

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 524/1995**

% **Reserved on : 11th November, 2011.**
Date of Decision 5th January, 2012.

RAGHBIR SINGH Petitioner
Through : Mr. M S Syali, Sr. Adv. with
Mr. V K Tandon and Mr. Mayank
Nagi, Advs.

versus

APPROPRIATE AUTHORITY I.T.DEPTT. Respondent
Through: Mr. Rakesh Khanna with
Mr. Mannmohit K Puri, Advs. for
Mr. Anand Mehta and Mr. Deepak
Mehta-Auction Purchasers/
Interveners

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

R.V. EASWAR, J.:

The facts leading up to the filing of the writ petition are as follows.
The petitioner is one Raghbir Singh of 302-R, Model Town, Ludhiana-II.
He was desirous of acquiring residential property in Delhi on ownership
basis and accordingly approached respondent Nos. 3 to 9, who are Smt.

Vidyawati, wife of late Shiv Saran Das and their six sons. Vidya Wati owned the property at No.27, Bazar Lane, Bengali Market, New Delhi. She had acquired the property under a registered gift deed in October, 1950. The petitioner negotiated with Vidyawati and her sons for the purchase of the property. As a result of the negotiations, the petitioner is stated to have agreed to purchase the rights, title and interest in the whole of the terrace floor with mumty over the ground floor in the residential building owned by Vidyawati. These rights were to be acquired by him together with 50% undivided share in the plot of land underneath the building. The total consideration was Rs. 3,25,000/-. An agreement to sell was accordingly entered into on 11.7.1992 between the petitioner on the one hand and Vidyawati and her sons on the other.

2. The petitioner thereafter paid the consideration of Rs.3,25,000/- undertaken to be paid by him to Vidyawati. It is claimed that she delivered vacant possession of the terrace floor in part performance of the agreement and undertook to execute and register the sale deed in favour of the petitioner and also to obtain all requisite permissions from the authorities. It is alleged that there was some delay by Vidyawati in discharging her obligations under the agreement to sell. At one point of time it appears that Vidyawati and her sons had offered to sell the entire property to the petitioner for a total consideration of Rs.53,50,000/-. However, this did not materialise. Instead, Vidyawati offered the rear side portion of the premises to the petitioner for a total consideration of

Rs.7.50 lacs. This, it is stated, was accepted by the petitioner who paid Rs.3,00,000/- to the Vidyawati who also acknowledged the same.

3. The petitioner submits that the agreement to sell the rear portion of the premises was not honoured by the Vidyawati who it is alleged to have avoided performing their part of the contract and, therefore, the petitioner was forced to file a suit on 19.5.1993 before this Court (suit No.1209/1993) against Vidyawati and others for a perpetual and mandatory injunction against them.

4. It is now necessary to refer in brief to the various orders passed by the Court in the suit for the sake of completeness. The Court was pleased to direct status quo of the property to be maintained by order passed on 24.5.1993. On 10.12.1993 another order was passed restraining the defendants therein from entering into any agreement to sell or negotiate for transfer or alienation of the property or creation of any third party interest therein. After the above order was passed, it is stated that Vidyawati and her sons approached the petitioner for an amicable settlement of the disputes and accordingly on 04.02.1994 the suit was decreed taking the settlement on record. According to the said settlement, Vidyawati agreed to sell the entire property for Rs.56.50 lacs, subject to adjustment of the amount of Rs.9.25 lakhs already paid by the petitioner. The parties, i.e. the petitioner and Vidyawati, were directed to obtain clearances from the L&DO and Income Tax Department. The parties were directed to complete all the above arrangements within the next 7

days. Another order was passed by this Court on 04.03.1994 again taking on record the settlement between the parties and giving some further directions for moving the authorities for necessary permissions etc. and for depositing the purchase price in the court.

5. In terms of the order dated 04.03.1994 of the Court in the aforesaid suit the petitioner filed an application on 20.5.1994 before the appropriate authority constituted under Chapter XX-C of the Income Tax Act, 1961 (Act for short) in Form No.37-I seeking clearance for the purchase of the property along with the agreement to sell dated 10.5.1994. In the meantime, Vidyawati had moved an appeal before a Division Bench of this Court against the order passed by the Single Judge on 10.12.1993. After noticing the course of events and the various negotiations and settlements agreed upon between the parties the Division Bench dismissed the appeal by order dated 28.04.1994. Vidyawati then filed an application before the Single Judge under Sections 152 and 153 of the CPC and in the course of the proceedings before the learned Single Judge submitted that the agreement to sell between them and the petitioner had been executed, that the provisions of Chapter XX-C of the Act were complied with and the permission to sell the property was expected to be received within two months. They also stated that public notice regarding the loss of original title deed in respect of the property had already been issued. Thus, the litigation between the parties came to an end.

6. As already noted, on 20.5.1994, a statement to the appropriate authority was filed in Form-37 I under Section 269 UC of the Act by the petitioner. The statement was also signed by the transferors namely, Vidyawati and her children. In the statement the “apparent consideration” for transfer of the property was shown at Rs.56,50,000/-. On 8th August, 1994, the appropriate authority issued show cause notice under Section 269UD(1A) of the Act to the petitioner and the transferors. In the notice the appropriate authority observed that the apparent consideration appeared to be understated. The opinion of the appropriate authority that the apparent consideration appeared to be understated, was based on a sale instance of property at No.20, Hanuman Road, New Delhi measuring 493.40 sq.mts, which was sold for Rs.1,60,00,000/- as per agreement dated 14.3.1993. The appropriate authority in the show cause notice made adjustments to the sale price fixed by the sale instance for time gap of 14 months and for FAR and arrived at the fair market value of the subject property at Rs.73,72,000/-. It was pointed out to the parties that this figure is 30.47 % above the apparent consideration of Rs.56,50,000/- for the subject property. The parties were therefore, given an opportunity of being heard and to show cause why a pre-emptive purchase order under Section 269 UD(1) of the Act shall not be passed. The parties were also directed to produce the original title deeds of the property together with photocopies thereof for verification and return.

7. The aforesaid show cause notice could not be served on the petitioner and was returned unserved by the postal authorities with the

remarks that the premises of the petitioner mentioned in form no.37I were always found locked. Attempts were, therefore, made by the appropriate authority to trace the petitioner and finally the petitioner was served the show cause notice as well as summons under Section 131 of the Act in room No.811 of Park Hotel, Parliament Street, New Delhi.

8. On the appointed date namely, 23rd August, 1994, the petitioner appeared before the appropriate authority and filed the requisite documents along with a copy of the newspaper advertisement dated 5.5.1994 issued as per the directions of the Court on 3.5.1994 in IA 2680/1993 in suit No.1209/1993. The petitioner, beyond narrating the facts, which have been mentioned in the preceding paragraphs and informing the appropriate authority about the loss of the original title deeds to the property, did not make any submission on merits regarding the under-statement of the apparent consideration for the subject property.

9. On 26.8.1994 the appropriate authority passed an order under Section 269 UD(1) of the Income Tax Act. According to the appropriate authority the sale consideration of Rs.56,50,000/- did not represent the fair market value of the property and was too low. They referred to a similar property located at No.20, Hanuman Road, New Delhi which was sold for Rs.1,60,000,00/- on 14.3.1993 and observed that after making appropriate adjustments to the same for time difference and FAR, the fair market the value of the property at No.27, Bazar Lane, Bengali Market, New Delhi came to Rs.73,72,495/- as against the sale consideration of

Rs.56,50,000/- and since the difference between these two figures was 30.48%, the conditions of Section 269UD were satisfied. Accordingly, the appropriate authority ordered the purchase of the property for an amount equal to the sale consideration stated in the document.

10. On receipt of the order passed by the appropriate authority under Section 269 UD(1), the petitioner moved an application dated 13.9.1994 before the said authority under Section 269 UJ of the Act which provides for rectification of mistakes apparent from the record in the order of the appropriate authority. There was also another application filed by him before the appropriate authority pointing out certain errors in the application of the value of the property in the order passed under Section 269 UD(1). This application appears to have been received in the office of the appropriate authority on 21.9.1994. The application itself is not dated. The application dated 13.9.1994 and the application received by the appropriate authority on 21.9.1994 are respectively marked as Annexures C5 and C6 to the writ petition.

11. In the rectification applications, the assessee raised various contentions against the findings recorded by the appropriate authority under Section 269 UD(1) in the order dated 26.8.1994. He charged the appropriate authority of having passed the order in a hurried manner without verifying the facts, which allegedly had given rise to a number of mistakes apparent from the record. He alleged that he had orally requested the appropriate authority to adjourn the hearing to enable

him to produce the requisite papers but the adjournment was unjustly refused. He referred to the litigation between him and the transferors of the property and stated that the date of the agreement to sell of the property should be taken as 4th June, 1992 and not 10th May, 1994 as taken by the appropriate authority and if the date is so taken, there would be a time gap of 23 months for which an appropriate deduction should be given in determining the fair market value of the property. He pointed out that there were several transferors and therefore a rebate of 15 % should have been allowed by the appropriate authority. The petitioner also questioned the comparable sale instance of Hanuman Road property brought on record by the appropriate authority and submitted that the subject property and the sale instance were not comparable at all as they were located in different places which were not comparable at all. It was claimed that a further deduction of 15% for the situation and potentiality difference in respect of both the properties should have been given. It was claimed that if the valuation of the subject property is made on the basis pointed out by the petitioner, the fair market value would be Rs.43,28,887/- as against the apparent consideration of Rs.56,50,000/- and thus Chapter XX-C of the Act would not apply.

12. Another letter is stated to have been filed with the appropriate authority on 21.9.1994 which in substance raised the same contentions as the earlier letter dated 13.9.1994.

13. The appropriate authority considered the claims raised by the petitioner in the aforesaid two letters and after giving the transferors as well as the petitioner an opportunity of being heard on 6.10.1994 held that there was nothing on record to suggest that there was an agreement to sell entered into between the parties in June, 1992 for the purchase of the entire property for Rs.56,50,000/-, and even assuming that there was such an agreement, it was never acted upon and was superseded by another agreement to sell dated 11th July, 1992 for the transfer of the terrace floor only. It was held that merely because the assessee had claimed to have paid Rs.9,25,000/- up to 14.11.1992, it does not go to prove conclusively that there was any agreement to sell for the entire property in June, 1992. It was pointed out by the appropriate authority that the reason for the petitioner making a payment of Rs.3,00,000/- in cash to the transferors on 4.6.1992 was not known. As regards the claim of the petitioner for deduction of 15% from the value arrived at by the appropriate authority on account of situation and potentiality differences and another 15% for litigation and title defects, the appropriate authority held that these claims cannot be accepted because they were not made in the course of hearing before the order under Section 269 UD was passed. It was held that in any case the pre-emptive purchase order cannot be rectified on the basis of such contentions which were not made before the order was passed. As regards the claim for deduction of 23% on account of time gap, the same was rejected on the ground that according to the appropriate authority there was no subsisting agreement dated 19th Jun, 1992 to sell the entire

property. The appropriate authority also rejected the calculations of the petitioner, which showed the fair market value of the property at Rs.43,28,887/-. For these reasons the rectification applications filed by the petitioner were rejected. This order was passed by the appropriate authority on 19.12.1994.

14. The property which got vested in the Central Government by virtue of the order passed under Section 269 UD(1) was subsequently auctioned on 15.1.1995 for Rs.1,40,00,000/- even though the reserve price had been fixed at Rs.65 lacs, less than 50% of the price fetched in the auction.

15. The arguments of Mr. Syali, learned counsel appearing for the petitioner can be summarized as under:-

(a) The appropriate authority, in passing the order under Section 269 UD(1) of the Act, has ignored the encumbrances, suits and disputes with regard to the property and has proceeded to determine the value thereof at a high figure of Rs.73,72,495/- as against the apparent consideration of Rs.56,50,000/-;

(b) No title deeds to the property are available, which fact has not been taken note of by the appropriate authority. As held by the Madras High Court in *Ashok Leyland Finance Ltd. v. Appropriate Authority, Income-Tax Department and Another*, (2007) 289 ITR 61 (Mad) at page 70, the absence of the title deeds to the property depresses its value;

(c) The appropriate authority has wrongly compared the subject property with the property located at No.20, Hanuman Road, New Delhi. The comparable property is located in a residential area, whereas the subject property is located in a commercial area and that too near the railway track. The properties, considering their widely different locations, cannot be compared;

(d) There are 9 transferors involved in the property and this makes negotiations and agreements between them more difficult which is also a negative factor to be taken into account, but ignored by the appropriate authority;

(e) In the case of *C.B.Gautam v. Union of India*, (1993) 199 ITR 530 it was held by the Supreme Court that there has to be a finding of understatement of the sale consideration and the said finding should be recorded in order to justify the pre-emptive purchase of the property under Chapter XXC of the Act. There is no such finding of understatement in the present case. The impugned order is bad in law for this reason alone.

16. On behalf of the appropriate authority and the Income Tax Department who are respondent Nos. 1 and 2 in the writ petition, it was contended by the learned standing counsel that in **C.B.Gautam's case (supra)** the Supreme Court only envisaged an opportunity to be given to the parties likely to be affected by the preemptive purchase and it was not laid down that it was incumbent upon the appropriate authority to show, as a fact, that there was understatement of the sale consideration. The

submission, therefore, is that the absence of a definite finding of understatement of the sale consideration in the impugned order does not make it bad in law. Our attention was drawn to the fact that the bid amount in respect of the property was as high as Rs.1,40,00,000/- on January, 1995 which was more than double the reserve price of Rs.65 lacs fixed by the Income Tax Department while auctioning the property, which itself was indicative of the fact that the apparent consideration was way below the real consideration. It was further submitted by the learned standing counsel that the appropriate authority was quite aware of the fact that the original title deeds in respect of the subject property were not available with the respondent Nos. 3 to 9 as can be seen from the fact that the petitioner was called upon to produce them before the appropriate authority by summons dated 18.8.1994 issued under Section 131 of the Act. The suggestion was that while responding to the summons the petitioner would have certainly pointed out to the appropriate authority that the original title deeds to the subject property were not available. It cannot, therefore, be stated, according to the learned standing counsel, that the impugned order was passed without being aware of the fact that the original title deeds to the property were not available. According to the learned standing counsel due opportunity has been given to the petitioner to make all submissions and representations with regard to the factors which would affect the value of the property.

17. The auction purchaser has sought to intervene in the present proceedings and has filed CM No.5420/1995. In the absence of any

objections from the petitioner or the first two respondents we have allowed the application. Accordingly, the learned counsel for the auction purchaser was also permitted to make his submissions. He submitted that the impugned order should not be disturbed or varied in any manner since he has purchased the property in the auction by bidding the highest price of Rs.1,40,00,000/-. The huge difference between the two considerations is highlighted. It is submitted that understatement is apparent. He also submitted that there is uncertainty in his enjoying the property which should not be permitted to linger further and since equity was in his favour, the impugned order should be upheld.

18. Before we proceed to consider the arguments, we may mention that the petitioner and the auction purchaser made an attempt, with the permission of the Court, to settle the matters through mediation. However, after some attempts it was reported to us that they failed and the parties could not reach any consensus.

19. On a careful consideration of the matter in the light of the facts and the rival contentions, we are not able to accept the submissions of the petitioner. The first contention of Mr. Syali, ld. senior counsel for the petitioner, that the appropriate authority has ignored the encumbrances, suits and disputes with regard to the subject property while determining the fair market value thereof at the figure of Rs.73,72,495/- is without merit. It has to be noted that the disputes and suits in this case were between the transferors and the petitioner, to which we have made a brief

reference earlier. The disputes and suits were not between the transferors and third parties. Mr. Syali's contention could have possibly been accepted if the disputes were between the transferors and third parties with regard to the subject property and the petitioner had come forward to purchase the property despite such disputes and suits. In that case it was possible for the petitioner to contend that such pending disputes and suits had a depressing effect on the fair market value of the property. The position, however, is that the disputes are only between the transferor and transferee, which were ultimately settled and the petitioner purchased the entire property for Rs.56,50,000/-. Therefore, the contention of Mr. Syali is not acceptable. The fair market value of the subject property, which was determined by the appropriate authority in the impugned order at Rs.73,72,495/- was therefore rightly determined as the value for a property which was free from any disputes or suits. The appropriate authority was not wrong in not giving any reduction in the fair market value of the property on account of the so-called disputes and suits.

20. The second contention of Mr. Syali that the original title deed to the property conveying the same to Smt. Vidyawati under a gift deed dated 1.4.1950, said to have been registered on 14.9.1950, was not available and the absence of the original title deed would depress the value of the subject property is also not acceptable. It is observed from the impugned order that the appropriate authority was quite aware that the original title deed to the property was not available with the transferors. The appropriate authority has recorded towards the end of para 2 of the

impugned order that they were informed about the loss of the original title deed to the subject property and the issue of a public notice in the newspaper on 5.5.1994 regarding the loss of the original title deed as directed by this Court on 3.5.1994 in IA no.2680/93 in Suit No.1209/93. No claim was made or dispute raised by any person on the subject property in response to the notice in the newspaper. The order of the appropriate authority was passed on 26.8.1994. In a period of three months, there was no claim made by any person to the subject property in response to the notice given in the newspaper. Therefore, the loss of the original title deed to the property, on the facts of the present case, cannot be said to have had any adverse impact on the fair market value of the property. In these circumstances, the judgment of the Madras High Court in *Ashok Leyland Finance Ltd.* (supra) is not applicable.

21. The third submission that the property was located near the railway track and therefore, it did not command such a high market value as was determined by the appropriate authority is also without merit. In fact, it could with equal force be argued that nearness to the railway station is an advantage. Be that as it may, what particular disadvantage the property was put to because of the nearness of the railway track has not been made clear by the petitioner. The only objection is that the noise caused by the frequent passing of the trains will have an impact on the fair market value of the subject property. But that would be minimal and would perhaps be outweighed by various other advantages which the subject property may be enjoying. In any case, the disadvantage, if any, caused by the nearness

to the railway track, in our opinion would have only very minimal effect, if at all, on the fair market value of the property. It cannot be to such an extent that the fair market value determined by the appropriate authority can be said to be wholly arbitrary. This contention of the petitioner is also rejected.

22. The fourth submission that there were nine transferors involved in the property which made negotiations and agreements with them more difficult is a limb of the first argument to the effect that there were various encumbrances, suits and disputes between the transferors and the petitioner with regard to the subject property. Since we have found no merit in the first argument of the petitioner, this limb of the argument also is rejected.

23. The last contention of Mr. Syali that *C B Gautam*'s case (supra) requires that the appropriate authority should record a finding of understatement of the sale consideration in order to justify the pre-emptive purchase of the property is also without merit. We have carefully perused the judgment. We do not find therein any requirement laid down that the appropriate authority must establish or must record a finding of actual understatement of the sale consideration before proceeding to effect pre-emptive purchase of the property in the sense that money should have been paid under the table. The Supreme Court did refer to the reason behind introducing the provisions of Chapter XX-C of the Income Tax Act. It was only stated that the provisions of the said Chapter can be

resorted to where there is a significant undervaluation of the property to the extent of 15% or more in the agreement of sale, as evidenced by the apparent consideration being lower than the fair market value by 15% or more. In the show cause notice issued on 8th August, 1994, the appropriate authority has informed the petitioner about the sale instance of No.20, Hanuman Road, New Delhi, which according to the authority was comparable to the subject property and has pointed out to the petitioner that after adjustments made on account of time gap and FAR, the fair market value of the subject property should be Rs.73,72,000/- which is more than the apparent consideration of Rs.56,50,000/- by 30.47%. On this basis the petitioner was informed that the appropriate authority has come to a tentative conclusion that the apparent consideration for the subject property appears to be understated. Thus a prima facie case of understatement of the true sale consideration was made out. This in our opinion would meet the requirements of the judgment of the Supreme Court cited above. In the pre-emptive purchase order passed on 26th August, 1994, the appropriate authority has observed in paragraph 4 that the apparent consideration of Rs.56,50,000/- shown in the agreement to sell dated 10.5.1994 in respect of the subject property is understated. The petitioner, even though he appeared before the appropriate authority in response to the show cause notice, did not make any submission on merits regarding the under-statement of the apparent consideration in respect of the subject property despite being informed of the sale instance on which the appropriate authority proposed to rely. The petitioner has not thus

made any attempt to rebut the allegation of under-statement of the sale consideration. Although a presumption of an attempt to evade tax may be raised by the appropriate authority concerned in a case where the aforesaid circumstances are established, it was held in *Gautam's case* (supra) that such a assumption is rebuttable and it would necessarily imply that the intending purchaser and the intending seller must be given an opportunity to show cause as to why such a assumption should not be drawn. In our understanding of the judgment, what is required to be done by the appropriate authority is to indicate the circumstances which could give rise to the assumption that there was an understatement of the sale consideration in the document of sale due to difference in the valuation and the apparent sale consideration. Thereafter, it is incumbent upon the appropriate authority to give an opportunity to the concerned parties to rebut and after explanation/justification. It is also incumbent upon the appropriate authority to consider all the objections raised by the concerned parties and dispose them of fairly and in the true spirit of the principles of natural justice. But it appears to us that ***C B Gautam's case*** (supra) did not require that the appropriate authority should record a definite or positive finding that there was actual under-statement of the true sale consideration in the document of sale (i.e. payment of unaccounted for money) before proceedings could be taken under Chapter XX-C of the Act. The appropriate authority in the present case has complied with all the directions issued by the Supreme Court in ***Gautam's case*** (supra). The petitioner has been given full liberty of rebutting the

allegation of under-statement of the apparent consideration. He has been informed of the sale instance and how that is proposed to be compared with the apparent consideration in respect of the subject property. The petitioner has not, however, made any effort before the appropriate authority, in the proceedings before the said authority, to make submissions on merits and to rebut the allegation. Therefore the presumption has been rightly drawn about understatement . This aspect of the matter has been clearly noticed in the end of para 2 of the order for pre-emptive purchase.

24. In the present case, the impugned order of the appropriate authority has compared the subject property with a sale instance of a property located at 20, Hanuman Road, New Delhi. That property was sold as per agreement dated 14.3.1993 for an apparent consideration of Rs.1,60,00,000/-. It measured 493.40 sq.mts. The subject property was on a plot area of 177.67 sq.mts. Mr. Syali submitted in the course of his arguments that the subject property was much smaller in area than the sale instance brought in by the appropriate authority and was therefore not comparable. Normally it is true that properties measuring a larger area command a lesser value than properties measuring a smaller area, but the sale instance cited by the appropriate authority, though of a large size, has been shown to have commanded a price of Rs.32,322.45 per sq.mts. Therefore, there is no need to pursue the line of argument adopted by Mr. Syali further. The appropriate authority has also made due adjustments on account of the time gap for 14 months between the sale instance, which

was on 14.3.1993 and the date of sale of the subject property, which was 10.5.1994. After making suitable adjustments for the time gap and for FAR, the land rate was calculated at Rs.41,372.74 sq.mts for the subject property. This gave a fair market value of Rs.73,50,695/- for the subject property, applying the said rate to 177.67 sq.mts. After making minor adjustments for the salvage value, the fair market value of the subject property was taken at Rs.73,72,495/-, which was higher than the apparent sale consideration by 30.48%. It was only after establishing these facts that the transferors and the petitioner were given an opportunity of hearing as envisaged in *C B Gautam*'s case (supra). There was thus full compliance with the requirements laid down in the aforesaid judgment both substantively and procedurally. The objections raised by the petitioner in the course of the hearing before the appropriate authority have also been considered by them fairly and objectively.

25. In the course of his submissions Mr. Syali, learned counsel for the petitioner drew our attention to the snapshots depicting the location of the property under consideration in Bengali Market and the sale instance of property No.2, Hanuman Road, New Delhi, which was relied upon by the appropriate authority and submitted that they are quite far from each other and cannot be really compared. We have seen the snapshots compiled in the paper book. We do not think that there is much force in the submission. The subject property is situated in Bengali Market and the sale instance cited by the appropriate authority is situated in Hanuman Road. They appear to be located in substantially comparable locations,

both having quick access to Connaught Place, schools, commercial areas, markets, etc. It may be true that the distance between the two locations is about 2.5 kms but that by itself cannot make the properties non-comparable. In considering the question whether two properties are comparable, it is not inappropriate to accord more weightage to the fact that both have easy and quick access to what is generally perceived to be major conveniences for everyday living, especially in metropolitan cities like Delhi. The petitioner has not been able to show any major disadvantages which the subject property was facing, as compared to the sale instance cited by the appropriate authority. The petitioner has also not been able to bring on record any sale instance in the vicinity of the subject property. In these circumstances, the appropriate authority cannot be said to have committed any serious error in relying upon sale instance at Hanuman Road and in applying due adjustments for time gap of 14 months and for FAR. No better method of valuation has been suggested on behalf of the petitioner. What has been disapproved by the Supreme Court in *Appropriate Authority and Anr. Vs. Kailash Suneja and Anr.* (2001) 251 ITR 1 is the discriminatory treatment given to different persons by the appropriate authority in the matter of valuation of the properties without adopting a uniform method in respect of properties which were subject to similar encumbrances. The Supreme Court also disapproved of the procedure adopted by the appropriate authority in adopting different methods of valuation in respect of properties which

were subject to similar disadvantages or which were similarly placed. On the facts of the present case, this judgment does not apply.

26. Even if it is accepted that the appropriate authority is wrong in estimating 1% per month as the increase in the value of the property and in making an upward adjustment of 14% for the time gap of 14 months between the date of sale of the sale instance and the date of sale of the subject property, all that can be said is only that the assumption of increase in the market value of 1% per month is too high. It cannot be said that between March, 1993 and May, 1994 there could have been no increase at all in the market value of the properties in Delhi and more particularly in the prime and upmarket Bengali Market area. So far as the adjustment for FAR is concerned, this is a factor which every purchaser of property would take into consideration for the purpose of assessing the potential of the property. Even while fixing the sale price, it is not uncommon for the sellers of immovable properties in metropolitan cities to fix the reserve price in such a manner that it takes into account the FAR potential. Land is scarce and is limited in supply. In metropolitan cities such as Delhi, the pressure on land is very high. No willing buyer or willing seller of vacant land or land with existing building thereon would ignore the FAR potential of the land. Prices are fixed accordingly and this home-truth cannot be ignored while estimating the fair market value of the properties. In any case, what can at best be said against the adjustments made by the appropriate authority for the time gap of 14 months and for FAR is that they are too high or unrealistic, but it can

never be said that such adjustments cannot at all be made. Therefore, even if there is some excessiveness in making such adjustments which may merit some moderation/reduction, still the gap of 30.48% is too large to be bridged. There is no plausible explanation for such a large gap. We do not see on what basis or material it is contended by the petitioner that the whole gap of 30.48% would get wiped out or shortened to less than 15% even if some downward adjustment is required to be made for the time gap and FAR. We are, therefore, unable to hold that the allegations of under-statement of the sale consideration has been successfully rebutted by the petitioner.

27. For the aforesaid reasons we are not able to accept the contentions advanced on behalf of the petitioner. Accordingly, the impugned order passed by the appropriate authority on 26.8.1994 under Section 269 UD(1) of the Act is upheld. The writ petition is accordingly dismissed with no order as to costs. All interim orders stand vacated.

(R.V. EASWAR)
JUDGE

(SANJIV KHANNA)
JUDGE

January 05, 2012
mm/vld