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UNION OF INDIA

v.

M/S SHATABADI TRADING AND INVESTMENT
PVT. LTD. AND ORS

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AUGUST 10, 2001

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

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Income Tax Act, 1961—Chapter XX-C—Section 269UD—Order of acquisition of property by Appropriate Authority—Writ Petition filed against the Order before High Court challenging valuation of property—High Court granting interim order of stay—Special Leave Petition filed before Supreme Court by Union of India—Supreme Court directing auction of the property—Sale of property to highest bidder and confirmation by Supreme Court—High Court allowing the Writ Petition holding valuation of the property by the

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Authority as illegal, irrational or arbitrary—Validity of—Held, basis of valuation cannot be decided in a writ petition—Hence interference by High Court not justified—Article 226—Constitution of India.

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An agreement for transfer of an immovable property was entered into by parties for an apparent consideration of Rs. 1.75 crores. The parties filed a statement in Form 37-I with Appropriate Authority for issuance of 'No objection certificate' under the provisions of the Income Tax Act, 1961. The Authority, without issuing a show-cause notice, made an order for the purchase of the property by Central Government under Section 269UD of the Act. A Writ Petition was filed by the parties before High Court against the order of the Authority. The High Court allowed the Writ Petition on the ground that no show-cause notice was issued by the Authority in the light of the decision of this Court in *C.B. Gautam v. Union of India*, [1993] 1 SCC 78.

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Subsequently, the Authority issued a show-cause notice for the purchase of the property under the Act as the fair market value of the property is 160% above the apparent consideration stated in Form 37-I. The parties, not accepting the basis of valuation of the property by the Authority, contended that the conclusions of the Authority are *mala fide*, arbitrary and discriminatory resulting in deliberate adoption of a wrong method of determining fair market value of the property. The Authority rejected the contentions raised by the parties and passed an order for acquisition of the

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property.

A Writ Petition was filed before the High Court challenging the order of acquisition by the Authority. The High Court admitted the writ petition and granted an interim order of stay restraining the Authority to proceed further. Against the interim order, petitioner-Union of India filed a Special Leave Petition before this Court. During the pendency of the proceedings, an order was made by this Court to auction the property subject to bid confirmation by this Court. Auction was held and the highest bidder of the property offered Rs. 4.01 crores. Permission was sought by the Authority for confirmation of the same. The parties contended that the auction was a farce and stage-managed by the Authority in collusion with the highest bidder and that the Writ Petition filed before the High Court was pending. However this Court rejected the contentions of the parties and confirmed the bid. A sale deed was executed by the Appropriate Authority in favour of the highest bidders. The original transferor received a sum of Rs. 1.75 crores with interest without any protest. Subsequently, the High Court allowed the Writ Petition holding that, the valuation of the property by the Authority was illegal, irrational or arbitrary. Hence the appeal by the Union of India.

Allowing the appeals, the Court

HELD : 1.1 On materials, if two views are possible, it would not be possible for the High Court to substitute its conclusion for that of the Tribunal. It is trite to say that the proceedings arising under Article 226 of the Constitution is in the nature of judicial review and such review could be only in respect of the process of decision and not the decision itself. In the case on hand, the Appropriate Authority had adopted the comparison of the market sales approach considering the location of the property. The approach of the High Court, that in cases where the property is a tenanted property and is being sold the Department cannot adopt the stand of invoking the provisions of Chapter XX-C of the Act, is not correct. Having given due deductions towards tenancy arising in respect of the property and on comparison with similar properties situated elsewhere though not tenanted but after discounting for the tenancy if mode of valuation is adopted by the Department, the High Court could not have termed the same as illegal, irrational or arbitrary.

[422-D, E, F]

1.2 The basis of the valuation had been disclosed to the party concerned in the show cause notice in sufficient detail. Even if other records such as the valuation reports were not disclosed or made available, it may

A not affect the decision itself. The non-supply of the valuation report itself may not be vital to the case. For in this case the Department has given the details of the report in the show cause notice itself which was issued and other materials having been made available to the party concerned, there is no justification for the High Court to interfere with the same on that ground.

B [422-G]

B 1.3. Examination of the facts, materials and the valuation report of the Appropriate Authority by the High Court to come to the conclusion that the comparisons made were wrong or otherwise is not the procedure to be adopted as laid down in the decision of this Court in *Appropriate Authority and Anr. v. Sudha Patil (Smt.) and Anr.*, [1998] 8 SCC 2371. Thus, the order made by the High Court needs to be set aside. [422-A, B]

D 1.4. This Court having allowed the auction of the property and confirming the same and that order having become final, setting aside the order of the Appropriate Authority now and permitting the parties to work out in appropriate proceedings for restitution of the property would lead to serious anomalous position. When the transferor without demur allowed the property to be sold pursuant to the order of this Court and that sale having taken place and this Court having affirmed the same and the Special leave Petition having become infructuous, the High Court could not have brushed aside that sale in the manner it has been done. The impact of such a decision ought to have been taken note of by the High Court. [423-D, E, F]

Appropriate Authority and Anr. v. Sudha Patil (Smt.) and Anr., [1998] 8 SCC 237, relied on.

F *C.B. Gautam v. Union of India*, [1993] 1 SCC 78 and *K. Basavarajappa v. Tax Recovery Commissioner, Bangalore and Ors.*, [1996] 11 SCC 632, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6054-55 of 1998.

G From the Judgment and Order dated 17.12.97 of the Delhi High Court in C.W. No. 4153/93 and C.M. No. 3199 of 1994.

Dr. Gauri Shankar, T.L.V. Iyer, Ranbir Chandra, Ashok K. Srivastava, B.V. Balramdas and Ms. Sushma Suri for the Appellants.

H Dr. Rajeev Dhawan, L.R. Gupta, Dr. A.M. Singhvi, Ashok Mathur,

P.K. Bansal and K.S. Rana for the Respondents. A

The Judgment of the Court was delivered by

RAJENDRA BABU, J. In respect of property comprised in 25, Friends Colony West, New Delhi [hereinafter referred to as 'the subject property'], an agreement was entered into to sell for a consideration of Rs. 1.75 crores on 1.2.1991. On 4.2.1991, the intended seller and the purchaser filed Form 37-1 for issuance of 'No Objection Certificate'. However, on 18.4.1991, a purchase order was passed by the Appropriate Authority and on the same day, the owner of the land was directed to surrender the possession of the subject property. In that regard, a writ petition was preferred before the High Court and on March 1, 1993, that writ petition was allowed in the light of the decision of this Court in *C.B. Gautam v. Union of India*, [1993] 1 SCC 78. Subsequent to the decision in the said writ petition decided by the High Court a show cause notice had been issued disclosing the following facts: B C

"In the case of subject property, the apparent consideration is Rs. 1,75,00,000. The plot area is 3595.32 sq. mts. including 830.95 sq. mts. Declared as excess land under ULCR Act. The net plot area comes to Rs. 3595.32-830.95 = 2764.37 sq. mts. If salvage value of Rs. 1, 64, 445 is considered, the achieved land date works out to Rs. 1,75,00,000-1,64,445=1,73,35,555 divided by 2764.37=6271 per sq. metr. We may compare the sale instance of property at 60, Friends Colony (East) which was agreed to be sold on December 5, 1990 for apparent consideration of Rs. 2.65 crores. If the depreciated value of structure of sale instance is taken at Rs. 11,60,000 the land rate per sq. mtr. works out of Rs. 2,65,000 (-) 11,60,000=2,53,40,000 divided by 1173.91=Rs. 21,586. If adjustment of account of time gap of Sup+2%, side open + 10%, potential for basement+10% in the sale instance and nearness to railway track -5% and size of plot -5% is taken into account, the rate per sq. mtr. works out to Rs.24,180. This gives land value of subject property as Rs. 2764.37 x 24180=Rs.6.68 crores. In view of the fact that the subject property is tenanted, its value is deferred for 5 years at 8% interest and the present value would work out to Rs. 4.55 crores to which Rs. 1,64,000 salvage value is to be added. This brings value of the subject property to Rs. 4.564 crores which is 160% above the apparent consideration." D E F G

The intended transferor and the transferee raised several contentions before the Appropriate Authority for not proceeding with the said show H

- A cause notice. The principal ground is that the difference between the sale consideration and the fair market value does not exceed 15 percent if the various circumstances surrounding the sale are taken note of. Even assuming that there is such a difference between the apparent sale consideration and the fair market value beyond 15 percent it would not automatically prove that there was an under-valuation so as to attract the provisions of Section 269UD of the Income Tax Act, 1961 [hereinafter referred to as 'the Act']. It was contended that the apparent sale consideration of the property in question is higher than the fair market value if determined by an appropriate norm, method or standard. There were several compelling circumstances set out in the affidavit filed by the transferor which existed under which the property
- C was sold at Rs.1.75 crores considering the best/maximum price he could get for a tenanted property. Even otherwise, the facts would disclose that the transferor sold the property for Rs. 1.75 crores particularly when he was getting a rental income of the property to the extent of Rs. 4,000 per month and he was residing in a tenanted house where he was paying about Rs. 8,000 per month as rent and he had no other house in Delhi and no business premises wherein he could carry on his business and that he was also paying very heavily for more than Rs.14,000 per month as rent for the business premises and was in dire need of finances to carry on his business gainfully and successfully. The transferor had no hope of getting the property vacated from the tenant, Shri Vinod Jain who was very affluent, possessed of great
- E political influence and at whose instance the action to acquire the property has been initiated. It was contended that the sale instances cited in the notice are not comparable properties because the property comprised in 60, Friends Colony is a vacant property and the actual physical and vacant possession of the property was handed over and delivered to the purchaser while the subject property is a tenanted property occupied by a person who cannot be easily evicted. There were dis-similarities between the subject property and the property comprised in 60, Friends Colony and, therefore, the Department ought not to have compared the same. Thereafter they set out a dozen instances where method of valuation adopted was different. It was also contended that the valuation report prepared by the Departmental Valuer is not a *bona fide* one. Thus, it is ultimately submitted that the conclusions of the Department are *mala fide*, arbitrary and discriminatory resulting in deliberate adoption of a wrong method of determining fair market value of the subject property. It was also contended that in the previous purchase order made on 18.4.1991 it was noticed that one Vinod Jain had offered Rs. 4.5 crores and it was made clear that the offer of Bishwanath Traders and Investment Ltd.
- H in the case of the previous purchase order and also now the offer of Vinod

Jain are all bogus and manipulative and a pretext for the Appropriate Authority to acquire the subject property. The Appropriate Authority rejected the various contentions raised by the parties and proceeded to pass an order for acquisition. Challenging the said order on the averments raised before the Appropriate Authority, writ petition was filed before the High Court. A

The High Court admitted the writ petition and granted interim order of stay restraining the Department to proceed further in the matter. Against the said interim order a special leave petition was preferred before this Court. During the pendency of the proceedings before this Court, an order was made on 25.4.1994 directing that the property be auctioned subject to bid confirmation by this Court. Auction was held and Smt. Anju Jain, Mr. Vineet Jain and Mr. Manish Jain as the highest bidders of the property offered their bid at Rs.4.01 crores and permission was sought for confirmation of the same. Various pleadings were raised in those proceedings to the effect that the auction itself was a farce and stage managed by the Appropriate Authority in collusion with Mr. Vinod Jain and the property was purchased by him in the name of his wife and two sons for Rs. 4.01 crores and that if the said bid was allowed it would be a fraud on the Government and public exchequer and the writ petition filed before the High Court challenging the validity of the proceedings initiated under Chapter XX-C were yet to be considered. However, this Court after hearing the matter at length rejected the said objections of the intending purchasers and confirmed the same on 19.9.1994. A sale deed has been executed by the Appropriate Authority in favour of the highest bidders and it is significant to note that the original owner of the property Arjun Anand, respondent No. 9 herein has not challenged the aforesaid impugned order of the Department and in fact without any protest received a sum of Rs.1.75 crores from the department and a further amount of Rs.14,03,500 by way of interest. He had accepted the amount without any protest and has not contested the matter either in the High Court or in this Court and thereafter the said SLP (C) No. 6040 of 1994 filed by the Appropriate Authority along with other connected matters was disposed of as having become infructuous in view of the auction sale held and confirmation thereof by this Court. B
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One of the learned Judges of the High Court [K. Ramamoorthy, J.], apart from referring to the various facts arising in the case, the pleadings, the contentions put forth before the Court, some of the decisions of different High Courts and of this Court on the matter of law, did not specifically deal with the contentions arising in the case on analysis of the facts arising in the matter. As regards the contentions of the impact of the sale that had taken pursuant to the permission granted by this Court, which stood confirmed by H

- A an order of this Court, the learned Judge stated that the same could not come in the way of deciding the writ petition as the order of this Court was made only in proceedings arising in an interlocutory matter. In the other judgment rendered by Sabharwal J., the facts stated earlier have been noticed but does not deal with the matter in the perspective in which the Department has proceeded and on the other hand sits in judgment over the same to find out whether the method of valuation adopted by the Department one way or the other is correct or not. He does not hold one way or the other as to the impact of the order of sale made by this Court.

- C This court in *Appropriate Authority and Anr. v. Sudha Patil (Smt.) and Anr.*, [1998] 8 SCC 237, held that merely because no appeal is provided for against the order of the Appropriate Authority directing the compulsory acquisition by the Government, the supervisory power of the High Court would not get enlarged nor can the High Court exercise an appellate power while examining the correctness of the conclusion arrived at by such tribunal. On the materials, if two views are possible, even then it would not be possible for the High Court to substitute its conclusion for that of the tribunal. It is trite to say that the proceedings arising under Article 226 of the Constitution is in the nature of judicial review and such review could be only in respect of the process of decision and not the decision itself. In the case on hand, the Appropriate Authority had adopted the comparison of the market sales approach considering the location of the property. The approach of the High Court that in cases where the property is a tenanted property and is being sold the Department cannot adopt the stand of invoking the provisions of Chapter XX-C may not be correct. Having given due deductions towards tenancy arising in respect of the property and on comparison with similar properties situated else where though not tenanted but after discounting for the tenancy if mode of valuation is adopted by the Department, the High Court could not have termed the same as illegal, irrational or arbitrary.

- G The basis of the valuation had been disclosed to the party concerned in the show cause notice in sufficient detail. Even if other records such as the valuation reports were not disclosed or made available may not affect the decision itself. The non-supply of the valuation report itself may not be vital to the case. For in this case the Department has given the details of the report in the show cause notice itself which was issued and other materials having been made available to the party concerned, we do not think that there is justification for the High Court to interfere with the same on that ground.

- H The grievance of the petitioners before the High Court was that not one

of the methods but the combination of different methods of valuation such as comparative sales, cost or income or rent or developer's approach should have been adopted. The High Court, in fact, examined the facts, materials and the valuation report of the Appropriate Authority to come to the conclusion that the comparisons made were wrong or otherwise but that was not the procedure to be adopted as indicated in *Sudha Patil's* case [supra]. Thus, the order made by the High Court needs to be set aside.

Though, serious arguments have been advanced by the learned counsel appearing for the parties in this Court as to the mode of valuation, nature of the power under Chapter XX-C of the Act, scope of judicial review, the requirements to be taken note of in the valuation and large number of decisions are referred to, we do not think, there is any need for us to advert to the same for the principles stated therein are identical to what we have stated in the course of this order.

There is one other factor which is very significant, namely, that this Court having allowed the auction of the property in question ending confirmation of the same and that order having become final, now to allow the order made by the Appropriate Authority to be set aside and to permit the parties to work out in appropriate proceedings for restitution of the property would lead to serious anomalous position. When the transferor without demur allowed the property to be sold pursuant to the orders of this Court and that sale having taken place and this Court having affirmed the same and the proceedings by way of SLP filed under Article 136 of the Constitution coming to an end as having become infructuous, the High Court could not have brushed aside that sale in the manner it has been done. The impact of such decision ought to have taken note of by the High Court. Indeed in *K. Basavarajappa v. Tax Recovery Commissioner, Bangalore and Ors.*, [1996] 11 SCC 632, this Court has held that an agreement to sell creates no interest in the property and in the absence of a decree of specific performance of an agreement even though authorised by the general power of attorney holder of the original owner of the property had no *locus standi* to move an application for setting aside the auction-sale on offer to deposit full tax dues. If we extend the said principle to the present facts, we find it hardly possible to come to the conclusion the High Court has arrived at. It is possible that the writ proceedings were still pending before the High Court but those writ proceedings were not at the instance of the owner of the subject property and the agreement holder did not have any interest other than that was indicated in the *K. Basavarajappa's* case [supra]. In that view

A of the matter, we do not think the High Court should have ignored the effect of the same.

For the aforesaid reasons, we allow these appeals, set aside the order made by the High Court restore that of the Appropriate Authority in the proceedings arising under Chapter XX-C of the Act. No costs.

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Appeals allowed.