Supreme Court of India
Prima Realty vs Union Of India And Ors on 18 November, 1996
Bench: J.S. Verma, B.N. Kirpal

CASE NO.:
Appeal (civil) l4554 of 1996

PETITIONER:
PRIMA REALTY

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 18/11/1996

BENCH:
J.S. VERMA & B.N. KIRPAL

JUDGMENT:

JUDGMENT 1996 Supp(8) SCR 665 The Judgment of the Court was delivered by J.S. VERMA, J.: This appeal by special leave is against the judgment dated December 15,1995 by which the appellant's writ petition challenging the compulsory purchase order dated April 26,1995 made by the appropriate authority under Section 269 UD(I) of the Income Tax Act, 1961 (for short "The Act") has been dismissed. In short, the challenge is on the ground that the compulsory purchase order stood abrogated under Section 269 UH (1) of the Act in view of the failure of the Central Government to tender under Section 269 110 (1) the amount of consideration required to be tendered within the period specified therein in respect of the immovable property which had vested in the Central Government under Section 269 UE (1) of the Act.

The material facts are these. An agreement for sale of the right. title and interest of Respondents 6 to 12 and one Dr. V.S.J, Rao (in all eight transferee) was made on 13.1. 1995 in favour of the appellant prima Realty' in respect of a property at Chembur in Bombay for an aggregate sum of Rs. 3,60,00,000 (Rupees three crores and sixty lakhs), Out of the total sale consideration, a sum of Rs, 3,30.00,000 was to be paid in cash, i.e.. by pay orders/demand drafts payable in instalments over a period of approximately 24 months .and the remaining amount of Rs.30,00.000 was to be paid towards the cost of reconstruction of the bungalow occupied by Dr. Rao and his family in that property. A statement in statutory form No, 37-1 as required by Section 269 UC (1) and (3) read with Rule 481, duly signed by all parties to the agreement was filed with the appropriate authority' on January 30, 1995 giving details of the persons "interested in consideration". As required by the proviso to Section 269 UD(I) the purchase order had to be made on or before April 30, 1995. Show cause notice was issued under Section 269 UD (1A) addressed to respondents 6 to 12 and Dr. V.S.J. Rao (the transferors) and to the appellant (the transferee), The appellant/transferee was described in this notice as "Prima Realty, Partnership Finn". On April 13, 1995 Dr.-V.S.J. Rao expired and was survived by respondents 13 to 16 as the legal heirs. Show-cause notices were then issued by the appropriate authority to the legal heirs of Dr, Rao. On April 26, 1995 the compulsory purchase order was passed by the appropriate authority under Section 269 UD(1) of the Act acquiring the property and determining the apparent consideration payable by the Central Government at Rs. 3.58.84.384

(Rupees three crores fifty eight lakhs eighty four thousand three hundred and eighty four only). The purchase order correctly records that the sum of Rs. 3,58,84,384 has been arrived at, taking into account the discounted value of the sum of Rs. 3,30,00,000 with reference to the dale on which the payment was required to be made by the Central Government under the Act, i.e., on or before May 31, 1995 which works out exactly to Rs. 3,28,84,384 (Rupees three crores twenty eight lakhs eighty four thousand three hundred and eighty four only). Thus adding the additional consideration of Rs. 30 lakhs (towards the cost of construction of the new bungalow) the total consideration payable by the Central Government was Rs 3,28,84,384 plus Rs. 30 lakhs amounting in all to Rs. 3,58,84,384. The purchase order also correctly described the appellant/transferee as "Prima Realty, partnership firm,...". On April 29, 1995 a letter in the standard form was addressed by the appropriate authority to the transferors and the transferee requesting them for various documents and papers relating to the property; and the letter to the appellant/transferee was addressed correctly as "Prima Realty, partner".

Section 269 UG(1) requires that the amount of consideration payable in accordance with the provisions of Section 269 UF shall be tendered to the person or persons entitled thereto within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government under Sub-section (1), or, as the case may be, Sub-section (6) of Section 269 UE. In the present case, the purchase order having been made on April 26, 1995 the property concerned became vested in the Central Government under Sub-section (1) of Section 269 UE on the date of that order. The amount of consideration, namely, Rs. 3,58,84,384 became payable and was required to be tendered to the person or persons entitled thereto under Section 269 UG(1), within a period of one month from the end of the month of April 1995, i.e., on or before May 31, 1995. The persons entitled to the payment of the amount of consideration were the transferors/respondents 6 to 12 and the legal heirs of Dr. V.S. J, Rao and the transferee/appellant to the extent of their shares in the consideration. The appellant/transferee became entitled to the sum of Rs. 66 lakhs which had been paid by them as earnest money to the transferors; and transferors were entitled to the remaining amount to the extent of their shares therein, the details of which were given in the statutory form No. 37-1 filed with the appropriate authority. The dispute relates to the compliance of this requirement under Section 269 UG(l)of the Act.

On May 31, 1995 the Central Government issued nine cheques, all dated May 31, 1995 drawn on the State Bank of India in fovour of respondents 6 to 12, Dr. V.S.J. Rao's heirs and the appellant/transferee aggregating Rs. 3,58,84,384. The cheque in favour of the appellant was for Rs. 60 lakhs only, instead of Rs. 66 lakhs and was drawn in favour of "Prime Reality Ltd." instead of Prima Realty, partnership firm". This cheque was sent by speed post on May 31, 1995 and was delivered to the appellant only on June 1, 1995. On June 19, 1995 the appellant returned the cheque dated May 31, 1995 for Rs. 60 lakhs with a covering letter to the appropriate authority contending that the purchase order stood abrogated on account of non- compliance with Section 269 UG(1). On June 21, 1995 the appellant filed the Writ Petition No. 1106 of 1995 in the Bombay High Court for quashing the compulsory purchase order.

Thereafter on June 22., 1995 the Central Government sent a corrected cheque for Rs. 60 lakhs in the name of "Prima Realty" which is admittedly of no consequence, if the consequence of re-vesting of the property in the transferors on the failure of payment of Consideration within the prescribed period has ensued by virtue of Section 269Uh (1). However, the Division Bench of the Bombay High Court dismissed the writ petition. Hence this appeal by special leave.

Shri F. S. Nariman, learned counsel for the appellant advanced several arguments but his main contention is that the tender of the amount of consideration was not as required by Section 269 UG(1) and, therefore. there was re-vesting of the property in the transferors in accordance with Section 269 Uh(l). On this basis it was contended that the purchase order dated April 26, 1995 made under Section 269 UD(1) must be quashed and consequential reliefs flowing from the re-vesting of the properly in the transferors under Section 269 UH, must be granted.

Before we deal with the main contention, we may mention the other points urged by Shri Nariman in which we find no merit.

It was urged by Shri Nariman that the tender of the consideration was made only on June 1, 1995 when the cheque was delivered by post to the appellant even though it was dispatched on May 31, 1995 because the post office could not be deemed to be the agent of the addressee and mere posting of the cheque on May 31, 1995 would not operate as the delivery of cheque to the addressee. He argued that the appellant at no time made any request for the consideration to be sent by post and, therefore, the post Office would not become the agent of the addressee.

The law on the point is settled by the decisions of this Court. in Commissioner of Income-tax,. Bihar & Orissa v. M/s Patney & Co., [1959] Suppl. 2 SCR 868, it was held that "If it is shown that the creditor authorised the debtor either expressly or impliedly to send a cheque by post the property in the cheque passes to the creditor as soon as it is posted. Therefore, the post office is an agent of the person to whom the cheque is posted if there by any express or implied authority to send it by post." In Shri Jagdish Mills Ltd. v. The Commissioner of Income-tax, [I960] 1 SCR 236, it was held as under. .....The stipulation in the contract between the appellant and the Government was that the payment would he made by cheques. The Government of India was located in Delhi and the cheques would be necessarily drawn by it .from Delhi. Could it be imagined that in the normal course of affairs the cheques thus drawn in Delhi would be sent by a messenger to Baroda so that they may be delivered to the appellant in Baroda? Or that the officer concerned would come to Baroda himself and hand the same over to the appellant in Baroda? The only reasonable and proper way of dealing with the situation was that the payment would be made by cheques which the Government would send to the appellant at Baroda by post. According to the course of business usage in general Which appears to have been followed in this case, the parties must have intended that the cheques should be sent by post which is the usual and normal agency for transmission of .such articles. If that were so, there was imported by necessary implication an implied request by the appellant to send the cheques by post from Delhi thus constituting the Post Office its agent for the purposes of receiving those payments." (page 247) Admittedly. there was no express stipulation of the mode of payment of the consideration or that the cheque would be sent by post. However. according to the ordinary course of business usage the only reasonable and proper inference is that the payment of such large

amount would be made by cheque issued by the central Government and unless the payee went to collect the cheque personally, the cheque had to be sent by post to the payee. According to this implied term, it must be assumed that unless the cheque was collected personally by the payee it would be sent by post thereby constituting the post office as the agent of the payee for the purpose of receiving the payment. In the present case the payees did not indicate the mode of payment to them inspite of a letter received by them to indicate the mode of payment. The appellant did not even choose to reply to that letter. In these circumstances it was reasonable for the concerned authority to have waited for the cheque to be collected personally by the payee till the last date, i.e., May 31, 1995 and to have dispatched it by post on that day when no one came to collect the cheque personally from the authority. In such a situation, payment by cheque dispatched by post on May 31, 1995 amounted to tender of the payment to the payee on may 31, 1995 itself when the cheque was put in the course of transmission through post so as to be beyond the control of the sender from the time of its dispatch by post. This contention has no merit.

The next contention of Shri Nariman is that the exact amount required to he paid to the appellant was the sum of Rs. 66 lakhs and not Rs. 60 lakhs for which the cheque was sent on May 31. 1995 since the total amount paid as earnest money .by the appellant was Rs. 66 lakhs. In the facts of the present case we do not find any merit even in this contention.. There is no dispute that the total amount of Rs. 3,58,84,384 inclusive of Rs. 60 lakhs sent to the appellant/transferee was tendered by cheque by the concerned authority collectively to the persons entitled to the payment. The payment of the entire consideration due under the purchase order was, therefore, made collectively to the persons entitled to receive the payment even though there was some difference in the amount tendered to the appellant/transferee. The adjustment of the exact amount due to each. between the several persons who had to share the total amount of consideration was an internal arrangement between them, and this by itself would not vitiate the tender of the amount of consideration as required by Section 269 UG (I). This contention also fails.

The question now is of the effect of the description of the payee in the cheque for the sum of Rs. 60 lakhs which was sent to the appellant on May 31, 1995. In the cheque, the payee was described as "M/'s Prime Realty Ltd. " The question is : whether this can be treated as a valid tender of the amount to the appellant?

The contention of Shri Nariman is that it was not a valid tender to the appellant since the description of the payee in the cheque was of a different legal entity, i.e., a limited company other than the partnership firm which is the correct description of the appellant. The point for consideration is : whether the description of the payee in the cheque was of a legal entity distinct from, and other than the appellant. If it be so. .as contended by Shri Nariman, it was not a valid tender to the appellant/ transferee, The result would be a deficiency in lender of the amount of consideration to this extent and, therefore, non-compliance of Section 269 UG (1) resulting in the consequences provided in Section 269 UH.

Admittedly the correct description of the appellant/transferee is ''Prima Realty" which is a partnership firm. It is settled that the firm name is a compendious mode of describing the partners collectively; and a limited company, by itself a legal entity, is a distinct person or legal entity, The

description of the payee in the cheque was of a limited company named as "Prime Reality" and not even "Prima Realty" which is the firm name of the appellant's partnership firm, Does it describe the appellant as the payee?

In Davies v. Elsby Brothers, Ltd.. (I960) 3 All E.R. 672 at 676, Devlin, L.J. indicated the test for deciding whether a misdescription of this kind is merely a misnomer or the description of a different person or legal entity. The test is: "....."1 cannot tell from the document itself whether they mean me or not and I shall have to make inquiries", then it seems to me that one is getting beyond the realm of misnomer. One of the factors which must operate on the mind of the recipient of a document, and which operates in this case, is whether there is or is not another entity to whom the description on the writ might refer." in that decision amendment was sought to change the defendant from 'EB (a firm)' to 'EB (Ltd.)' and it was held that these were two different entities, the firm and the company; and therefore, it was not a case of mere amendment to correct the misnomer but one of substitution by one entity for another. The position in the present case is similar.

The appellant/transferee is a partnership firm with the name "Prima Realty" but the cheque described the payee as "Prime Reality Ltd. " which referred to a different legal entity, a limited company instead of a firm. The tender of the cheque could not, therefore, be treated as tender to the appellant. It was reasonable to assume that the cheque would not be honoured by the banker to credit the amount of that cheque to the account of the appellant since it could relate to another legal entity, a limited company. In such a situation the appellants were justified in taking the view that the cheque was not meant for them, and they could not lawfully require the bank to deposit the amount of the cheque in their account. The result is that the tender of the amount of consideration was short to the extent of Rs. 60 lakhs for which amount this cheque was made. There was, thus, clear non-compliance of the requirement of Section 269 UG (1) of the Act. The consequence envisaged by Section 269 UH of the Act ensued.

Accordingly, the order dated April 24, 1995 made under Section 269 UD(i) by the appropriate authority stood abrogated and the property was revested in the transferors in terms of Sub-section (1) of Section 269 UH of the Act with the other consequential results including those specified in Sub- section (2) of Section 269 UH and Sub-section (3) of Section 269 UD. It is not necessary to detail all the consequences which follow as a result thereof, in terms of the Income-tax Act, 1961 and any other laws which may be applicable. In view of the fact that the cheque for the amount of Rs, 60 lakhs has not been encashed, the remaining amount of Rs. 2,98,84,384 has become refundable to the Central Government as on June 1, 1995, which would be refunded by the appellants with interest @ 12% per annum from June I , 1995 till the date of payment. It is directed accordingly. All the consequences in accordance with law including the requirement of execution of the conveyance in favour of the appellants follow as already indicated.

This appeal is allowed in the manner indicated. No costs.