IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2786 OF 2008

M/s. Grace Construction .. Petitioner.
Vs.
1. Appropriate Authority Constituted U/s. 269 UB of the Income Tax Act, Ahmedabad & Ors. ..
2. Chief Commissioner of Income Tax-II, Erandwana Karve Road, Pune-04 ..
3. Union of India Aayakar Bhawan, Marine Lines, Mumbai .. Respondents.

Mr.D.S. Mhaispurkar for the Petitioner and for the applicant in CA No.1175/2009 and 1158/2010.
Mr.Sachin Gite for the applicant in CA No.694/2010.
Mr. Sham Walve for the Respondents.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATED : 24TH NOVEMBER, 2017

ORAL JUDGMENT (PER A.S. OKA, J.)

1. Heard learned counsel appearing for the parties.

2. According to the case of the petitioner which is a registered partnership firm, one Mr.Suhas Narayan Deshpande and others were the owners of the property bearing Survey No.54, Hissa No.3 and 4-B admeasuring Section 36 Ares situated at Wanowrie, Pune (for short "the said Act"). According to the case of the petitioner, Mr.Suhas Deshpande and others ("the Original owners") entered into an agreement with the petitioner on 14th December,

1990 by which the right to develop said property was conferred on the petitioner. The consideration agreed was Rs.15,68,000/- out of which the petitioner paid a sum of Rs.2,36,000/-. A Power of Attorney was executed by the original owners on 14th December, 1990 in favour of a partner of the petitioner authorising him to do deeds and things in respect of the property including a power to sell, transfer and assign the right acquired by the petitioner under the said agreement. Even according to the case of the petitioner, the said Shri Suhas Deshpande on 12th January, 1992 terminated the development agreement. On 1st November, 1993 the petitioner entered into an agreement with M/s.Venkatesh and Cold Storage Private Limited by which the petitioner agreed to transfer to M/s.Venkatesh Warehousing and Cold Storage Private Limited the FSI of the said property admeasuring about 35,000 sq. ft. for total consideration of Rs.35,00,000/-. Under the agreement, it was provided that the petitioner will pay a sum of Rs.14,00,000/- to the original owners. The said agreement was subject to no objection certificate of the original owners and clearance of the Income Tax department.

3. After issuing notice, the Appropriate Authority under the Income Tax Act, 1961 (for short “the said Act”) passed an order on 24th February, 1994 in exercise of the powers under Section 269UD(1) of the said Act. The said order was passed on the basis of the agreement dated 1st November, 1993. The Competent

Authority passed an order of purchase of the said property and net consideration was determined at Rs.29,29,919/-. It was observed by the Appropriate Authority that the consideration will be reduced proportionately if FSI was found to be less than 35,000 sq. ft. On 25th February, 1994 the petitioner was called upon by the Appropriate Authority to handover possession of the said property. According to the case of the petitioner, the Income Tax department took over possession of the said property.

4. A suit for declaration was filed by the said Suhas Deshpande in the Court of Civil Judge (Senior Division) Pune for a declaration that he is the owner of the suit property. In view of the dispute as to title, in accordance with sub-section (3) of Section 269UD, the amount of consideration fixed under the order dated 24th February, 1994 was deposited by the Central Government with the Appropriate Authority. The suit filed by the said Suhas Deshpande came to be dismissed on 19th September, 2005. We may note here that the said Suhas Deshpande has filed an application for intervention in this Writ Petition. There is another Civil Application No.694 of 2010 filed by a person claiming to be a transferee from M/s.Venkatesh Warehousing and Cold Storage Private Limited.

5. In this petition, there is no challenge to the order dated 24th February, 1994. The substantive prayers in this petition read

thus :

> *"(a) That this Hon'ble Court be pleased to issue appropriate writ for issuing directions to the Respondents to deliver copy of the declaration to the Petitioners as required under sub-section 2 of Section 269 UD of the said Act and further declare that the purchase of the property vide order dated 24.2.1994 being No.AHD/AA/PN-609/93-94/1601 stands abrogated;*
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> *(b) That the Respondents be directed to deliver possession of the immovable property as acquired by them vide order dated 24.2.1994 being No.AHD/AA/PN-609/93-94/1601;*
>
> *(c) That the Respondents be directed to remove the unauthorized encroacher's of the said property as acquired by them vide order dated 23.2.1994 being No.AHD/AA/PN-609/93-94/1601."*

6. Learned counsel appearing for the petitioner has taken us through the aforesaid order dated 24th February, 1994 and the averments made in the petition. He invited our attention to Section 269 UH of the said Act and in particular first proviso to Sub-section (1) by pointing out that the suit filed by the said Suhas Deshpande was dismissed on 19th September, 2005 and since that date, there

was no dispute about title of the petitioner and therefore, the petitioner ought to have been paid consideration fixed under the said order passed under sub-section (1) of Section 269 UD. He submitted that as a result of the failure to pay the amount to the petitioner, the order under sub-section (1) of Section 269 UD stands abrogated and therefore, the subject property vests in the petitioner. He invited our attention to the decision of the Apex Court in the case of *Jayshree Rajendra Shroff and Others vs. Appropriate Authority, Ahmedabad*[1]. The learned counsel appearing for the petitioner submitted that neither the declaration as contemplated by sub-section (2) of Section 269 UG is issued nor consideration is paid to the petitioner. He submitted that in the meanwhile, there has been an encroachment on the property and that is reason why prayer clause (c) is incorporated inasmuch as it was the responsibility of the Income Tax Department to maintain the property free of encroachments. The learned counsel appearing for the respondents invited our attention to the documents annexed to the affidavit in reply of Smt.Hemlata Balasaheb Palke, Income Tax Officer, Pune. He submitted that from the documents annexed, it is clear that the petitioner has not even a semblance of title apart from the fact that sub-section (2) of Section 269 UD is not applicable. The petitioner is not entitled to any relief. We have also heard submissions of one of the intervenors.

1 JT 2002 (10) SCC 259

7. We have considered the submissions. Even according to the case of the petitioner, he is not claiming to be the owner of the subject property. He is claiming on the basis of an agreement dated 14th December, 1990 and the Power of Attorney executed on the same day. Out of the agreed consideration of Rs.15,68,000/-, the petitioner has admittedly paid only a sum of Rs.2,36,000/- to the original owners. It will be necessary to make a reference to the affidavit in reply and the documents annexed thereto. The documents shows that on 18th December, 1991 the Advocate for the original owners called upon the petitioner to make payment of certain amounts. There is another notice dated 11th July, 1991 issued by the Advocate for the original owners to the petitioner by which the petitioner was called upon to pay entire amount due and payable under the agreement dated 14th December, 1990. There is a further correspondence between the original owners and the petitioner. The last of the notices issued by the Advocate for the original owners is of 12th January, 1992. By the said notice, the petitioner was informed that the agreement executed by the original owners and the power of attorney stands terminated and cancelled.

8. It appears that by an agreement dated 8th March, 2000 executed by the petitioner in favour of one Mr.Dattatraya Mahendra Mahadik, the petitioner agreed to sell the same property to Shri Dattatraya Mahadik for consideration of Rs.40 lakhs. In fact, the

petitioner received a sum of Rs.15 lakhs from Mr.Dattatraya Mahadik.

9. What is important is that the said Dattatraya Mahadik on the basis of a Power of Attorney, executed a registered sale deed dated 12th December, 2008 in favour of one Shri Rajendra Mahadu Shitole. Thus, long before filing of this petition in April 2008, the petitioner had dealt with the said property by executing an agreement for sale on 8th March, 2000 in favour of Dattatraya Mahadik and in fact executed a Power of Attorney in his favour. This aspect is not brought on record by the petitioner in this petition. It is only on the basis of the said Power of Attorney that the said Dattatraya Mahadik had sold the property to one Shri Rajendra Mahadu Shitole by a registered sale deed.

10. Firstly, the petitioner had no title in respect of the property as he is claiming on the basis of an agreement for development executed by the original owners Shri Suhas Deshpande and Others. Whatever title or right he had, is completely lost in the light of execution of the registered conveyance dated 12th December, 2008. The petitioner has no locus to call upon this Court to exercise writ jurisdiction under Article 226 of the Constitution of India. Apart from this fact, we find that there is no abrogation of the order under sub-section (1) of Section 269UD. The prayers made in this petition cannot be entertained at the instance of the petitioner

not only on the ground that he has no right, title or interest in respect of the said property, but he has indulged in suppression of facts. Moreover, after termination of the agreement dated 14th December, 1990 the petitioner has never sought enforcement of the said agreement by filing a civil suit. As noted earlier, one of the original owners by notice dated 12th January, 1992 has purported to terminate the agreement dated 14th December, 1990. Hence no case is made out for interference under the writ jurisdiction of this Court. The petition is dismissed. Rule is discharged. No order as to costs.

(A.K. MENON, J.) **(A.S. OKA, J.)**