

APPROPRIATE AUTHORITY AND ANR.

v.

KAILASH SUNEJA AND ANR.

AUGUST 7, 2001

[S. RAJENDRA BABU AND K.G. BALAKRISHNAN, JJ.]

Income Tax :

Income Tax Act, 1961—Chapter XX-C—Acquisition of Immovable property by Appropriate Authority—Valuation of Fair Market Value—Basis of—Held, adoption of any method of valuation of the property by the Appropriate Authority cannot be interfered with—On facts, there are loopholes or lacunae in the process of reasoning adopted by the Appropriate Authority in arriving at the conclusions—Hence, acquisition of property is improper.

Constitution of India, 1950—Article 136 and 226—Scope of Judicial Review.

An agreement for sale of an immoveable tenanted property situated on a plot measuring 800 square yards in Delhi, was entered into by respondents for a consideration of Rs. 79 lakhs. A statement in Form No. 37-I was furnished before petitioner-Appropriate Authority as per the provisions under Chapter XX-C of the Income Tax Act, 1961. The Appropriate Authority made an order of purchase of the property under the provisions of the Act on finding that the apparent consideration has been under-valued by 24% of fair market value of the property. The fair market value of the property was calculated by the Appropriate Authority after considering sale instances of three different properties. The respondents filed Writ Petitions before High Court against the order of the Appropriate Authority. The High Court allowed the Writ Petitions of the respondents by holding that the method of valuation of the fair market value of the property is not just and reasonable on the ground that the Appropriate Authority has compared the values of incomparable properties.

In appeal to this Court, the Appropriate Authority contended that there were several methods of calculating fair market value of an immovable property; that the High Court could not interfere with the calculations of fair

A market value of the property, if it chooses any of the methods; and that the scope of interference of the High Court under Article 226 of the Constitution is very limited.

Dismissing the appeals, the Court

B **HELD :** The scope of interference under Article 226 of the Constitution is very limited, but that is only in the nature of a judicial review of the proceedings and not by way of appeal or revision where the scope of interference is much wider. In cases of the present nature, where several methods are available for finding out the value of the property and if any method is adopted by the Appropriate Authority, which may be reasonable, then it may not call for any interference. However, if there are loopholes or lacunae in the process of reasoning adopted by the Appropriate Authority in arriving at the conclusions then the parties who appear before the authorities will definitely have a reason to have heart burn. It is unjustifiable if one method of valuation is adopted and benefit given to one party is not adopted in the other case to arrive at the conclusion. In this background, if the High Court had examined the matter and arrived at a conclusion, it is not necessary for this Court to interfere with the finding in a proceeding arising under Article 136 of the Constitution. [349-H; 350-A, B, C]

E *Appropriate Authority and Anr. v. Sudha Patil (Smt.) and Anr.*, [1998] 8 SCC 237 and *C.B. Gautam v. Union of India*, [1993] 1 SCC 78, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6050-51 of 1998.

F From the Judgment and Order dated 17.12.97 of the Delhi High Court in C.W.P. No. 5220/93 and 1988 of 1994.

Shail Kumar Dwivedi for the Appellants.

M.S. Syali, K.K. Mohan and Ms. Geetanjali Mohan for the Respondents.

G The Judgment of the Court was delivered by

H **RAJENDRA BABU, J.** The property comprised in No. G-4(Old No. C-62), Maharani Bagh, New Delhi on a plot measuring about 800 sq. yards was agreed to be sold pursuant to an agreement dated July 1, 1993 for a sale consideration of Rs. 79 lakhs. The property consists of two floors - ground and the first - and is in occupation of the tenants. The agreement provided

for symbolic delivery of the possession while it was open to the purchaser to make use of the portion over the roof on the first floor. An application in Form 37(1) was filed on 9.7.1993. The Appropriate Authority worked out the fair market value of the property and the apparent consideration fell short by 24 per cent of the fair market value. The Appropriate Authority compared the property in question with three different properties as sale instances to arrive at the correct market value of the property in question : (1) G-8, Maharani Bagh, (2) D-18, Maharani Bagh, and (3) N-62, Panchsheel Park. The High Court went into the mode of calculation of fair market value adopted by the Appropriate Authority and stated that in respect of property comprised in D-18, Maharani Bagh the agreement had been entered into on 25.6.1991 and on account of the time gap of 24 months, the adjustment of plus 24 per cent was to be made and in respect of property comprised in G-8, Maharani Bagh, there was basement potential and, therefore, adjustment of minus 10 per cent was to be made by the Appropriate Authority on that count. This basis is termed to be perverse. In identical circumstances when the valuation adopted by the Appropriate Authority was challenged in *Appropriate Authority & Anr. v. Sudha Patil (Smt.) and Anr.*, [1998] 8 SCC 237, this Court after examining the decision in *C.B.Gautam v. Union of India*, [1993] 1 SCC 78 and the absence of provision of filing an appeal against the order made by the Appropriate Authority, had stated that the conclusion of the Appropriate Authority regarding the fair market value in a matter of compulsory acquisition of immovable property after considering all the germane and relevant materials should be accepted and the same should not be made a subject matter of the examination as if it is an appeal. Reasons set forth by the Appropriate Authority are as follows :

<i>Subject property</i>		<i>Ist sale instance</i>	
Sale agreement 9.7.93	Apparent sale con- sideration	Declared land rate works out at Rs. 21,821 per sq. mt. Value to be increased at 1% per month for 24 months 24%.	Sale deed dated 25.6.91, 24 months earlier sale agreement
Has no base- ment	10% to be deducted	Thus value to be added is 14% (24%-10%) if 14% is added the land rate of subject property would come to Rs. 21,821 x 14% Rs. 24,875 or Rs. 25,000	

A	per sq. mt.	
	Value of land	Rs. 1.30 crores
	Depreciated value of the structure	Rs. 9,35,758
B	Total value of the subject property	Rs. 1,39,33,758
The property is tenanted	Depreciated value for 6 years at 8% is calculated at:	Rs. 87,78,267 (Rs. 1,39,33,758 x .63)
C	(a) Thus the value of the subject property is	Rs. 87,78,267
	(b) To this rent for 6 years is added	Rs. 1,42,092
D	Has barsati potential of the area is 149.90 sq. mt.	Has no barsati potential Rs. 37,27,500
	(c) This is to be added. The value of the subject property is fixed at	Rs. 1,26,42,859 Or
E	This is 58% more than the apparent consideration of the subject property.	Rs. 1,26,45,000 (Rs. 79,99,390)
<i>Subject D-18 (known Property as I-15), Maharani Bagh</i>		<i>2nd sale instance</i>
F	Sale agreement	Sale deed dated 1.12.1992 Rs. 1.11 crores
G	Adjusted declared land rate works out at Rs. 29,587 per sq. mt.	
	Value to be increased at 1% per month 7 months earlier to sale agreement.	
H	For 7 months	+ 7%

FAR (not so much as the 2nd instance)	FAR (140-100)	- 28%	A
Side open (not available/which is available in 2nd instance)		- 5%	B
Has no basement potential		- 10	
	+ 7%	- 43%	
		- 36%	C
	Declared land rate deducting	Rs. 18,950 per sq. mt.	
	- 36%	29,587 x .64	
	Value of the land of the subject property	52 x 18,950 Rs. 98,54,000	D
	Depreciated value of the structure	9,33,758 Rs. 1,07,87,758	
Tenanted	Depreciated value at the rate of 8%	Rs. 67,96,287 (Rs. 1,07,87,758 x .63)	E
	Rental increase for years	Rs. 1,42,092.00 =Rs. 28,21,655	
Barsati potential 148.90 sq. mt. x 18,950	Total value of the subject property	Rs. 97,60,034 22% higher than to AC	F
<i>Subject Property</i>		<i>3rd sale instance</i> N-62, Panchsheel Park 800 sq. yds. having FAR	
Sale agreement 9.7.1993	Land rate declared works out at Rs. 28,455 per sq. mt.	29,4,1993 sale agreement consideration	G
	If the rate of increase of 1% per month	Rs. 1,56,00,000 Rs. 35,02,220	H

A	4 months + 4% time gap	
	No open area	Falling open area
		Rs. 1,91,02,220
	No basement potential	-5%
B		Basement available 10%
		+4% - 15%
		= -11%
	The land rate works out at Rs.	
	25,333	(28,455 x .89)
C	Land rate of subject property (ground floor 1st floor) 520 sq. mt.	
	= 25,333 x 520	
	= Rs. 1,31,73,160.00	
D	Depreciated value of the structure	
	= 9,33,758.00	
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	Rs. 1,41,06,918.00	
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E The Appropriate Authority added one per cent every month. The basement and barsati potential was also taken into account. The Appropriate Authority took into account the subject property was tenanted and made certain calculations such as 6 years deferred value at 8 per cent and 6 years rent was added to the value arrived at by the above process.

F The High Court disapproved this process of arriving at the figures and that the apparent consideration fell short of the fair market value by more than 15 per cent and, therefore, the High Court held that the action is incorrect.

G The Department contends that the learned Judges of the High Court could not have sit on judgment over the manner of calculations made by the Appropriate Authority. If any of the factors set out therein had been ignored in the matter of arrival of fair market value, the same would have affected the consideration made by the Appropriate Authority. There are several methods of arriving at fair market value such as comparative sale method or the capitalisation of the rent, i.e., yield method or any other appropriate method.

H

But when the Appropriate Authority adopted one or the other method and in that process there is no inherent error or the factors taken note of by the Appropriate Authority being relevant, it is submitted that it is not open to the High Court to have interfered with such a matter. This Court in Sudha Patil's case [supra] has stated that when the Appropriate Authority comes to the conclusion one way or the other after giving due opportunity to the parties concerned and there has been under-valuation on that basis by more than 15 per cent of the fair market value, the Appropriate Authority had jurisdiction to interfere with the same.

The High Court took the view that there is nothing on record to suggest as to what were the special reasons for making a purchase order in respect of wholly tenanted property. Even assuming that there was some justification for the authority to initiate proceedings for the pre-emptive purchase of the property under Chapter XX-C of the Act, the method of valuation of the fair market value had to be just and reasonable. The authority has compared the values of incomparable properties. While considering comparable instances, the instances of tenanted properties had to be taken into consideration and not vacant properties by discounting without any factual or legal basis. While the agreement in relation to property at Maharani Bagh had been entered into in June 1991, the agreement for the property in question was entered into on July 1, 1993. Therefore, there is no basis for adding 24% on the hypothetical basis that there would be increase of 1 per cent every month.

In respect of tenancy, the plea taken before the High Court is that the purchaser had mutual terms to get the property vacated from the tenant. While the ground floor tenancy was from the year 1979 and the first floor tenancy was from the year 1967, there is hardly any justification to presume that the tenants would vacate in 5/6 years. The sale instance in respect of property comprises in S-39-A, Panchsheel Park, which was substantially tenanted without any justification, was not taken into consideration, though rent capitalisation method was applied in that case. Why in respect of one tenanted property rent capitalisation method was applied to work out the fair market value and in the other case land and building method was applied is not clear. It is on this basis the High Court allowed the writ petition before it.

It is no doubt true that the scope of interference under Article 226 of the Constitution is very limited, but that is only in the nature of a judicial review of the proceedings and not by way of appeal or revision where the

- A** scope of interference is much wider. In cases of the present nature where several methods are available for finding out the value of the property and if one or the other method is adopted by the Department and that may be reasonable, it may not call for any interference. However, if there are loopholes or lacunae in the process of reasoning adopted by that authority in reaching the conclusion as in the present case that the tenanted property would be vacated soon or that the property is close to the vicinity of the situation of the subject property if compared, adopting different methods of valuation, then the parties who appear before the authorities will definitely have a reason to have a heart burn. If one method of valuation is adopted and benefit is given to one party and why that method is not adopted in the other case
- C** to reach the conclusion the other way is not clear and in our opinion it is unjustifiable. If in this background the High Court examined the matter and arrived at a conclusion one way or the other, we do not think it is necessary for us to interfere with that finding in a proceeding arising under Article 136 of the Constitution.
- D** Hence these appeals shall stand dismissed. No costs.

B.S.

Appeals dismissed.