* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE T.RAJANI

+ <u>Writ Petition No.3645 of 2002</u>

% 13-9-2017

Smt. K.Sridevi, W/o. K.Muralidhar, Aged: 45 years,
R/o.3-6-643, Himayathnagar, Hyderabad
... Petitioner

Vs.

$ 1. The Union of India, Rep. by its Secretary,
Ministry of Finance, Central Secretariat, New Delhi

2. Chief Commissioner of Income Tax,
Ayakar Bhavan, Basheerbagh, Hyderabad

3. The Appropraite Authority, Income Tax Dept.,
Kendriya Sadan, IV Floor, A-Wing, 17th Main,
2nd Block, Koramangla, Bangalore
... Respondents

! Counsel for Petitioner: Mr. A.V. Krishna Koundinya,
Senior Counsel, representing
Mr. Singam Srinivasa Rao

Counsel for Respondents: Mr. B.Narasimha Sarma,
Senior Standing Counsel

< Gist:

> Head Note:

? Cases referred:
Nil.

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Order: (per V.Ramasubramanian, J.)

The petitioner who offered to sell a vacant land owned by her in Plot No.172, the Jubilee Hills Cooperative House Building Society Limited, to a third party, filed Form 37-I with the Income Tax Department on 10-9-2001. The draft agreement of sale and Form 37-I disclosed the apparent consideration for the sale of the property as Rs.43,20,000/-.

2. On the ground that the property was undervalued, a show cause notice was issued on 02-11-2001 by the Appropriate Authority. The petitioner filed a reply on 08-11-2001.

3. After hearing the petitioner, the Appropriate Authority passed an order on 29-01-2002, ordering the pre-emptive purchase of property under Section 269UD(1) of the Income Tax Act, 1961. Challenging the said order, the petitioner has come up with the above writ petition.

4. The above writ petition was admitted way back on 26-02-2002 and an interim order of suspension was also granted at that time. A period of 15 years has now passed and the provisions of Section 269UD itself have now been scrapped. It is at that time the writ petition has come up for final hearing.

5. Heard Mr. A.V. Krishna Koundinya, learned Senior Counsel for the petitioner and Mr. B.Narasimha Sarma, learned Senior Standing Counsel for the respondents.

6. The total extent of land offered to be sold under Form 37-I, was indicated to be 1200 square yards. Therefore, the Appropriate Authority came to the conclusion that the offer was for the sale of the property at the rate of Rs.3,534/- per square yard.

7. After conducting an inspection by a valuer and taking his report, the Appropriate Authority came to the conclusion that the consideration stated in the draft agreement was lesser by more than 15% of the fair market value and that therefore as per the decision of the Supreme Court in **C.B. Gautam v. Union of India** [*199 ITR 530*], the provisions of Chapter-XXC got attracted and that there was a presumption that the transaction was undertaken with a view to evade tax.

8. But a careful look at the engineer's report on the basis of which the Appropriate Authority came to the conclusion to exercise the power would show that though the petitioner was the owner of the land of the extent of about 1200 sq. yards, the land had lot of disadvantages. The first disadvantage pointed out by the engineer appointed by the Appropriate Authority itself is that the land was "land locked". It appears that the property was land locked on the northern side by a land belonging to the Jubilee Hills Cooperative

House Building Society Limited. In order to provide access to the land of the petitioner, a strip of land of a measurement of 150 feet long and 14 feet width was carved out. If this strip of land left as access to the rear side, which totalled to 233.33 sq. yards was left out, the net land available for construction, even according to the engineer appointed by the Appropriate Authority was 966.67 sq. yards. In other words, nearly 20% of the total extent of land as indicated in the draft agreement of sale, had to be reduced from the total extent actually available for sale and construction.

9. Let us assume for a minute that the fair market value of the entire extent of 1200 sq. yards would be 15% more than the stated market value in the agreement of sale. But even then, seller gets compensated by the reduction in the total extent of the land to the extent of 20%. The Appropriate Authority has gone on the wrong premise that the entire extent of 1200 sq. yards may be available for the benefit of the buyer. But it is not so. A strip of land even according to the engineer, measuring an extent of 233.33 sq. yards could be used only for the purpose of access to the remaining extent of 966.67 sq. yards.

10. The engineer has also indicated in his report that "the plot was low lying and required substantial investment for filling, levelling etc." Again in another column of his report, the engineer has indicated the disadvantages in buying the plot as follows:

> "The plot B located at flange of T-Junction of road which is reported to be undesirable".

11. Therefore, in the light of the above facts, we are of the considered view that the conclusion arrived at by the Appropriate Authority that the stated consideration was lesser by more than 15% of the fair market value, did not take into account the defects pointed out by the engineer. In any case, Chapter-XXC has now been removed from the Act. A period of nearly 16 years has passed from the date of the filing of Form 37-I. It is stated across the Bar that the purchaser, who offered to buy the land and who came up with an application for impleadment, has also now backed out. Therefore, the impugned order cannot be sustained. Hence, the writ petition is allowed and the impugned order is set aside. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

T.RAJANI, J.

13th September, 2017.
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AND
HON'BLE SMT. JUSTICE T.RAJANI

Writ Petition No.3645 of 2002
(per VRS, J.)

13th September, 2017.
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