4,000 for the residence of Vinod Kumar Jain who had been in occupation of the said property as director of the lessee-company. In terms of a lease deed dated December 1, 1983, the entire property was leased to Vinod Kumar Jain for a period of 5 years at a monthly rental of Rs. 4,000 including Rs. 1,000 as rent for garages, servants/driver quarters excluding electricity and water charges. Various litigations were pending between lessor and lessee in respect of the property in question. The impugned order itself shows how strenuously the tenant was contesting the proceedings before the authority. The impugned order records the offer of Vinod Kumar Jain to buy the property at a price of Rs. 4.5 crores. The offer, however, seems to have been given in 1993 whereas the agreement in question is dated February 1, 1991. The sale instance of property No. 60, Friends Colony, New Delhi, was taken into consideration to arrive at the land

value and the value of the subject property at Rs. 4.564 crores. The property No. 60, Friends Colony, as per the impugned order, was agreed to be sold on December 5, 1990, for apparent consideration of Rs. 2.65 crores. The area of the said property was 1173.91 sq. mtrs. After deducting the depreciated value of the structure, the land rate of the sale instance property was worked out to Rs. 21,586 per sq. mtrs. and after some adjustment on account of time gap, basement potential and the location of the land, etc., the land rate of the property in question was worked out to Rs. 24,140 per sq. mtr. Again the sale instance property was not tenanted whereas the subject property was tenanted and, therefore, its value was deferred to 5 years at the rate of 8 per cent. interest and that is how the value of Rs. 4.55 crores was worked out and after deducting the salvage value of Rs. 1,64,000 of the structure the value of property was worked out to Rs. 4.65 crores. This case again demonstrates the wholly illegal, irrational and arbitrary approach adopted by the authority. Firstly, there is no special reason for making a pre-emptive purchase order in respect of a property which is wholly tenanted and is subject to various litigations. Curiously the authority deals with this aspect by stating that the transferee should have been happy to get out of a deal of a property which is encumbered by litigation. Be that as it may and assuming there was some justification for issuing show-cause notice to consider pre-emptive purchase order being made in respect of property in question, the method of valuation adopted by the authority is also wholly arbitrary and irrational. In respect of the subject property whereof there is so much of litigation, the authority labours under the belief that the period of lease agreement having already expired and the tenancy after the lease period being monthly, there could be no question of the tenant not being evicted. Under these circumstances 5 years deferment formula was applied for determining the market value and net rent capitalisation method. It has to be borne in mind that the monthly rent was only Rs. 4,000. It also deserves to be noticed that though the sale instance of property No. 60 was taken into consideration for determining the fair market value of the property in question but it has now come on record that in respect of property No. 60, Friends Colony, agreement dated December 5, 1990, for Rs. 2.65 crores did not materialise. The seller forfeited Rs. 25 lakhs and the said agreement was cancelled and under a subsequent agreement of September 1991, the property was sold at Rs. 2.40 crores. On that agreement "no objection certificate" was granted by the appropriate authority. According to the approach of the authority, if on account of nominal rent of Rs. 4,000 like the one in respect of property in question and on account of various litigations between tenant and the owner, the owner sells the property, then too it is not "pressing circumstance" for sale of the property. Moreover, the petitioner had given instances of at least 12 tenanted properties in respect of which the permission was granted and the same were valued as per the averments made by the petitioner applying the rent capitalisation method. There is nothing in the reply of the respondent to explain those cases. Further in CWP No. 5220 of 1993 referred to above, deferment period of 6 years was applied and in this case deferment period of 5 years was applied. What is the rationale, we do not know. These matters cannot be left to the undisclosed, unguided

and uncontrolled discretion of the authority. I am also unable to appreciate the contention that the valuation report/data prepared by the staff was not necessary to be supplied to the transferor and transferee even when asked for. There is also no justification to deny opportunity to the parties to file valuation reports on the ground that it is not required by the authority and, therefore, it is not necessary to allow the transferor and transferee to file such a report from a Government recognised valuer. Regarding the non-supply of the valuation report the approach of the authority is clear from its following observations : "it is alleged that the reasons recorded had not been supplied and copies of the valuation report have also not been supplied to the transferees. There is no need to allow inspection of the Government records unless some evidence is being used without confronting to the parties. In this case the show-cause notice clearly indicates the reasons as to why apparent consideration was considered low". The whole approach of the authority in the matter is clearly perverse and thus the impugned order deserves to be quashed. C.W. No. 4589 of 1994 : The property in question in this petition is A-6, Chirag Enclave, New Delhi, which was agreed to be sold for a sum of Rs. 2.70 crores besides unearned increase payable by the purchaser under the agreement dated April 18, 1994. The built up area of the property is 4300 sq. ft. By show-cause notice dated July 6, 1994, the transferor and the transferee were granted opportunity to show cause why pre-emptive purchase order under section 269UD(1) of the Act be not made. The impugned order of preemptive purchase was made by the authority on July 28, 1994. The sale instances given in the show-cause notice and confirmed under the impugned order for determining the fair market value of the property are : (1) 4, Palam Road, Vasant Vihar. (2) N-119, Panchsheel Park, New Delhi. (3) A-95, Neeti Bagh, New Delhi. In respect of the Vasant Vihar property the agreement to sell was dated August 20, 1993, in respect of the Panchsheel Park property the agreement was dated September 28, 1993, and in respect of the Neeti Bagh property the agreement was dated October 28, 1993. After plus and minus adjustments on account of time gap, locational difference of the colony and the plot, etc., the unit land rate per sq. mtr. was worked out to Rs. 33,440 by applying the sale instance of Vasant Vihar property, Rs. 41,460 on the basis of Panchsheel Park property and Rs. 34,172 per sq. metre on the basis of Neeti Bagh property. The sale instances given by the transferor and the transferee in respect of property B-13, Greater Kailash Enclave I, B-16, Panchsheel Park, and B-4, Greater Kailash Enclave I, where the agreements had been executed on January 17, 1994, May 27, 1993 and May 12, 1993 respectively were not accepted as according to the appropriate authority there was FAR difference as high as 39 per cent. in respect of the sale instances relied upon by the transferee and the transferor and also that the size of the plots of sale instances relied upon by the transferor/transferee was smaller. In respect of the said sale instances, the plotted area was about 418 metres in respect of two plots and 668 in respect of the third plot. It has to be borne in mind that while considering the sale instances there should be basic similarity of the two properties particularly in respect of the characteristic of the localities, i.e., colonies, location and proximity of time. The sale price of two totally dissimilar properties cannot be taken

into consideration and the value of the subject property arrived at by making adjustments. The adjustments cannot be made to remove the basic and fundamental differences. The value of a property cannot be stated in an abstract form. By adjustment for plus and minus factors two totally incomparable properties cannot be made equal and the price compared. A judicial notice can be taken of the fact of the basic difference between the colonies like Vasant Vihar and Panchsheel Enclave, on the one hand, and Chirag Enclave, on the other, the former being considered to be much better colonies. Further there were genuine disputes about the amount of unearned increase payable to the DDA. As per letter of the DDA dated September 5, 1994, the unearned increase payable was Rs. 95,81,149 whereas the unearned increase taken into consideration by the appropriate authority for arriving at the fair market value was Rs. 55,66,537. The sale instances of Greater Kailash I-Enclave properties were not accepted mainly for the reason that plots were smaller in size and there was 39 per cent. adjustment to be made in FAR in arriving at a fair market value. Both the grounds are ex facie erroneous. Ordinarily, smaller plots have more value than the bigger plots. Regarding the 39 per cent. FAR, in other cases particulars whereof have been placed on record by the petitioners, the authority itself had made adjustment of FAR to the extent of 40 per cent, Greater Kailash Enclave I is adjacent to the subject property and in any case better comparable than Vasant Vihar area. The authority has compared two incomparables. The impugned order thus cannot be sustained and deserves to be quashed. CW. No. 3139 of 1993 : The property in issue in this petition is Flat No. 2 on 4th Floor Neelgiri Apartments, 9, Barakhamba Road, New Delhi. The petitioners who are purchasers are husband and wife. They are doctors by profession. Under the agreement dated June 25, 1991, the flat in question was agreed to be sold to the petitioners for a sum of Rs. 29 lakhs plus 15 per cent, other charges. The pre-emptive purchase order made by the authority on August 23, 1991, was set aside by this court by judgment dated March 1, 1993, in view of the decision of the Supreme Court in C. B. Gautams case . Thereafter, show-cause notice dated May 10, 1993, was issued to the transferor and transferee relying upon the sale instance of Flat No. 4 on the third floor of the same building said to have been agreed to be sold far Rs. 38 lakhs, as per agreement dated May 30, 1991, and having the built up area of 1341 sq. ft. The built-up area of the flat in question is 1411 sq. ft. The unit rate of the sale instance flat was worked out at Rs. 2,834 per sq. ft. and on that basis value of the subject flat was worked out at Rs. 39.99 lakhs and the apparent consideration was said to be less by about 20 per cent. The apparent consideration of the subject flat was taken at Rs. 34,82,000 by adding to Rs. 29 lakhs, a sum of Rs. 4,35,000 representing 15 per cent. increase as per the agreement and Rs. 1,47,000 towards the interest on the amount paid by the petitioners to the seller earlier in respect of the agreement for purchase of another flat, which deal did not materialise. In this regard, it may be noticed that earlier by agreement dated March 7, 1989, the petitioners were to purchase from the same seller flat No. 7, on the 11th floor of Ferozeshah Road, plus a garage. However, the plans beyond 7th floor in respect of the said building, it is claimed, were not sanctioned. The vacant possession

of the flat under the agreement dated March 7, 1989, was to be delivered to the petitioners by March 6, 1992. Under that agreement, the petitioners had paid on April 11, 1989, a sum of Rs. 5,20,005 out of the total amount of Rs. 18 lakhs plus incidental charges, payable for the said flat. It is in respect of this payment of Rs. 5,20,000 that the petitioners were claiming interest at Rs. 2,65,000 at the rate of 18 per cent but it was allowed at 10 per cent. on the prevailing fixed bank rate to determine the value of the flat in question. Though in the show-cause notice the value of the sale instance flat was stated at Rs. 2,034 per sq. ft. and on that basis the value of the subject flat was worked out, but in the impugned order it was worked out at Rs. 3,000 per sq. ft. stating that subject property was located on the front block of the complex whereas the sale instance flat was located in the rear block of the complex. This addition was made without grant of any opportunity to the petitioners. Further, by reducing the value of the comparable flat No. 4 by Rs. 1 lakh on account of the value of the car parking space, the value of the comparable flat would work out at Rs. 37 lakhs. On these calculations assuming the addition of 5 per cent. on account of the flat in question being in the front complex can be legally made, the apparent consideration would still be within the permissible range df 15 per cent. In fact the apparent consideration paid by the authority for the flat in question was Rs. 38.34 lakhs. The per square foot rate thus would be Rs. 2,717 and, the difference, if compared with the rate of comparable flat at Rs. 2,898 would be 6.25 per cent. It may also be noted that the case of the petitioners before the authority was that Barakhamba Road being a very busy road, it is subject to heavy air and noise pollution and hence the flat of residential purpose in the front complex has disadvantage. The authority erroneously rejected the value of the flat on the first and third floor in respect of which permission has been granted on the ground that the said sales were much prior to the date of agreement. In other cases noticed hereinbefore the authority had by applying adjustment taken into consideration the instances of the sale effected about two years prior to the date of the agreement. Further, from the material placed on record, it appears, that Rs. 23,30,924 was tendered by the Central Government to the vendor on September 6, 1993, which was beyond the stipulated period under section 269UG(1), thereby attracting the rigours of section 269UH resulting in the abrogation of the purchase order. The purchase order deserves to be quashed. CWP No. 3726 of 1994 : Flat No. 84 in Greater Kailash Part I, New Delhi, on the first floor was agreed to be sold under the agreement dated April 23, 1994, for Rs. 24 lakhs. The transferors Mr. K. S. R. Chari and Mrs. Chari are permanent residents of Bangalore. The authority passed the impugned order on considering the sale instances of property Nos. S-237, Greater Kailash Part I and E-547 Greater Kailash Part-II. The property S-237 had built up area of 1200 sq. feet and was agreed to be sold for Rs. 24 lakhs under agreement dated November 26, 1993. The sale instance was taken into consideration by the authority and by making adjustment on account of time gap and location, etc., the fair market value of the property in question was worked out by the authority at about Rs. 35 lakhs. By comparing the value of the property with E-547, Greater Kailash Part-II, which was agreed to be sold for Rs. 65 lakhs as

per agreement to sell dated December 6, 1993, and by making adjustments on account of time gap, location, etc., the fair market value of the subject property was worked out by the authority at about Rs. 42 lakhs. The explanation given that the transferor was 75 years old who had retired as secretary from the Government of India and became a consultant with the World Bank, UN, after retirement in 1977; he wanted to settle down at Bangalore and was in need of money to make payment before March 31, 1994, for the flat he had agreed to purchase at Bangalore; the flat was sold to the immediate neighbour of the second floor and the parties also saved commission to the extent of 3 per cent., the nature of construction, etc., was much inferior as compared to the one in the sale instance properties and that unlike the sale instance properties there was no parking inside the subject building, even for a scooter/motor cycle; the actual area of the flat was 1,402 sq. feet and not 1532 sq feet; the bed rooms are of very small size; despite advertisement, offers were not coming; payments to the extent of about 70 per cent. were received by April 23, 1994, as advance from the transferee because of the need of the transferor, were all rejected by the authority. The approach of the authority, to say the least, is not in conformity with the object underlying Chapter XX-C of the Act. The sum and substance of view point of the authority is as to why Mr. & Mrs. Chari entered into a deal to purchase property at Bangalore when they did not have arrangements of money. The question, however, is not about the prudence of the transferors to sell the property to the transferee because the transferors wanted immediate payment but is whether there is any attempt to evade tax. The factor that the subject property was agreed to be sold to an immediate neighbour who also gave about 70 per cent. amount as advance, cannot be rejected only on the ground that only transactions between the relatives on account of natural love and affection can be considered for a value lesser than market value. The whole concept of distress sale, in so far as applicable to such matters, has been completely misunderstood by the authority. Further, the subject flat was constructed in the year 1986 and was compared by the authority with a flat constructed in the year 1993 alleged to have specification of a five star hotel by merely stating, without any material on record, that the difference of specification in construction was negligible. At the same time, the sale instance of flats at E-273, Greater Kailash in ground floor under agreement dated March 31, 1993 for Rs. 17,55,000 relied upon by the parties was ignored on the ground that the construction was old. The sale instance of property No. E-280, Greater Kailash Part-I, relied upon by the transferor and the transferee was ignored by the authority on the ground that sale instance of that property was more than one year old. In many other cases, as noticed hereinbefore, the authority had taken the ale instance of properties sold more than two years prior to the date of the agreement under consideration by the authority. It is not for the authority, as was contended before us, to judge whether the action of the transferors to purchase property at Bangalore without arrangements for funds was an immature and unwise act or not. It is an irrelevant consideration to state that allowing such a plea would open a floodgate for the purposes of purchase orders under Chapter XX-C. Such an approach of the authority cannot be sustained. The authority has primarily

to see whether there is tax evasion or attempt to conceal the income when there is understatement of value. Moreover, it was admitted that there was parking space and servant quarters facilities available in sale instance property at S-237, Greater Kailash Part I, but no adjustment was given on the ground that the parking space was open and that the servant quarters on the terrace was unauthorised. This approach again is erroneous since what has to be examined by the authority is whether the facilities in the sale instance property as contended by the parties were available or not and if so its effect on the fair market value of the subject property and not whether the parking space is in the open and whether the servant quarter on the terrace is authorised or unauthorised. The entire approach of the authority in these cases shows that somehow or the other, the order of pre-emptive purchase shall be made because the show-cause notice had been issued to the transferor/transferee. The impugned order deserves to be quashed. CWP No. 3884 of 1994 : A single storey property with plot area of about 325 sq. yds/275 sq. metres, No. C-590, Defense Colony, New Delhi, was agreed to be sold to the petitioners in terms of the agreement to sell dated May 6, 1994, for a sale consideration of Rs. 80 lakhs plus conversion charges of about Rs. 1,04,000. The sale instance of properties situate at C-77 and C-86, defense Colony, have been taken into consideration by the authority for coming to the conclusion that the apparent consideration disclosed is understated by more than 15 per cent. The land rate of the subject property has been worked out at Rs. 29,659 per sq. mtr. The land rate of C-77 agreed to be sold at Rs. 99 lakhs including conversion charges as per agreement dated December 22, 1993, has been worked out at Rs. 35,838 per sq. mtr. and it is concluded that the total value of the subject property is about 20 per cent. higher than the apparent consideration. It is stated to be lower by 43.6 per cent. when compared to the sale instance property C-86 agreed to be sold for Rs. 1.25 crores as per agreement dated July 19, 1994. It was strenuously contended before the authority by the petitioners that the sale instance properties were not comparable on account of various factors including the nature of construction and disadvantage of the location of the subject property, the same facing the servant quarters of E-Block and also that the subject property was under litigation and the proceedings were pending in a court of law. The authority ignored the pending litigation factor by, inter alia, stating that the order dated May 27, 1994, passed by the Additional District Judge restraining the sale, transfer or parting with possession of the property was only temporary injunction and that the pending litigation was not material. The reason for the pending litigation not being material as per the authority seems to be that under the terms of the agreement the transferor had undertaken to indemnify the transferee for any loss and damage on account of litigation. The step brothers of the transferor were challenging the title of the transferor and thereby his right to sell and transfer the subject property. They had also filed an application in these proceedings for being imp leaded as a party. I fail to understand how the factor of pending litigation could be ignored and brushed aside while determining the fair market value on the ground that the injunction was temporary or that the transferor had agreed to indemnify the transferee. No one would like

to purchase a property in respect of which there is a litigation or there can be genuine litigation, which may ultimately fail, unless the price is considerably reduced. It deserves to be noticed that it was nobodys case that the litigation was engineered to show that the value of the property was less. The case of engineered litigation with the object of circumventing the provisions of Chapter XX-C would, of course, be different. The pending or impending litigation in respect of property cannot be altogether ignored while determining the fair market value on the ground that the transferor had agreed to indemnify the transferee or that in the long run the litigation will fail. The agreement to sell had mentioned the apprehension of litigation and challenge to the title of seller by his relatives who, it seems, had knowledge that the seller wanted to sell the property. By notice published in newspaper dated May 22, 1994, by the sellers relatives, they had claimed the co-ownership in the property and on May 27, 1994, they had obtained ex parte order of injunction restraining the sale of property from the Additional District Judge. As already stated they had also moved an application for being imp leaded as a party though the said application was rejected by this court. In other cases, the authority has been discounting the fair market value of the property on account of litigation. The aforesaid ground on which such discounting has been declined in the present case, is wholly erroneous. If the value on account of litigation had been discounted by 10 per cent. as was done in other cases while considering the fair market value, the apparent consideration of the subject property would have been within permissible limits, when compared with the sale consideration of property No. C-77, defense Colony. Apart from the above, the authority without any just cause rejected the explanation pertaining to property at C-86 that it was a centrally air-conditioned property and thus not comparable by merely observing that the said fact only showed that the value of the property C-86 was slightly more. It failed to consider that the value of a centrally air-conditioned property could not have been taken into view to value the subject property. Looking from any angle, we find it difficult to sustain the impugned order of pre-emptive purchase and, therefore, the same is set aside. C.W.P. No. 5613 of 1993 : Under the agreement dated August 28, 1993, respondent No. 3 - Ved Prakash Marwaha, agreed to sell to the petitioner the property A-3, East of Kailash, measuring 300 sq. mtr. for Rs. 70 lakhs. The sale instance considered by the appropriate authority for coming to the conclusion that there is understatement of the value of the property is that of property No. E-326, East of Kailash, which is situate in a different block and has a smaller plot of 167 sq. mtrs. that was agreed to be sold for Rs. 51 lakhs under agreement dated May 23, 1993. In the show-cause notice the salvage value of the sale instance property was taken at about Rs. 55,000 and that of the subject property was taken at about Rs. 93,000. In reply to the show-cause notice filed before the authority it was, inter alia, stated by the transferor/transferee that the value of the building on property E-326 as on the date of the agreement, would be about Rs. 10 lakhs and that is to be taken into consideration while working the land value, and also that the subject property is surrounded by jhuggi jhompri as compared to property E-326 which faces Greater Kailash, on the one side, and Nehru Place, on the other, and that

the size of the plot of the subject property was bigger. It was also claimed before the authority that the value of the properties which are in C, D and E Block of East of Kailash is more as compared to the value of the property in Block A which plea was rejected by merely stating that it is difficult to accept such a submission. Though the salvage value of building of the subject property as given in the show-cause notice was Rs. 93,000 but in the impugned order it has been taken at about Rs. 9.92 lakhs, for coming to the conclusion that the fair market value was beyond the permissible 15 per cent. limit. Neither the fact nor the basis for concluding that the building value was Rs. 9.92 lakhs was disclosed to the parties. Thus the principles of natural justice were clearly violated. Besides this, it appears from the two valuation reports obtained before the issue of show-cause notice, that there was no under valuation and, therefore, we fail to appreciate as to on what basis the authority came to the prima facie view that there was understatement of the apparent consideration. Further, the instance of property No. A-32 relied on by parties was rejected for irrelevant reasons. A-32 was not only the property in the same block but its valuation was relied upon for determining the value of property E-326 and, therefore, it could not be ignored. The value of the subject property was worked out by not only violating the principles of natural justice but also by comparing incomparables and declining to compare the instance of comparable properties. In this view the impugned order of pre-emptive purchase deserves to be quashed. C.W.P. No. 4357 of 1993 : Under agreement dated May 21, 1987, property bearing No. B-7/118, Safdarjung Enclave Extension, having plotted area of 375 sq. mtr. was agreed to be sold for Rs. 23.50 lakhs. The order of pre-emptive purchase made on July 10, 1987, was set aside in C.W.P. No. 2275 of 1987 decided on March 1, 1993, in view of the Supreme Court decision in C. B. Gautams case . Thereafter, the authority issued show-cause notice dated May 11, 1993, wherein it was stated that prima facie apparent consideration of the subject property was low as compared to other sale transactions. Reference has been made by the authority in the show-cause notice to the land rate per sq. mtr. in respect of property No. B-1/16, Hauz Khas, New Delhi, which sale took place in February, 1987; sale instance of property No. J-10, Green Park, and yet another sale instance of B-2/2, Safdarjung Enclave, sold in February, 1987. The average of three sale instances was taken into account to work out the land rate of Rs. 7,850 per sq. mtr. and it was concluded that the fair market value of the subject property was in excess by 28.5 per cent. The transferor and the transferee in reply, inter alia, stated that Safdarjung Enclave Extension where the property was situate was neither developed by any Government agency or a private coloniser; it was part of the old village known as Arjun Nagar which grew in an unplanned manner with unauthorised constructions surrounded by all sorts of people - labourers and wage earners and, therefore, the plot areas varied from 36 sq. mtr. to 500 sq. mtr. with small approach roads surrounded by old Arjun Nagar Village and labourers jhuggies; the property was owned by Sardar Mohan Singh who due to adverse political atmosphere was anxious to dispose of the property and to leave the country to join his daughter abroad and, therefore, he was desperate to sell it. According to the transferor and the transferee, the property could

not be compared with the properties at Hauz Khas, Green Park or Safdarjung Enclave because of defective situation, small approach roads, sub-standard habitation, jhuggies and unhealthy surroundings of the subject property. The sale instances of properties sold in the same colony, i.e., Safdarjung Development Enclave, were also cited by the transferor/transferee to show as to what was the fair market value of the subject property. Most of the sale instances of the properties in the same colony were rejected by the authority on the ground that the same pertain to small plots whereas the plot area of the subject property was bigger. For more than one reason, we find it difficult to sustain the impugned order. Firstly, the authority has not considered at all the explanation that the owner was desperate to sell the property to go abroad to settle with his only daughter in America, Secondly, the sale instances of incomparable properties in different colonies were taken into consideration. The question in the same colony were rejected on account of irrelevant consideration, namely, smaller size of sale instance properties stating that the fair market value of bigger plot size properties is more than those on smaller size plots. In my view, one of the reasons for comparing incomparable sale instances has been absence of any guidelines, norms and standard to determine the fair market value of the properties. The mode and manner for determining the fair market value has to be fair, just and reasonable and not arbitrary. The authority has been applying different yardsticks in different cases. Though in determining the fair market value of a property, there has to be some element of guess work, that does not mean that the basic facts to be taken into consideration should differ from case to case and should depend upon as to who are the members of the authority. Such a course would be arbitrary and violative of article 14. There is reasonable likelihood of arbitrariness stepping in while determining the fair market value of properties in the absence of any norms and guidelines for addition and/or deduction. The impugned order deserves to be quashed. C.W.P. No. 3594 of 1990 : In this case the impugned pre-emptive purchase order dated November 27, 1989, has been made by the authority in respect of Property No. 756, Asian Games Village, which was agreed to be sold for Rs. 20 lakhs in terms of the agreement dated September 14, 1989. The respondents stated that they have no objection for setting aside of the impugned order and the matter being decided afresh by the authority after affording an opportunity to the parties in terms of the decision of the Supreme Court in C. B. Gautams case . The impugned order in this case was made prior to the Supreme Court decision in C. B. Gautams case . According to the petitioner, it is not necessary to remand the matter for fresh decision by the authority since the impugned order stands abrogated. It was strenuously contended for the petitioner that for want of deposit of the full amount of Rs. 20 lakhs by the due date, i.e., by June 30, 1990, the order of pre-emptive purchase stands abrogated under section 269UH of the Act. In case the plea of abrogation is accepted, it would not be necessary to examine whether the case deserves to be remanded for fresh decision by the authority. A writ petition (CWP No. 3459 of 1989) earlier filed challenging the order of pre-emptive purchase was dismissed as withdrawn on May 10, 1990. The court directed that interim orders granted in the said petition are vacated as on May 10, 1990, and

that the effect of it would be that the order under section 269UD(1) would be deemed to have been passed on May 10, 1990, for the purpose of limitation and other consequences. In this view, the amount of consideration under section 269UG admittedly was liable to be paid or deposited by June 30, 1990. A sum of Rs. 8.5 lakhs was given to respondents Nos. 4 and 5 on July 6, 1990, and Rs. 11.5 lakhs payable to the petitioner, according to the petitioner, was deposited with the authority after June 30, 1990. Assuming that the amount of apparent consideration was Rs. 20 lakhs and not more as contended by the petitioner, the question is whether it was paid or deposited by June 30, 1990 or not. In view of the fact that the letter of deposit in respect of Rs. 8.5 lakhs is dated June 29/July 2, 1990, it is difficult to accept the contention that the amount was tendered on June 29, 1990. Had it been so the date July 2, 1990, in the letter would have been meaningless. Further, the letter of authority of Mrs. Francis Mary Elizabeth Sinha authorising her husband to collect the cheque itself is dated July 6, 1990. Further, respondents Nos. 4 and 5 have stated in their counter-affidavit that they were never contacted by respondents Nos. 2 and 3 before June 30, 1990, and they had met the Deputy Commissioner of Income-tax in the office of respondent No. 2 on July 2, 1990, to find out about the refund of Rs. 8.5 lakhs and that the cheque of Rs. 8.5 lakhs was collected by them on July 6, 1990. Further, the affidavit of respondent No. 3 dated February 12, 1991, refers to only deposit of Rs. 11.5 lakhs on June 29, 1990, and not the deposit of Rs. 8.5 lakhs. There was no dispute about the payment of Rs. 8.5 lakhs. It was payable on or before June 30, 1990. In the face of these facts the plea that the sum of Rs. 8.5 lakhs was deposited in the names of respondents Nos. 4 and 5 with the authority on June 29, 1990, cannot be accepted. The point regarding the effect of non-payment within stipulated period is covered against the respondents by the decision of the Supreme Court dated February 17, 1995, in the case of Shri Chand V. Raheja v. Union of India, Civil Appeal arising out of SLP (C) Nos. 18415-16 of 1994. In this view, the order of pre-emptive purchase stands abrogated and, therefore, the writ petition deserves to be allowed. For the aforesaid reasons, I agree with the conclusions of brother Ramamoorthy J. that all the writ petitions deserve to be allowed leaving the parties to bear their own costs.