

C.B. Gautam vs Union Of India & Ors on 17 November, 1992

Equivalent citations: AIRONLINE 1992 SC 158, 1993 (1) SCC 78, (1992) 108 CURTAXREP 304, (1992) 111 TAXATION 476, (1992) 3 SCR 12 (SC), (1992) 65 TAXMAN 440, (1992) 6 JT 678 (SC), 1992 KERLJ(TAX) 547, (1993) 49 DLT 421

Bench: J.S. Verma, S.C. Agrawal, Yogeshwar Dayal

CASE NO.:

Transfer Case (civil) 26 of 1987

PETITIONER:

C.B. GAUTAM

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT: 17/11/1992

BENCH:

M.H. Kania C.J. & J.S. Verma & S.C. Agrawal & Yogeshwar Dayal & A.S. Anand

JUDGMENT:

JUDGMENT 1992(3) Suppl.SCR 12 = 1993(1) SCC 78 = 1992(6) JT 678 = 1992(3) SCALE 138
ORDER Kania, C.J.

1. The petitioner herein filed Civil Writ Petition No. 2821 of 1989 in the Delhi High Court challenging the validity of the provisions of Chapter XX-C inserted in the Income Tax Act, 1961 (referred to herein as 'the Income Tax Act') by the Finance Act of 1986. That writ petition has been transferred to this Court as a test case. The order transferring the said Writ Petition was made on 20.9.89.

2. The relevant facts lie within a narrow compass. The petitioner is the intending purchaser of a plot of land bearing No. B-7/108A, situated at Safdarjung Enclave, New Delhi, admeasuring 253 sq. mtrs. The owner of the property is one Jai Lal s/o Ghazi Ram. The said owner held the said plot under a lease executed by the Delhi Development Authority on 25.2.81. On 4.2.85 the owner entered into an agreement to transfer the leasehold rights in the said property to the petitioner and a sum of Rs. 4.5 lakhs was paid as the advance price. On the same day an agreement for the construction of a structure on the plot was entered between the said parties. On 9.7.86 a fresh agreement to sell the residential house put up on the aforesaid plot of land along with the leasehold rights in the said land was executed between the parties wherein the owner agreed to transfer to the petitioner his leasehold rights in the said land along with the ownership of the construction, namely, the building put up thereon, for Rs. 16 lakhs. In addition, the petitioner was liable under the agreement to pay Rs. 3.4 lakhs to the Delhi Development Authority on account of the unearned increase. On the

coming into force of Chapter XX-C of the Income Tax Act, which was brought into effect from 1st October, 1986 by a Notification dated 7.8.86 in the area with which we are concerned, the said agreement to sell the said property along with Form No. 37-I in duplicate were furnished to the appropriate authority as per the requirements of Section 269UC of the Income Tax Act. After getting the report of the registered valuer, the appropriate authority passed an order for the purchase by the Central Government of the said property, namely, the lease hold rights in the land and the ownership of the said building under Section 269UD(1) of the Income Tax Act and served the same on the petitioner in the night of December 15, 1986. No specific reason was given in the said order for the compulsory purchase of the said property. All that was stated was "...considering all the relevant facts and for the reasons recorded as required. It is decided that the said property is fit for purchase by the Central Government at an equal amount of the apparent consideration...." The said order has been challenged in this petition on various grounds.

3. As we will presently show, the controversy which remains after analysing the respective stands of Mr. Salve, learned Counsel for the petitioner, and learned Attorney General, who appears for the respondents, is fairly narrow. It is, therefore, not necessary to set out the submissions of respective counsel in much detail or to cite all the authorities referred to by counsel.

4. In brief, it was submitted by Mr. Salve that the effect of Chapter XX-C of the Income Tax Act is to confer on the authority concerned, referred to in the said Chapter as "appropriate authority" powers of compulsory purchase of immovable property as a punitive measure where the said authority takes the view that there was under-valuation of the property in an agreement for sale with a view to avoid tax. He submitted that the factors which supported this conclusion were that the order of the appropriate authority for purchase of the property ipso jure operates to vest the property in the Government, and the scope of the vesting is far in excess of the right proposed to be transferred. To complete the title of the Government no further requirement like the execution of a conveyance is required and the Government is not even required to comply with the provisions of the Transfer of Property Act. It was submitted by him that on the plain language of Chapter XX-C there was no guideline prescribed as to where this drastic power of pre-emptive purchase was to be exercised. It was submitted by him that in the absence of such guidelines the provisions of Chapter XX-C confer an unfettered discretion on the appropriate authority under Chapter XX-C to compulsorily purchase immovable properties and such a provision conferred unfettered power which was liable to be exercised arbitrarily and, therefore, violated the provisions of Article 14 of the Constitution. It was urged by him that, if a view were taken that the legislative history of Chapter XX-C shows that the power to purchase immovable property conferred thereunder was to be exercised only to counter tax evasion, the provisions were still bad in law as they did not comply with the principles of natural justice which are now accepted as a requirement for compliance with Article 14 of the Constitution. There is no provision in Chapter XX-C for any opportunity being given to the intending purchaser or intending vendor of the immovable property concerned to show cause against the compulsory purchase of the property. There is no provision even for given them a notice of the intention of the appropriate authority to order purchase of the property. The mere requirement of recording, reasons is not sufficient in the absence of any requirement that they must be set out in the order of purchase or communicated to the transferor or the transferee. It was further submitted by him that the provisions of the said Chapter were unconstitutional on account of their failure to provide for the

mode of valuation of property taking into account the requisite factors for adjustment of the value as where the title of the property is disputed or the sale is a part of the resolution of some dispute between the transferor and transferee or where there is an adjustment in the price on account of tenancy rights vested in the transferee or on account of encumbrances and so on. It was urged by him that the want of these provisions made the legislation totally unreasonable and this lacuna could not be cured by framing rules. It was further submitted by him that a law providing for the acquisition or compulsory purchase of immovable property, even in the absence of any proof of tax evasion would violate the provisions of Article 14 and Article 19(1)(g) of the Constitution as being excessive and unreasonable.

5. It was further urged by Mr. Salve that the provisions of the said Chapter were bad in law as 'there was no appeal or revision provided against orders made by appropriate authorities for compulsory purchase of immovable properties which orders had serious civil consequences and cast an aspersion on the parties of attempted tax evasion. It was submitted that this was all the more so in view of the other factors pointed by him, namely, that the appropriate authorities are not required to give any show cause notice to the parties concerned before an order for compulsory purchase is made, and are not required to supply any reasons to the parties concerned which led the appropriate authorities to the conclusion that there was an intended tax evasion in the agreement to sell the immovable property concerned. It was submitted by him that the provisions of the said Chapter are clearly arbitrary, excessive and they infringe the provisions of Article 14 of the Constitution in so far as under the provisions when an order for compulsory purchase the rights of leaseholders, monthly tenants and mortgagees and other encumbrance holders are destroyed without any adequate provision for compensation to them. The mere provision that such encumbrance holders and the holders of the leasehold rights on the premises could claim a share in the compensation awarded to the owner is no substitute for their secured rights in the immovable property concerned.

6. It was, on the other hand, submitted by learned Attorney General that the history leading to the enactments of Chapter XX-C and the circumstances under which Chapter XX-C was introduced have been elaborately dealt with in paragraphs 7 and 8 of the main counter affidavit. A perusal of paragraphs 7 and 8 of the counter affidavit shows that the main reason behind the introduction of this Chapter in the Income Tax Act was the desire to curb the large scale evasion of income-tax and to counter other modes of tax evasion adopted by various assesseees to deprive the Government of its legitimate tax dues. It was felt that a lot of tax evasion was involved in transfers of immovable properties in urban areas. Reference is made in the affidavit to the recommendations of Direct Taxes Inquiry Committee chaired by the Hon'ble Mr. Justice Wanchoo, retired Chief Justice of India and known as the Wanchoo Committee. In its interim report in 1970 the Wanchoo Committee took the view that understatement of prices in the sale deeds of the immovable properties was a widespread method of tax evasion and recommended, by way of a drastic remedy, that the Government should empower itself to acquire property where the consideration was found to be understated in the sale deeds. It was in pursuance of this recommendation that the provisions of Chapter XX-A were introduced in the Income Tax Act. However, provisions of that Chapter were found inadequate for dealing with the evil of under-valuation of immovable properties in sale deeds and agreements to sell with a view to evade tax and certain difficulties emerged in the effective enforcement of the provisions of Chapter XX-A. It was in these circumstances that Chapter XX-C was introduced into

the Income Tax Act. It may be mentioned here that the provisions of Chapter XX-A ceased to operate in respect of transfers of immovable properties made after September 30, 1986 and as from October 1, 1986 the provisions of Chapter XX-C came into force. It was submitted by learned Attorney General that the very reason which led to the incorporation of that Chapter in the Income Tax Act, namely, to counter the evil of tax evasion by under-valuation of immovable properties in agreements to sell and sale deeds, itself furnishes adequate guidelines for the exercise of the power conferred under that Chapter. It was contended by him that the provisions of that chapter are not penal in nature as, in so far as the transferor of the immovable property is concerned, no right of his was seriously prejudiced by an order of purchase under Section 269UD, as he would get the consideration for which he had agreed to sell the property under the agreement to sell and cases where the price might have been lowered for bona fide reasons like sales to close relatives were specifically provided for in this Section itself. It should not matter to the transferor whether he got his price from the Government or from the purchaser. It was submitted by him that as far as the transferee is concerned, he could not be said to have any legal interest in the property agreed to be purchased by him because all that he would have in his favour is an agreement to purchase and such an agreement by itself creates no interest in property Under the provisions of the Transfer of Property Act. After the deletion of Article 19(f) of the Constitution an intending purchaser could not be said to have any fundamental right to acquire any immovable property. It was submitted that although a transferee might be a person aggrieved for the purposes of Article 226 of the Constitution he could not have any serious grievance on the ground of violation of principles of natural justice as he could always challenge the order of purchase as arbitrary by filing a petition in a court of law and on such a petition authorities would have to disclose the reasons to satisfy the court that they had acted on relevant considerations germane to the object of Chapter XX-C in taking the decision to purchase the property. Learned Attorney General agreed and, in fact, supported the view that the order for purchase passed by the authorities must have some nexus to the tax evasion and it was, in fact, submitted by him that every order passed for purchase under Section 269UD could be tested on the touch-stone of its having a rational nexus with an attempt at tax evasion. He urged that the decision to purchase the property is required to be taken by three high officers who have adequate knowledge in the matter and hence the lack of provision in the Chapter for any appellate or revisional powers made no difference. It was submitted that a requirement for the communication of reasons was not necessary. Chapter XX- C did not provide for such communication and the fact that recording of reasons was required and that the aggrieved parties could get the reasons by filing a writ petition were adequate to meet the requirements of Article

14. As far as tenants and mortgagees are concerned, it was pointed out by him that although the property, on purchase under the provisions of Section 269UD, would be vested in the Government free from all encumbrances yet it must be kept in mind that similar provisions were upheld in cases for compulsory acquisition of property. It was faintly urged by him that compulsory or pre-emptive purchase of property must be treated on the same footing as acquisition of property. It was further submitted by him that even if a view were taken' that Chapter XX-C did not provide for compulsory acquisition of immovable property but for pre-emptive purchase of the same yet the provisions could be read down in such a way that encumbrances on the property in question and long term leases thereon which created interests in favour of parties who might have nothing to do with the tax evasion attempted in the intended sale of the immovable property would not be affected by the

acquisition. It was urged that if the case was regarded as one of compulsory or pre-emptive purchase all that was purchased was what was sought to be sold under the agreement to sell and hence, unless the agreement provided for the sale of the property free from encumbrances or leasehold rights, such encumbrances or leasehold rights in the property would not be affected. As far as monthly tenancies were concerned, it was submitted by him that these tenancies created no interest in the properties and hence the monthly tenants were not entitled to challenge the order for compulsory purchase under Section 269UD on the ground that the purchase by the Government of the property would bring such tenancies to an end. He lastly contended that there was no justification for the claim that any interest should be paid by the Government on the amount of consideration when an order for purchase was made in favour of the Government because the property vested in the Government only on possession being taken and the right to possession was more valuable than a right to claim interest.

7. Before discussing the merits of the respective arguments of counsel, we may point out that after arguments were advanced for some time the learned Attorney General made it clear that he did not press his contention that no reasons were required to be supplied to the affected parties when an order for compulsory purchase was made. He did not seriously contest the position that the parties aggrieved by a proposed order of purchase were entitled to have an adequate opportunity to show cause against the order of purchase by the Central Government being made by the appropriate authority in exercise of the powers conferred under Section 269UD of the Income-Tax Act. It was, however, clarified by him that the inquiry which would have to be made to determine the objections raised by the aggrieved parties would necessarily have to be somewhat summary because of the limited time frame within which the decision whether to purchase the immovable property in question or not had to be taken by the appropriate authority. In view of this fair stand taken by the Attorney General, the controversy has become somewhat narrow as we have pointed out earlier.

8. Before considering the respective arguments of learned Counsel, it would not be out of place to take note of the relevant provisions of the said Chapter.

9. Section 269UA of Chapter XX-C is the defining section. An agreement to transfer is defined as an agreement, whether registered under the Indian Registration Act, 1908 or not, to transfer an immovable property. Sub-section (b) of the said section gives the definition of the term "apparent consideration". The relevant portion of the said sub-section is as follows:

(b) 'apparent consideration'-

(1) in relation to any immovable property in respect of which an agreement for transfer is made, being immovable property of the nature referred to in Sub-clause (i) of Clause (d), means,-

(i) if the immovable property is to be transferred by way of sale, the consideration for such transfer as specified in the agreement for transfer:

(ii) if the immovable property is to be transferred 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 on which the agreement for transfer is made;

(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 on which the agreement for transfer is made, and such sum;

(iii) if the immovable property is to be transferred 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 agreement for 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 agreement for 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 or things forming part of or constituting the rent, as specified in the agreement for 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 agreement for transfer, the value of the consideration payable after such date shall be deemed to be the discounted value of such consideration, as on the date of such agreement for transfer, determined by adopting such rate of interest as may be prescribed in this behalf;

10. "Appropriate authority" is defined under Sub-section (c) of Section 269UA as the authority constituted under Section 269UB to perform the functions of an appropriate authority under Chapter XX-C. The relevant portion of the definition of the term "immovable property" reads as follows:

(d) 'immovable property' means-

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

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

11. "Person interested" is defined as follows:

(e) 'person interested' in relation to any immovable property, includes all persons claiming, or entitled to claim, an interest in the consideration payable on account of the vesting of that property in the Central Government under this Chapter

12. The term "transfer" has been defined very widely in Sub-section (f) so as to include within its ambit transfer by way of sale or exchange or lease for a term of not less than 12 years, Sub-section (2) of Section 269UB which deals with the Constitution of appropriate authorities reads as follows:-

269UB(2): An appropriate authority shall consist of three persons, two of whom shall be members of the Indian Income-tax Service, Group A, holding the post of Commissioner of Income-tax or any equivalent or higher post, and one shall be a member of the Central Engineering Service, Group A, holding the post of Chief Engineer or any equivalent or higher post.

13. Section 269UC prescribes restrictions on transfer of immovable property. In brief it provides that no transfer of any immovable property of a value exceeding Rs. five lakhs or such other amount as may be prescribed shall be effected except after an agreement for transfer is entered into between the person who intends transferring the immovable property and the person to whom it is proposed to be transferred at least three months before the intended date of transfer. Sub-section (2) of this section provides that such an agreement as aforesaid must be reduced to writing in the form of a statement and Sub-section (3) provides that this statement must be in a prescribed form. Rule 48L of the Income-tax Rules, 1962 deals with the statement to be furnished under Section 269UC(3) and sub-Rule 2 of Rule 48L provides that the statement in Form 37-I shall be furnished in duplicate to the appropriate authority. The sub-clauses of Sub-rule (2) of Rule 48L deal with the time limits within which the statement under Section 269UC(3) must be furnished. The relevant portion of Section 269UD which deals with orders of appropriate authority for purchase of immovable property by the Central Government runs as follows:

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

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

Provided further that in a case where the statement referred to in Section 269UC in respect of the immovable property concerned is given to an appropriate authority,

other than the appropriate authority having jurisdiction in accordance with the provisions of Section 269UB to make the order referred to in this Sub-section in relation to the immovable property concerned, the period of limitation referred to in the preceding proviso shall be reckoned with reference to the date of receipt of the statement by the appropriate authority having jurisdiction to make the order under this sub-section.

(2) The appropriate authority shall cause a copy of its order under Sub-

section (1) in respect of any immovable property to be served on the transferor, the person in occupation of the immovable property if the transferor is not in occupation thereof, the transferee, and on every other person whom the appropriate authority knows to be interested in the property.

14. Section 269UE deals with the vesting of properties. The relevant portion of the said section runs as follows:

269UE(1) Where an order under Sub-section (1) of Section 269UD is made by the appropriate authority in respect of an immovable property referred to in Sub-clause (i) of Clause (d) of Section 269UA, such property shall, on the date of such order, vest in the Central Government free from all encumbrances.

(2) The transferor or any other person who may be in possession of the immovable property in respect of which an order under Sub-section (I) of Section 269UD is made, shall surrender or deliver possession thereof to the appropriate authority or any other person duly authorized by the appropriate authority in this behalf within fifteen days of the service of such order on him."

(3) xxx xxx xxx (4) xxx xxx xxx (5) For the removal of doubts, it is hereby declared that nothing in this section 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.

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

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

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

15. Sub-section (1) of Section 269UF runs as follows:

269UF.(1) Where an order for the purchase of any immovable property by the Central Government is made under Sub-section (1) of Section 269UD, the Central Government shall pay, by way of consideration for such purchase, an amount equal to the amount of the apparent consideration.

16. Section 269UH deals with re-vesting of property in the transferor on failure of payment or deposit of consideration by the Central Government. It reads as follows:

269UH. (1) If the Central Government fails to tender under Sub-section (1) of Section 269UG or deposit under Sub-section (2) or Sub-section (3) of the said section, the whole or any part of the amount of consideration required to be tendered or deposited thereunder within the period specified therein in respect of any immovable property which has vested in the Central Government under Sub-section (1) or, as the case may be, Sub-section (6) of Section 269UE, the order to purchase the immovable property by the Central Government made under Sub-section (1) of Section 269UD shall stand abrogated and the immovable property shall stand re-vested in the transferor after the expiry of the aforesaid period.

17. There is a proviso to this sub-section which is not material for the purposes of this judgment.

18. Section 269UK imposes restrictions on revocation or alteration of certain agreements for the transfer of immovable property or on transfer of certain immovable property. Sections 269UM, 269UN and 269UO provide as under:-

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

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

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

"269UO. The provisions of this Chapter shall not apply to or in relation to any immovable property where the agreement for transfer of such property is made by a

person to his relative on account of natural love and affection, if a recital to that effect is made in the agreement for transfer."

19. We shall first discuss the question whether the provisions of Chapter XX-C confer an unfettered discretion on the appropriate authorities concerned to acquire immovable properties which are agreed to be sold in the areas to which the provisions of the Chapter are applicable. In this regard, as we have already pointed out, the very historical setting in which the provisions of this Chapter were enacted suggests 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. This conclusion is strengthened by Instruction No. 1A88 issued by the Central Board of Direct Taxes of the Government of India, Ministry of Finance, Department of Revenue, which was filed in the Court by learned Attorney General. In the said document it is emphasised by the Central Board that the main objective of the provisions of Chapter XX-C is to check proliferation of black money in real estate transactions and to enforce declaration of the true value of immovable properties that are subject of transfer between the parties. The Central Board has pointed out in the said Instructions that, in administering the provisions of the said Chapter, it has to be ensured that no harassment is caused to bona fide and honest purchasers or sellers of immovable property and there is no erosion of the confidence of the public in the sense of justice and fair play of the Income Tax Department. Paragraph 3 of the Instruction makes it clear that the right of pre-emptive purchase has to be exercised by the appropriate authority only when it has good reason for acquiring the property. When the property purchased by the Central Government by an order of an appropriate authority is put up for sale the reserve price is required to be fixed at a minimum of 15% above the purchase price shown as the apparent consideration under the agreement between the parties. Thus it is pointed out by the Board that the right of pre-emptive purchase has to be exercised only if the fair market value is found to be at least 15% more than the apparent consideration. The Instruction further provides that in coming to a conclusion as aforesaid a reasonable margin of probable errors in estimation needs to be kept in view particularly as the law does not provide for any opportunity of being heard. The contents of the affidavit filed by one H.K. Sarangi, Under Secretary, Central Board of Direct Taxes, Department of Revenue is also to the effect that the provisions of the said Chapter ought to be resorted to only in cases of under valuation of immovable properties in agreements of sale to the extent of 15% or more. The said H.K. Sarangi has further pointed out that right from the time when the provisions of the said Chapter were brought into force, they are being applied in such manner that the rights and interests of third parties unconnected with the tax evasion are not affected. This has also been pointed out in the main counter affidavit of the Union of India, referred to by us earlier, in paragraph 40. The said affidavit points out that where an order is made under Sub-section (1) of Section 269UD for the purchase by the Central Government of any immovable property, there is no compulsory acquisition involved and hence no solatium is payable and that what the Chapter provides for is pre-emptive purchase of a property already offered for sale. It has been set out in the said affidavit that only properties with an apparent consideration above Rs. 10 lakhs are at present covered by the scheme which applies to only certain large metropolitan conglomeration. Transfers to a relative, on account of natural love and affection, are excluded from the provisions of the scheme. The appropriate authority consists of two Commissioners of Income Tax and one Chief Engineer from the Central Engineering Service. The said affidavit repeats that the pre-emptive purchase has to be resorted to only if the fair market

value of the property concerned is found to be at least 15% more than the apparent consideration and this limit has not to be mechanically applied but a reasonable margin for probable error taken into account. The affidavit of Hemant Sarangi further states that the following types of properties should not ordinarily be purchased:

- (a) cases of doubtful or disputed titles;
- (b) transactions by and with Government, semi-Government Organisations, Public Sector Undertakings, Universities etc.;
- (c) properties with bona fide tenancies of long standing; and
- (d) properties with too many restrictions on user.

20. It is clarified in the affidavit (para 14) that, although the appropriate authorities will not normally purchase buildings which are leased, in a few cases they may do so when it is felt that even taking into account that the property was encumbered with lease the apparent consideration was grossly understated. The affidavit of Sarangi states that the practice uniformly followed in compulsory purchase of immovable properties under the provisions of Chapter XX-C is as set out earlier. Statements annexed to the affidavit of H.K. Sarangi show that the several properties which were purchased under the provisions of Chapter XX-C have brought much higher amounts than the purchase price when sold at public auctions which would clearly suggest that the in the relevant agreements for sale the apparent consideration was significantly understated.

21. The legislative history of Chapter XX-C, 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 makes 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.

22. 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 evading tax finds support from the decision of this Court in the case of K.P. Varghese v.

Income-Tax Officer, Ernakulam and Anr. : [1981]131ITR597(SC) . 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 that the transfer of the capital asset was being made at an under-value of not less than 15%, 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 was 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 possibly 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 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 fulfilled 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 that the condition of the consideration declared by the assessee in respect of the transfer is less by 15% or more than 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, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning" were quoted with approval. 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 under-stated or, in other words, only where the assessee has actually received a larger consideration for the transfer than that what 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}.

23. We may point out that although it was submitted by the learned Attorney General that the decision in the case of K.P. Varghese (supra) requires reconsideration, he did not seriously challenge the correctness of that decision. No argument has been advanced by him which could lead us to the conclusion that the said case was not correctly decided nor has he pointed out any error in the judgment in that case.

24. In Commissioner of Income-tax, Gujarat-II v. Smt. Vimlaben Bhagwandas Patel and Anr. : [1979]118ITR134(Guj) , a Division Bench of the Gujarat High Court took the view that the entire scheme as conceived and incorporated in Chapter XX-A of the Income-tax Act, 1961, postulates a basic premise that the under-statement of consideration in an instrument of transfer of sale is untruly made if it falls short of the fair market value by 15% and the ulterior motive should be presumed to be concealment of income or tax evasion unless rebutted by the parties to the transfer. Parliament has provided artificial rules of evidence so as to raise the presumption about the guilt of the parties to the transfer in respect of the offence of tax evasion or concealment. It has been pointed out that, before resorting to the provisions of the said Chapter, the competent authority must have reason to believe that the fair market value of the property of more than Rs. 25,000 exceeds the apparent consideration stated in the instrument of transfer and the parties have agreed to make the untrue statement with the ulterior motive of tax evasion or concealment of income. The satisfaction of the competent authority for initiation of the acquisition proceedings is a subjective satisfaction of the objective facts set out above. The reason for formation of 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.

25. In these circumstances, in our opinion, it cannot be said that the provisions of the said Chapter confer 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 must, therefore, fail.

26. The next question to which we propose to address ourselves is whether the provisions of Chapter XX-C are bad in law as there is no provision for giving the concerned parties an opportunity of being heard before an order is passed under the provisions of Section 269UD of the said Chapter for the purchase by the Central Government of an immovable property agreed to be sold in an agreement of sale. In this regard a plain reading of the provisions of the said Chapter clearly shows that they do not contain any provision for giving the concerned parties an opportunity to be heard before an order for compulsory purchase of the property by the Central Government is made. In connection with the requirement of opportunity of being heard before an order for compulsory purchase is made we find that somewhat similar questions have been considered by this Court on a number of occasions. In the case of Union of India v. Col. J.N. Sinha and Anr. :

(1970)IILLJ284SC the facts were that the first respondent who was in the class-I service of the Survey of India and rose to the position of Deputy Director was compulsorily retired by an order under Rule 56(j) of the Fundamental Rules, no reasons were given in the order. Respondent No. 1 challenged the order on the ground that it violated principles of natural justice and no opportunity had been given to the first respondent to show cause against his compulsory retirement. A Division Bench of this Court in its judgment in that case observed as follows:-

Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in *Kraipak and Ors. v. Union of India* : [1970]1SCR457 'the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law out supplement it.' It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if, on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

27. In the case of *Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors. etc.* : [1985] 2 SCR 51 at 89, a Constitution Bench comprising five learned Judges of this Court had occasion to deal with the provisions of Section 314 of the Bombay Municipal Corporation Act, 1888. Chandrachud, C.J., (as he then was) delivering the judgment of the Court held that "the said Section confers on the Commissioner the discretion to cause an encroachment to be removed with or without notice. That discretion has to be exercised in a reasonable manner so as to comply with the constitutional mandate that the procedure accompanying the performance of a public act must be fair and reasonable. The Court must lean in favour of this interpretation because this helps sustain the validity of the law." Chandrachud, C.J., went on to observe as follows:-

It must further be presumed that, while vesting in the Commissioner the power to act without notice, the Legislature intended that the power should be exercised sparingly and in cases of urgency which brook no delay. In all other cases, no departure from the *audi alteram partem* rule ('Hear the other side') could be presumed to have been intended. Section 314 is so designed as to exclude the principles of natural justice by way of exception and not as a general rule. There are situations which demand the exclusion of the rules of natural justice by reason of diverse factors like time, place the apprehended danger and so on. The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence.

28. It must, however, be borne in mind that courts have generally read into the provisions of the relevant sections a requirement of giving a reasonable opportunity of being heard before an order is made which would have adverse civil consequences for the parties affected. This would be particularly so in a case where the validity of the section would be open to a serious challenge for want of such an opportunity.

29. It is true that the time frame within which the order for compulsory purchase has to be made is a fairly tight one but in our view the urgency is not such as would preclude a reasonable opportunity of being heard or to show cause being given to the parties likely to be adversely affected by an order of purchase under Section 269UD(1). The enquiry pursuant to the explanation given by the intending purchaser or the intending seller might be a somewhat limited one or a summary one but we decline to accept the submission that the time limit provided is so short as to preclude an enquiry or show cause altogether.

30. In the light of what we have observed above, we are clearly of the view that the requirement of a reasonable opportunity being given to the concerned parties, particularly, the intending purchaser and the intending seller must be read into the provisions of Chapter XX-C. In our opinion, before an order for compulsory purchase is made under Section 269UD, the intending purchaser and the intending seller must be given a reasonable opportunity of showing cause against an order for compulsory purchase being made by the appropriate authority concerned. 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% or more in the agreement of sale, as evidenced by the apparent consideration being the lower than the fair market value by 15% 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 case of the aforesaid circumstances being established, but 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 lead 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. Although Chapter XX-C does not contain any express provision for the affected parties being given an opportunity to be heard before an order for

purchase is made under Section 269UD, not to read the requirement of such an opportunity would be to give too literal and strict an interpretation to the provisions of Chapter XX-C and in the words of Judge Learned Hand of the United States of America "to make a fortress out of the dictionary." Again, there is no express provision in Chapter XX-C barring the giving of a show cause notice or reasonable opportunity to show cause nor is there anything in the language of Chapter XX-C which could lead to such an implication. The observance of principles of natural justice is the pragmatic requirement of fair play in action. In our view, therefore, the requirement of an opportunity to show cause being given before an order for purchase by the Central Government is made by an appropriate authority under Section 269UD must be read into the provisions of Chapter XX-C. There is nothing in the language of Section 269UD or any other provision in the said Chapter which would negate such an opportunity being given. Moreover, if such a requirement were not read into the provisions of the said Chapter, they would be seriously open to challenge on the ground of violations of the provisions of Article 14 on the ground of non-compliance with principles of natural justice. The provision that when an order for purchase is made under Section 269UD-reasons must be recorded in writing is no substitute for a provision requiring a reasonable opportunity of being heard before such an order is made.

31. The recording of reasons which lead to the passing of the order is basically intended to serve a two-fold purpose:

(1) that the "party aggrieved" in the proceeding before acquires knowledge of the reasons and, in a proceeding before the High Court or the Supreme Court (since there is no right of appeal or revision), it has an opportunity to demonstrate that the reasons which persuaded the authority to pass an order adverse to his interest were erroneous, irrational or irrelevant, and (2) that the obligation to record reasons and convey the same to the party concerned operates as a deterrent against possible arbitrary action by the quasi-judicial or the executive authority invested with judicial powers.

32. Section 269UD(1), in express terminology, provides that the appropriate authority may make an order for the purchase of the property "for reasons to be recorded in writing". Section 269UD(2) casts an obligation on the authority that it "shall cause a copy of its order under Sub-section (1) in respect of any immovable property to be served on the transferor". It is, therefore, inconceivable that the order which is required to be served by the appropriate authority under Sub-section (2) would be the one which does not contain the reasons for the passing of the order or is not accompanied by the reasons recorded in writing. It may be permissible to record reasons separately but the order would be an incomplete order unless either the reasons are incorporated therein or are served separately along with the order on the affected party. We are, of the view, that reasons for the order must be communicated to the affected party.

33. We may also, in this connection, refer here to the decision of a Division Bench of the Madras High Court in *Government of India and Anr. v. Maxim A. Lobo and Anr.* : [1991]190ITR101(Mad) to which one of us (Anand, CJ, Madras High Court, as he then was) was a party where a somewhat similar view regarding the requirement of compliance with principles of natural justice in making an

order under Sub-section (1) of Section 269UD has been taken. In so far as the decision of the Karnataka High Court in *Vidyavati Kapoor Trust v. Chief Commissioner of Income Tax and Ors.* : [1992] 194ITR584(KAR) takes a contrary view, it does not lay down the correct law.

34. We now take up the submissions of the learned Counsel for the petitioner that the provisions of the said Chapter are arbitrary and violate the provisions of the Fundamental Rights Chapter insofar as an order for compulsory purchase under Section 269UD of the said Chapter has the effect of vesting the property in the Central Government free from all encumbrances or leasehold rights the value of which might not be reflected in the apparent consideration mentioned in the agreement for sale. It was submitted by him that these encumbrance holders and holders of leasehold rights might not have anything to do with the attempt at tax evasion in the intended sale, assuming that such an attempt is made by the intending seller or the intending purchaser by undervaluing the property concerned in the agreement for sale and yet they would be deprived of their valuable rights practically without any, compensation in the event of an order for compulsory purchase being made. In our view, the submissions of learned Counsel are not without merit. Under the provisions of Sub-section (1) of Section 269UD on an order for purchase by the Central Government of a immovable property, the government would be liable to pay as compensation to the owner of the property an amount equal to the amount of apparent consideration. Under the express provisions Sub-section (1) of Section 269UE which we have set out above, in case an order for compulsory purchase is made under Sub-section (1) of Section 269UD, the property in respect of which the order is made shall vest in the Central Government free from all encumbrances. (emphasis supplied) Sub-section (2) of Section 269UE provides that the transferor or any other person who may be in possession of the immovable property in respect of which an order under Sub-section (1) of Section 269UD is made is required to surrender or deliver possession of the property to the appropriate authority or any other person duly authorised by the appropriate authority within 15 days of the service of the order on him. If there is a lessee in occupation of the property concerned, his leasehold rights would be destroyed and he would have to handover the possession of the property to the appropriate authority or any other person nominated by the appropriate authority. Similarly if an encumbrance holder like a usufructuary mortgagee were in occupation he would loss his valuable right to remain in possession and enjoy the usufruct. This clearly shows that an order for compulsory purchase result in the rights of holders of encumbrances and leasehold rights being destroyed or significantly diminished. In a given case it might happen that the property is intended to be sold under an agreement to sell subject to encumbrances and leasehold rights, and very often agreements to sell the immovable property do not provide that the property sold would be free from encumbrances or leasehold rights. In such a case, the apparent consideration, even if it is equivalent to the fair market value, would be indicative of the market value of the property subject to such encumbrances. If, in such a case an order for compulsory purchase is made, the result would be that the property would be compulsorily purchased and the amount to be paid for the purchase would be only equal to the apparent consideration and this apparent consideration would not take into account the value of the encumbrances on the property like mortgages and so on or the leasehold rights. It is well know that a property may be heavily encumbered and its value can be considerably depressed if it were sold subject to encumbrances. It is equally well known that a property in respect of which term is a subsisting lease for a substantial period of time would fetch a comparatively low-price because the purchase thereof would not carry with it the right to possession or occupation

during the subsistence of the leasehold interests. In such cases, the amount to apparent consideration could be even less than the value of the encumbrances or the leasehold interests. An order for compulsory purchase in such cases would necessarily result in gross injustice to the encumbrance holders and lessees and to their being deprived of their rights without their being in any way involved in the attempt at a tax evasion. It, therefore, appears to us difficult to uphold the last part of Sub-section (1) of Section 269UE insofar as it provides that the property in respect of which an order under Sub-section (1) of Section 269UD 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.

35. 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.

36. 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 269UD(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 and 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 and leasehold interests which would be destroyed in this manner can be said to be persons interested as contemplated in Clause (e) of Sub-section (2) 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.

37. 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 for 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 the 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 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 the Parliament to consider.

38. This brings us to the question of relief. We find that the order for compulsory purchase under Section 269UD(1) of the Income Tax Act which was served on the petitioner in the night of 15th December, 1986, has been made without any show cause notice being served on the petitioner and without the petitioner or other affected parties having been given any opportunity to show cause against an order for compulsory purchase nor were the reasons for the said order set out in the order or communicated to the petitioner or other concerned parties with the order. In view of what we have stated earlier the order is clearly bad in law and it is set aside.

39. The next question is as to the consequence to follow. In view of the fact that the object of the provisions of Chapter XX-C is a laudable object, namely, to counter evasion of tax in transactions of a sale of immovable property, we consider it necessary to limit the retrospective operation of our judgment in such a manner as not to defeat the acquisitions altogether. We find that if the original time frame prescribed in Chapter XX-C is rigidly applied it would not be possible for the appropriate authority concerned to pass an order under Section 269UD(1) at all in respect of the property in question. In order to avoid that situation and, yet to ensure that no injustice is caused to the petitioner, we order, in the facts and circumstances of the case, that the statement in Form 37-1 submitted by the petitioner as set out earlier shall be treated as if it were submitted on the date of the signing of this judgment. Thereafter if the appropriate authority considers it fit, it may issue a show cause notice calling upon the petitioner and other concerned parties to show cause why an order for compulsory purchase of the property in question should not be made under the provisions of Sub-section (1) of Section 269UD and give a reasonable opportunity to the petitioner and such other concerned parties to show cause against such an order being made. In view of the limited time-frame this will have to be done with a sense of urgency. If after such an opportunity is given the appropriate authority so considers it fit, it may hold an inquiry, even though summary in nature, and may pass an order for compulsory purchase by the Central Government of the property in question under Section 269UD(1). The appropriate authority will have to decide whether an inquiry is called for in the facts and circumstances of the case after the show cause notice is issued. We are fortified in giving a somewhat limited retrospective operation of our judgment in view of the decision by a Constitution Bench comprising five learned Judges of this Court in *India Cement Ltd. v. State of Jamil Nadu* :

[1991]188ITR690(SC) . In that case inspite of Section 155 of the Madras Panchayats' Act being declared ultra vires, the State of Tamil Nadu was held not liable to refund to the petitioners the cess collected by it under the provisions of the said section.

40. We realise that if order for compulsory purchase of the property is made hereafter the intending vendor will suffer to some extent by reason of the fact that he will get the purchase amount several years after the time he would have got it had the impugned order been held to be valid. But on the other hand, however, he would have retained the possession of the property in question. Taking into account these factors and taking note of the fact that the immovable properties in urban areas have gone up steeply in value during the last few years, we direct that in case an order for compulsory purchase is made the Central Government shall pay to the intending seller the amount of the apparent consideration plus interest at 9 per cent per annum from the date the impugned order was made.

41. We may clarify that as far as completed transactions are concerned, namely, where after the order for compulsory purchase under Section 269UD of the Income Tax Act was made and possession has been taken over, compensation paid to the owner of the property and accepted without protest, we see no reason to upset those transactions and hence, nothing we have said in the judgment will invalidate such purchases. The same will be the position where public auctions have been held of the properties concerned and they are purchased by third parties. In those cases also nothing which we have stated in the judgment will invalidate the purchases.

42. In the result, the writ petition transferred is allowed to the extent aforesaid. Considering the facts and circumstances of the case there will be no order as to costs.