IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.5125 of 1995 (O&M)
Date of decision : 11.09.2019

Rupinder Kaur Randhawa and another

...... Petitioners

versus

Union of India and others

...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE HARNARESH SINGH GILL

***

Present : Mr. Akshay Bhan, Senior Advocate with
Mr. Akhilesh Barak, Advocate and
Mr. Mukul, Advocate
for the petitioners.

Ms. Urvashi Dugga, Senior Panel Counsel
for the respondents.

***

<u>AJAY TEWARI, J. (Oral)</u>

The petition has been filed challenging the action of the Central Government in taking over the property of the petitioners by way of pre-emptive purchase under **Chapter XX-C, consisting of Sections 269U to 269UO of the Income Tax Act, 1961 (for short 'the Act') as inserted by Finance Act, 1986.**

The brief facts are that apartment No.91, Building 103, DLF Silver Oaks, DLF Qutab Enclave, District Gurgaon, Haryana (hereinafter referred to as Apartment) was allotted to the petitioners by DLF Universal Limited, 1-E. Jhandewalan Extension, New Delhi (hereinafter referred to as DLF) in the year 1991 for a total consideration of Rs.12,08,052/-. Upto September, 1994 the petitioners had paid an amount of

Rs.15,65,584/- to DLF and a sum of Rs.2,98,424/- was pending. On 21.09.1994 the petitioners entered into an agreement to sell with one Shri Iqbal Singh Sood. The relevant clauses of the agreement to sell are quoted herein below :-

> *"WHEREAS the FIRST PARTY is the allottee/owner of Plot/House Flate No.103/91 measuring 2191 Sq.ft. Situated in D-L-F QUTAB ENCLAVE SILVER OKS APP PHASE-I, GURGAON HARYANA and has now agreed to transfer/sell the same to the SECOND PARTY at the rate of Rs.--- per sq. yards/Mtrs, or at the total cost of Rs.1208052. (Rs. Twelve lacs eight thousand fifty two only) on the following terms and conditions :-*
>
> *i. That the FIRST PARTY has received Rs.1,20,000/- (Rs.One Lac Twenty thousand only) as and advance/Earnest Money from the SECOND PARTY in Cash/By Cheque/Draft and the balance price of Rs.1088052 of the said Plot/House shall be paid by the Second Party to the FIRST PARTY at the time of Registration of Sale Deed of the said Plot/House before the concerned Sub-REgistrar.*
>
> *Money returned and Agreement cancelled.*
> *Sd/- I.S.Sood.*
>
> *5. All the expenses in respect of Registration of Sale Deed/Attorney documents, Stamp Duty, Registration Charges and other Misc. expenses shall be borne by the SECOND PARTY.*
>
> *7. The property to be transferred/sold under tlis Agreement is free from all encumberances, sale, mortgage, loan, dispute, litigation, etc. and the FIRST PARTY shall give the peaceful vacant physical possession of the said property to the SECOND PARTY at the time of Registration of Sale Deed. All the outstanding dues such of water, electricity, sewer etc. against the said property shall be*

cleared/paid by the FIRST PARTY upto the date of Registration of Sale Deed."

In terms of Section 269UC the petitioners and the intending purchasers submitted Form 37-I. In this Form the cost of the acquisition was mentioned as follows :-

(ii) Cost of acquisition of the property by the transfer or by the previous owner if the property has been acquired under other modes mentioned above	*PAID AMOUNT (till date)* *Rs.12,08,052/-* *Total cost :* *Rs.15,65,584.13*

When this document was submitted to the appropriate authority it issued notice dated 21/22.12.1994 bringing it to the knowledge of the petitioners that the authority had received an agreement to sell of a similar apartment in the same complex as per which the value was Rs.22,77,354/- and that after making the adjustment on account of time gap and floor difference the value of the property of the petitioners works out to Rs.20,35,439/- and consequently they were given an opportunity to show cause why the property be not acquired by the Central Government. It is not clear if any reply was filed by the petitioners but petitioner No.1 (on her own behalf) and on behalf of petitioner No.2 appeared before the appropriate authority. It seems that a letter dated 13.10.1994 was written which is not on the record and ultimately the appropriate authority held that the value of the subject property was under stated by more than 15% and ordered the purchase by the Central Government of the said immovable property. During this interregnum the petitioners had entered into an another agreement to sell with the third party from whom it had received a sum of Rs.3.50 as earnest money.

The respondent No.1-Union of India held the price to be Rs.12,08,052/- and out of that the subsequent intending purchasers were to be given the amount of earnest money which they had deposited i.e. Rs.3.50 lacs and a sum of Rs.2,98,424/- which was due towards DLF was paid to it and the remaining amount of Rs.5,59,628/- was paid to the petitioners and the possession of the property was taken. By this petition the petitioners has challenged that order.

Learned senior counsel for the petitioners has argued that there is no under valuation of the property because in Form 37-I the cost of acquisition was mentioned as **Rs.15,65,584.13**.

On the other hand learned counsel for the respondents has argued that the under valuation of the property is with reference to the agreement to sell of the similar property which was executed about the same time and where the value was assessed at Rs.20.00 lacs odd and therefore this argument would not cut much ice.

We find ourselves in agreement with the counsel for the respondents. What prompted the appropriate authority to take action was the fact that apartment No.62-B in Building No.103 on 6th floor which was also located in the same premises and was similarly situated was proposed to be sold for Rs.20.00 lakh odd and consequently no fault can be found with the finding that as against the market value of Rs.20.00 lacs, the petitioners were selling the property at a much lesser rate. The second argument of learned senior counsel for the petitioners is that in any case the sum of **Rs.2,98,424/-** which was the pending amount would have to be paid by the purchaser and therefore, this amount should have been paid by the Central Government and not foisted upon the petitioners.

In this regard the terms of the agreement to sell assume great significance.

Countering this argument learned counsel for the respondents has urged that to decide this issue the **(para No.(i) of the agreement)** would assume great importance. As per her the agreement mentions the total sale price as Rs.12.88 lacs. Further it is mentioned that Rs.1,20,000/- has been received and 'the balance price' of Rs**.10,88,052/-** would be paid at the time of registration. Para 5 further lays down all the other expenses which have to be incurred by the purchaser. Moreover the first part of para 7 lays down that the property is free from all encumbrances and the second part specifies the dues which the petitioners had to pay upto the date of registration. As per her even the price which remains unpaid has to be taken as an encumbrance and if it was the intention of the parties that the remaining amount of Rs**.298424**/- would be paid by the purchaser this would have been mentioned in the agreement to sell but the agreement to sell as laid gives rise only to the conclusion that (for whatever reason) the petitioners had agreed to part with the property for Rs.12.88 lacs odd.

Learned senior counsel for the petitioners has tried to counter this argument by saying that once it was mentioned in Form 37-I that a sum of Rs**.2,98,424**/- was yet to be paid and that Form was signed by the intending purchaser also it would lead to the result that that money was to be paid by the purchaser. In our opinion, the interpretation given by the learned Senior counsel for the petitioners is flawed. If it is accepted that the real value of the premises was Rs.20.00 lacs, may be the petitioner had taken about Rs.8.00 lacs in cash and that is why the agreement did not specify that the remaining payment would be made by the purchaser.

The reading of the agreement does not reveal that any liability of the purchaser remained.

In the circumstances, the petition is dismissed.

Since the main case has been dismissed, the pending C.M. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

11.09.2019
pooja sharma-I

Whether speaking/reasoned Yes/No

Whether Reportable : Yes/No