

The Appropriate Authority And Another vs Smt Sudha Patil And Another on 10 November, 1998

Equivalent citations: AIR 1999 SUPREME COURT 181, 1998 AIR SCW 3541, 1998 TAX. L. R. 1084, (1998) 101 TAXMAN 286, (1998) 7 JT 571 (SC), (1999) 1 APLJ 22, 1998 (8) ADSC 441, 1998 (6) SCALE 90, 1998 (8) SCC 237, 1998 ADSC 8 441, (1999) 235 ITR 118, (1998) 147 TAXATION 735, (1998) 8 SUPREME 366, (1998) 6 SCALE 90, (1998) 150 CURTAXREP 405

PETITIONER:
THE APPROPNATE AUTHORITY AND ANOTHER

Vs.

RESPONDENT:
SMT SUDHA PATIT AND ANOTHER

DATE OF JUDGMENT: 10/11/1998

BENCH:
SUJATA V., G.B. PATTANAIAK.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T PATTANAIAK, J.

This appeal is directed against the Judgment and order dated 6th March, 1907, passed by the Division Bench of Karnataka High Court in Writ Appeal No. 1233 of 1996. The said Writ Appeal arises out of a proceeding initiated under Chapter XX-C of the income Tax Act. The property in question is situated in Btock 5, Jayanagar, Bangatore-560 measuring 85 feet from east to west and 122 feet from north to south bearing no. 483/24. Respondent no. 2 Shri A.G. Krishna is the owner of the property. He entered into an agreement of sale with respondent no. 1 Smt. Sudha Patil for a consideration of 63,44,000 under agreement dated 25.9.1995. The Appropriate Authority under the Income Tax Act in exercise of its powers under Section 269-UD of the Act passed an order for purchase of the property by the Central Government on an amount equal to the amount of

consideration mentioned in the agreement to sale after due notice to the transferor of the property and after arriving at a conclusion that the property in question has been undervalued by a sum of Rs.200/- per square feet. The aforesaid order was passed by the Appropriate Authority on 28.2.1996. It may be stated that the Appropriate Authority took into consideration various sale instances relied on by the parties as well as the gradual trend in the enhancement of the value of the property. The said order of the Appropriate Authority was assailed by respondent no.1, the proposed transferee, by filing a Writ Petition which was registered as Writ Petition No. 7586 of 1996. The teamed Single Judge of the Karnataka High Court dismissed the said Writ Petition by order dated 22 March, 1996, holding inter alia that the order of the Appropriate Authority does not suffer from any legal infirmity and the said order has been passed after following the prescribed procedure and the conclusion of the Appropriate Authority has been arrived at on consideration of all relevant and germane materials produced in the course of the proceeding. Respondent No. 1, however, challenged the said order by preferring an appeal and the Division Bench by the impugned judgment and order dated 6th March, 1997, came to hold that the Appropriate Authority has come to the conclusion about the valuation of the land by taking into consideration the sale instances which are not comparable with the property in question and thereby the conclusion is vitiated. The Division Bench also came to the conclusion that the concerned authority had no relevant material to arrive at the correct valuation of the property and further the method adopted by the department was defective and consequently the order made by the authorities concerned is vitiated. With these conclusions the order passed by the Appropriate Authority having been quashed and the Writ Appeal having been allowed the said Appropriate Authority is in appeal in this Court.

Mr. Rawal, learned Additional Solicitor General appearing for the appellant contended that the Division Bench of the High Court committed gross error of law and exceeded its jurisdiction in interfering with the finding of the Appropriate Authority with regard to the market value of the land in question, in the absence of any procedural irregularity and in the absence of a finding by the High Court that the Appropriate Authority had considered irrelevant materials or have excluded relevant materials from consideration. A finding of an inferior Tribunal like the Appropriate Authority under the Income Tax Act can be interfered with by the High Court when the Court comes to the conclusion that the Tribunal has not considered relevant materials or it has considered irrelevant or extraneous materials or the conclusion is one which no reasonable man can come to the said conclusion on the materials on record or the conclusion is one which based on no evidence. Since in the case in hand the appropriate Authority took the relevant sale instances in the locality to arrive at a conclusion where valuation shown in the agreement to sale was grossly low and on consideration of those relevant and germane materials the Appropriate Authority came to the conclusion that the valuation shown in the transaction was grossly low, the said conclusion should not have been interfered with by the High Court in exercise of its supervisory jurisdiction under Article 226 even if the High Court could have come to the conclusion as an original authority. In other words what the learned Additional Solicitor General contended is that the power of High Court being supervisory in nature the said power must be exercised within the parameters already indicated in several decisions of this Court and the High Court was not justified in embarking upon an enquiry of the evidence and on reappreciating the same in coming to a conclusion that the valuation arrived at was not proper.

Mr. G. Sarangan, teamed senior counsel appearing for the transferee and Mr. Hegde, learned counsel appearing for the transferor on the other hand contended, that for 'invoking the powers of property purchased under Chapter XX-C of the Act the burden being on the department to show that the apparent consideration of the property shown in the transaction is less than its fair market value by 15% and the said burden, not having been discharged in the case in hand by the department by adducing a reliable and germane materials the Division Bench of the High Court was fully interfering with the conclusion and order passed by the Appropriate Authority.

According to Mr. Sarangan, teamed counsel appearing for the respondent, the order passed by the Appropriate Authority under Chapter XX-C having not provided for any remedy of appeal the standard of scrutiny by the High Court should be some way different from the standard of scrutiny as against orders of any other inferior Tribunals and the High Court is duty bound to take note of all submissions made by an aggrieved person. Judged from this stand point the Division Bench having recorded a finding that the same instances relied upon by the Appropriate Authority cannot be held to be comparable, the ultimate conclusion of the Appropriate Authority that the vacation of the property shown in the transaction is grossly wrong becomes a conclusion without any evidence and such conclusion has rightly been interfered with by the High Court. In support of such contention learned counsel, places reliance on a decision of Delhi High Court in the case of Mahesh Chandra Agarwal and anr. vs. Union of India and others reported in 231 ITR

319. According to the learned counsel for the respondents, a reading of the order of the Appropriate Authority would indicate that the said Authority has acted more or less in an arbitrary manner in arriving at the fair market value of the property in question and, therefore, in the interest of justice the Division Bench rightly quashed the said order of the Appropriate Authority.

in view of the rival contentions of the parties two questions really arise for our consideration.

1. Merely because no appeal is provided for under the statute against an order passed by the Appropriate Authority under Chapter XX-C of the Act does the supervisory power of the High Court under Article 226 get enlarged in any way and can the High Court in such a case exercise an appellate power and re-appreciate findings to come to its own conclusion?

2. Whether in the case in hand the conclusion arrived at by the Appropriate Authority with regard to fair market value of the property in question was by taking into consideration all relevant and germane materials and whether the department discharged the burden that lay on it in establishing that the apparent consideration, of the property as indicated in the agreement of sale was less than its fair market value by 15%?

So far as the first question is concerned, the parameters for exercise of supervisory jurisdiction of the High Court under Article 226 of the Constitution, while examining the decision of an inferior tribunal, has no connection with the question whether an appeal is provided for against the said order of the tribunal under the statute in question. As has been held in several decisions of this Court, the power being supervisory in nature in exercise of such power, a finding/conclusion of an inferior tribunal can be interfered with if the High Court comes to the conclusion that in arriving at

the conclusion the tribunal has failed to consider some relevant materials or has considered some extraneous and irrelevant materials or that the finding is based on no evidence or the finding is such that no reasonable man can come to such a conclusion on the basis of which the finding has been arrived at. This being the settled position, it is difficult to sustain a plea that when the order of the tribunal does not provide for an appeal, the High Court can get its Jurisdiction enlarged and exercise an appellate power while examining the correctness of the conclusion arrived at by such tribunal. In the case of C.B.Gautam vs. Union of India and Ors. 1993 (199) ITR 530 where the provisions of Chapter XX-C had been assailed as being ultra vires the Constitution Bench of this Court negated the contention raised that the provisions are arbitrary since no appeal or revision has been provided against the order made by the Appropriate Authority for compulsory purchase of immovable property on the ground that the provisions of said Chapter could be resorted to only when there is an attempt at tax evasion by significant under-valuation of immovable property agreed to be sold and further reasons are required to be recorded and disclosed to the affected parties and opportunity to be heard is required to be given before making an order for purchase. This Court ultimately came to the conclusion that The power of the Appropriate Authority is not arbitrary and the pre-conditions engrafted in the provisions must be satisfied for invoking the power to make an order for compulsory acquisition. This being the position, we find to understand how the supervisory power of the High Court while examining the correctness of the conclusion arrived at by such Appropriate Authority could get enlarged merely because there is no appeal or revision against the order of the Appropriate Authority. In the case of Kailash Suneja vs. Appropriate Authority 1998 (231) ITR 318 the decision of the Delhi High Court on which the learned Senior Counsel for the respondent strongly relied upon, the teamed Judges themselves have indicated 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 determination of the belief must have a national 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 teamed Judges of the Delhi High Court in the aforesaid case have themselves indicated that while exercising powers of judicial review under Article 226 of the Constitution though the case is not to be examined as an appellate court, it is to be kept in view that a citizen has no alternative remedy and it is permissible to examine whether extraneous matters have been considered by the authority and relevant materials have not been taken into consideration. This statement of the Delhi High Court on which the learned counsel for the respondent strongly relied upon, in our considered opinion does not in any way enlarge the power of judicial review in the matter of exercise of supervisory power of the High Court under Article 226 against an order of an inferior tribunal. It may be stated here that on the materials if two views are possible, one which has been given by the inferior tribunal and the other which the High Court may on examining the materials itself come to a conclusion, then also it would not be possible for the High Court to substitute its conclusion for that of the tribunal. In the aforesaid premises, we are of the considered opinion that merely because no appeal is provided for against the order of the Appropriate Authority, directing compulsory acquisition by the Government, the supervisory power of the High Court does not get enlarged nor, the High Court can exercise an appellate power.

Coming to the second question, on examining the order passed by the Appropriate Authority for arriving at a conclusion as to what would be the fair market value of the property in question agreed

to be sold, we find that the said Appropriate Authority did consider all the germane and relevant materials produced before it in course of the proceedings and formed 'its opinion that there is under-statement of consideration in the agreement dated 25.9.96 by an amount more than ^5% of the fair market value. On the basis of several sale transactions which are all contemporaneously made and which have the same potentiality and situated in the same locality, the Appropriate Authority came to the conclusion that the fairer market land rate could not be less than Rs.850 per square feet. Further, in the absence of any irrebutable materials adduced on behalf of transferor or transferee as to why in the impugned transaction the property has been agreed to be sold @ Rs.650 per square feet, the natural presumption arises that it was with a view to attempt to evade tax. in fact in Gautam's case referred to supra [1993(199) ITR 530] this Court had held that 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% or more in the agreement of sale, as evidenced by the apparent consideration being lower than the fair market value by 15% or more and a presumption of an attempt to evade tax may be raised by the Appropriate Authority concerned where the aforesaid circumstances are established but such a presumption is undoubtedly a rebuttable one. in the case in hand, the plea of the transferor that he agreed to sell the land at a tower price as he was in urgent need of money to defray the medica) expenses on account of kidney transplantation was duly considered but negatived inasmuch as the transplantation was done in June, 1994 and the agreement to sale was made in September, 1995. The Authority also took into consideration the fact that the transferor was highly qualified doctor and had various various offices with distinction in a carrier spanning over four decades in India and abroad. No other reason having been advanced and the only plea advanced having been considered and rejected and in our view rightly, it is difficult for us to sustain the argument advanced by tine learned counsel for the respondent that the transferor has been able to rebut the presumption arising out of a grossly low valuation on the ground of force sate. Having examined the order of the appropriate Authority we have no hesitation to come to the conclusion that the Appropriate Authority passed the order for compulsory purchase under Section 269 UD of the Act after giving due opportunity to the parties concerned of hearing and after recording the reasons as to the fair market value of the land and further after recording a finding that there has been a significant under-valuation of the property to the extent of more than 15% in the agreement of sale. Such conclusions of the Appropriate Authority were based on consideration of relevant materials produced in course of the proceedings and the authority was fully justified in drawing the presumption that the under-valuation had been done with a view to evade the tax and the transferor could not rebut the said presumption by adducing any positive ground. The High Court, therefore, exceeded its jurisdiction in interfering with such conclusions of the Appropriate Authority by embarking upon an inquiry as an Appellate Authority and, by recording its own conclusion in substitution of the conclusion of tine tribunal and, therefore, the said decision of the High Court gets vitiated. In the aforesaid premises, we set aside the impugned judgment of the Karnataka High Court in Writ Appeal No. 1233 of 1996 and affirm the decision of the Appropriate Authority. The writ petition filed before the High Court stands dismissed. It was contended on behalf of the respondents that even if the order of the Appropriate Authority under Section 269-UD of the Act is ultimately upheld by this Court, the respondents should be entitled to the interest on the amount of consideration money indicated in the agreement dated 25.9.96, particularly when the intended transferee under the deed has deposited a sizeable amount of the said consideration amounting to Rs. 43 lakhs. Learned additional Solicitor General appearing for the Appropriate Authority resisted

the prayer of the transferee for grant of interest on the ground that the transferee having attempted to delay and defeat the compulsory purchase of the property and the amount in question having been deposited after the transferor refused to take the money it would not be in the interest of justice to award interest in the case in hand. In support of his contention reliance has been placed on *Rajalakshmi Narayanan (Mrs.) vs. Margaret Kathleen Gandhi (Mrs.) & Ors.* 1993 Supp. (3) Supreme Court Cases 296. In the aforesaid case this Court held that whether interest should be paid to the owner of immovable property who has entered into an agreement of sale but the sale could not be completed by reason of an order of purchase under Section 269-UD of the Income Tax Act, and if so, at what rate will have to be decided in the facts and circumstances of each case. As a general rule the Court had observed that when such settler has raised no objection or obstruction either to the purchase of a property by an order under Section 269-UD or to the completion to agreement of sale entered into by him but is unable to get purchase price by reason of the said order and the stay order 16 passed by a Court then interest appropriate rate can be paid to him, if equity so requires. In the aforesaid case this Court had ordered that the Government should pay to the appellant the amount stated as the consideration for the sale of the said property in the agreement entered into between the appellant and respondent no.1 with interest thereon at 15% per annum. This Court has issued the aforesaid direction to be followed in the event the order of compulsory purchase passed is ultimately upheld. The Court while issuing the aforesaid direction took judicial notice of the fact that the prices of the immovable properties have shot up continuously for the last few years. Learned Additional Solicitor General, however, stated that the amount in question which has been deposited by the Government is carrying interest being deposited in a fixed deposit.

Having considered the facts and circumstances of the case we think it appropriate to direct that the entire amount lying in deposit together with the interest accrued thereon should be paid to the respondents. This appeal is accordingly allowed with the aforesaid direction and observation.

But in the circumstances there will be no order as to costs.