IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1880 OF 1999

Desiree M. Thakur and another	…	Petitioners
Vs.		
The Appropriate Authority and another	…	Respondents

Dr. Abhinav Chandrachud a/w. Mr. Manish Doshi a/w. Harsha Sawant i/b. M/s. Vimadalal & Co. for Petitioners.
Mr. Ashok Kotangale a/w. Mr. A. K. Saxena and Mr. Prabhakar Ranshur for Respondents.

CORAM : UJJAL BHUYAN,
MILIND N. JADHAV, JJ.

DATE : FEBRUARY 13, 2020

P.C. :

Heard Dr. Abhinav Chandrachud, learned counsel for the petitioners and Mr. Ashok Kotangale, learned standing counsel Revenue for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioners seek a direction to respondent No.1 to pay to the petitioners the benefits which accrued on the amounts of Rs.65,93,334.00 and Rs.32,96,667.00 including interest from the date of transfer of the said amounts into its Public Deposit Account till 21.05.1999 and thereafter further benefits including interest on account of alleged wrongful withholding of the said amounts by respondent No.1.

3. A brief recital of the facts is considered necessary.

4. Petitioner No.2 is a company incorporated under the Companies Act, 1956 whereas petitioner No.1 is one of its Directors.

5. Petitioner No.1 on behalf of petitioner No.2 had entered into an agreement for sale dated 04.05.1994 with Mrs. L. (Noreen) I. Pereira and others for purchase of 2/3rd undivided shares of the land bearing Survey Nos.262/19, 265/A/1, C.T.S. Nos.1170 and 1159 situated at Sherley Mala Road, Bandra (West), Mumbai admeasuring 995 sq.mtrs. By the said agreement, Mrs. Pereira and the others had agreed to sell and petitioners had agreed to purchase the said undivided 2/3rd share of the land for a total consideration of Rs.2,30,93,000.00, out of which an amount of Rs.65,93,334.00 was paid by the petitioners to the vendors as earnest money and the balance amount of Rs.1,55,00,000.00 was payable within 30 days of receipt of certificate from the appropriate authority under Section 269 UC of the Income Tax Act, 1961. The balance consideration of Rs.10,00,000.00 was payable on execution of the deed of conveyance and other formalities by the vendors.

6. Subsequently, petitioner No.1 on behalf of petitioner No.2 entered into another agreement for sale dated 27.06.1994 with one Mr. Dennis Ferriera for sale of the remaining 1/3rd undivided share in the aforesaid land. By the said agreement, the said Mr. Dennis Ferriera had agreed to sell the land and the petitioners had agreed to purchase the land (1/3rd undivided share) for a total consideration of Rs.1,15,46,667.00, out of which an amount of Rs.32,96,667.00 was paid by the petitioners to the vendors as earnest money. As per the agreement, a further sum of Rs.77,50,000.00 was payable within 30 days of receipt of no objection certificate from the appropriate authority under Section 269UC of the Income Tax Act, 1961. The balance amount of Rs.5,00,000.00 was payable on execution of the deed of conveyance and after completion of formalities by the vendors.

7. Show cause notices dated 16.08.1994 were issued by the appropriate authority to the petitioners to show cause as to why orders under Section 269UD(1) of the Income Tax Act, 1961 (briefly 'the Act' hereinafter) should not be passed. It was mentioned that appropriate

authority was *prima facie* of the view that there was significant under-valuation of the two properties.

8. Petitioners responded to the said notices and made detailed written submissions.

9. However, submissions made by the petitioners were not accepted by the appropriate authority whereafter two separate orders were passed on 30.08.1994 ordering compulsory / pre-emptive purchase of the two sets of immovable properties by the Central Government. While so directing, the consideration amounts under the two agreements were discounted whereafter it was ordered that an amount of Rs.2,16,93,324.00 be paid in terms of the first agreement dated 04.05.1994 and a sum of Rs.1,13,45,072.00 be paid in terms of the second agreement dated 27.06.1994.

10. Petitioners challenged legality and validity of the above orders dated 30.08.1994 before this Court by filing two separate writ petitions being Writ Petition Nos.2086 of 1994 and 2087 of 1994. It is stated that both the writ petitions were admitted and were pending final adjudication.

11. In the meanwhile, respondent No.2 deposited the apparent consideration amount into its Public Deposit Account, which was communicated to the vendors vide letter dated 28.09.1994, with copy to the petitioners. The said deposit included the two amounts of Rs.65,93,334.00 and Rs.32,96,667.00 respectively paid by the petitioners to the vendors as earnest money.

12. It is stated that petitioners desired to withdraw the two writ petitions. As per instructions of the petitioners, their counsel submitted *praecipe* before the Court seeking withdrawal of the two writ petitions but at the same time seeking a direction to respondent No.1 to make

payment to the petitioners of the aforesaid two amounts together with accumulated interest thereon. However, the two writ petitions were disposed of on withdrawal *vide* orders dated 28.04.1999 without any order or direction as to payment of principal as well as interest.

13. Counsel on behalf of the petitioners by their letters dated 28.04.1999 informed respondent No.1 about withdrawal of the two writ petitions whereby objection of the petitioners to the pre-emptive purchase orders was withdrawn and therefore, respondent No.1 was called upon to make the requisite payments to the petitioners along with accrued interest thereon.

14. It is stated that respondent No.1 had paid the balance of the apparent consideration money to the vendors and took over possession of the two properties.

15. Respondent No.1 by letter dated 05.05.1999 informed the petitioners that the payment would be made by the authority but declined to agree for payment of interest on the above two amounts by taking the plea that no direction was issued by the High Court for payment of interest.

16. Petitioners' counsel by letter dated 07.05.1999 pointed out to respondent No.1 that refusal to pay interest was contrary to the provisions of Section 269UG(4) of the Act. Be that as it may, respondent No.1 by his letter dated 21.05.1999 forwarded to the counsel of the petitioners two cheques for amounts of Rs.32,96,667.00 and Rs.65,93,334.00 i.e. the two amounts paid by the petitioners to the vendors without paying any interest.

17. Petitioners through their lawyers reiterated claim to interest by subsequent letter dated 31.05.1999 but without any success.

18. Aggrieved, present writ petition has been filed seeking the reliefs as indicated above.

19. Shri Awadesh Kumar, Deputy Commissioner of Income Tax has filed an affidavit on behalf of the appropriate authority constituted under Chapter XXC of the Act. Stand taken in the affidavit is that claim of the petitioners to interest on the two principal amounts is not maintainable. The two amounts were offered to the petitioners on 29.07.1995 but petitioners refused to accept the payment and returned the two cheques. There was no delay on the part of the respondents to make the payments. The subsequent delay had occurred because of the attitude of the petitioners in refusing to accept the two cheques. Therefore, petitioners are not entitled to any interest on the aforesaid two amounts.

19.1. It is stated that because of litigation at the instance of the petitioners, respondents were prevented from auctioning the subject property in the open market and in realizing sale proceeds though apparent consideration was paid to the transferors long back. Instead, respondent No.1 has suffered damages for not being able to auction the property which has been quantified at Rs.1,29,09,448.00.

19.2. It is stated that the two cheques returned by the petitioners were deposited in the Fixed Deposit Account and had earned interest as under:-

(i) cheque for Rs.65,93,334.00 earned interest of Rs.8,66,417.00 upto 12.05.1999; and

(ii) cheque for Rs.32,92,666.00 earned interest of Rs.4,33,208.00 upto 12.05.1999.

19.3. However, it is contended that the counter claim of the respondents far exceeds the interest earned on the aforesaid two principal amounts. Therefore, petitioners are not entitled to the claim of interest.

19.4. It is further stated that following withdrawal of the two writ petitions, respondent No.1 immediately paid the two principal amounts to the petitioners *vide* cheque Nos.406147 and 406146, both dated 21.05.1999.

20. Dr. Chandrachud, learned counsel for the petitioners has taken us to the provisions of Chapter XXC of the Act, more particularly to Section 269UG(4) thereof to contend that the appropriate authority is under a legal obligation to consider payment of interest on the consideration amount deposited with the appropriate authority, which is invested by the said authority in Government or other securities. Refusal on the part of the appropriate authority to pay interest on the ground that there was no order to that effect by the Court while allowing withdrawal of the two writ petitions is not justified. The appropriate authority has to apply its mind and act in a fair and reasonable manner while deciding claim of interest which he failed to do in the present case. He submits that while submitting the *praecipe* before the Court for withdrawal of the two writ petitions, prayer was made for a direction to pay interest. When the writ petition was closed on withdrawal, no occasion arose for issuing direction for payment of the principal or interest since the writ petitions were filed assailing the orders of the appropriate authority for pre-emptive purchase. He, therefore, submits that Court may consider issuing necessary directions to respondent No.1 for payment of adequate interest to the petitioners.

21. *Per contra*, Mr. Kotangale, learned standing counsel has referred to the averments made in the affidavit-in-reply filed on behalf of respondent No.1 and submits that petitioners cannot take advantage of their own conduct. When the principal amounts were offered to the petitioners, they declined to accept the same on the ground that the orders of pre-emptive purchase were challenged before this Court. Having withdrawn the challenge i.e., writ petitions thereby accepting such purchase, petitioners cannot now seek interest on the two principal

amounts. He, therefore, seeks dismissal of the writ petition.

22. Submissions made by learned counsel for the parties have been considered. Also perused the materials on record.

23. Chapter XXC covering Sections 269U to 269UO was inserted in the Act by the Finance Act, 1986 with effect from 01.10.1986. Section 269UA is the definition clause whereby various expressions used in the said Chapter have been defined. While "agreement for sale" has been defined in Section 269UA(a) to mean an agreement, whether registered under the Registration Act, 1908 or not, for transfer of any immovable property, the expression "apparent consideration" means the consideration amount in relation to any immovable property which is provided in the agreement for transfer, or in case of exchange, the price that such sale would ordinarily fetch in the open market. "Appropriate authority" is defined in clause (c) of Section 269UA to mean an authority constituted under Section 269UB to perform the functions of an appropriate authority under Chapter XXC. Clause (e) defines the expression "person interested". The said expression has been defined to include any person in relation to any immovable property claiming or entitled to claim an interest in the consideration payable on account of vesting of that property in the Central Government under Chapter XXC.

23.1. While Section 269UC places restrictions on transfer of immovable property, Section 269UD provides for passing of order by appropriate authority for purchase of the immovable property in question by the Central Government. As per sub-section (1), the purchase of immovable property by the Central Government should be at an amount equal to the amount of apparent consideration.

24. Where an order is passed under Section 269UD(1), the property in question shall on the date of such order vest in the Central Government in terms of the agreement for transfer. This provision is contained in sub-section (1) of Section 269UE. It says that where an order is made by the

appropriate authority in respect of an immovable property under sub-section (1) of Section 269UD, such property shall vest in the Central Government on the date of such order in terms of the agreement for transfer.

25. As per Section 269UF, where an order for purchase of immovable property by the Central Government is made under sub-section (1) of Section 269UD, the Central Government shall pay by way of consideration for such purchase, an amount equal to the amount of apparent consideration.

26. Section 269UG deals with payment or deposit of consideration. As per sub-section (1), the amount of consideration payable in accordance with the provisions of Section 269UF shall be tendered to the person or persons entitled thereto within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government. Thus, the amount of apparent consideration is required to be tendered to the person entitled to receive such consideration within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government. We have already noticed that under sub-section (1) of Section 269UE, once an order is passed by the appropriate authority for purchase of immovable property by the Central Government under Section 269UD(1), such property shall on and from the date of such order vest with the Central Government.

26.1. Sub-section (4) to Section 269UG on which much reliance has been placed by learned counsel for the petitioners reads as under:

> "(4) Where any amount of consideration has been deposited with the appropriate authority under this section, the appropriate authority may, either of its own motion or on an application made by or on behalf of any person interested or claiming to be interested in such amount, order the same to be

> invested in such Government or other securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefits therefrom as they might have had from the immovable property in respect whereof such amount has been deposited or as near thereto as may be."

27. A careful perusal of the provisions contained in sub-section (4) would indicate that where any amount of consideration has been deposited by the Central Government with the appropriate authority, the appropriate authority either on its own or on an application, may order the said amount of consideration to be invested in such Government or other securities and may direct that the interest or other proceeds of such investment as accumulated be paid to the parties interested as benefits which they might have had from the immovable property in respect of which such amount was deposited. Thus duty is cast upon the appropriate authority to invest the amount of consideration deposited by the Central Government and pay the interest accrued thereon to the parties interested.

28. Insofar the present case is concerned, facts are not in dispute. Order for purchase of immovable property by the Central Government was passed by the appropriate authority under Section 269UD(1) on 30.08.1994. As per affidavit of respondent No.1, cheques for the two amounts of Rs.65,93,334.00 and Rs.32,96,667.00 were issued to the petitioners on 21.07.1995 but petitioners refused to accept the two cheques following which the two cheques were deposited in Fixed Deposit Account and earned interest of Rs.8.66,417.00 and Rs.4,33,208.00 respectively upto 12.05.1999 when the two principal amounts (without the interest amounts) were repaid to the petitioners following withdrawal of the two writ petitions.

29. As discussed above, once an order is passed under Section 269UD(1) of the Act, the immovable property in question covered by the said order shall vest in the Central Government. As per sub-section (1) of Section 269UG, the amount of consideration payable on account of such purchase shall be tendered to the person or persons entitled to receive such payment within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government.

30. In the instant case, orders under Section 269UD(1) were passed on 30.08.1994. Therefore, in terms of Section 269UG(1), the consideration amount was required to be paid within one month from the end of month of August, 1994 i.e. within 30th September, 1994. As per the affidavit of respondent No.1, cheques covering the two principal amounts were offered to the petitioners on 21.07.1995 much after the statutory period as discussed above. The amounts which were required to be paid by 30th September, 1994 were offered to the petitioners on 21.07.1995. Because of pendency of the two writ petitions whereby petitioners had assailed the legality and validity of the two orders passed under Section 269UD(1), naturally petitioners declined to accept the two cheques. The two cheque amounts were thereafter deposited by respondent No.1 in Fixed Deposit Account.

31. The two writ petitions filed by the petitioners assailing the orders under Section 269UD(1) were finally closed on withdrawal on 28.04.1999 whereafter cheques covering the two principal amounts of Rs.65,93,334.00 and Rs.32,96,667 were handed over to the petitioners on 12.05.1999. As per own statement of respondent No.1, these two amounts which were kept in Fixed Deposit Account had earned interest of Rs.8,66,417.00 and Rs.4,33,208.00 upto 12.05.1999.

32. Petitioners' initial refusal to accept the aforesaid amount on 21.07.1995 in view of pendency of the two writ petitions assailing the

two orders passed under Section 269UD is understandable. Respondent No.1 did not inform the Court regarding payment and refusal of the cheque amounts. Respondent No.1 had deposited the cheque amounts in Fixed Deposit Account on which interest accrued. Had the two amounts been paid promptly to the petitioners in terms of Section 269UG(1), it is the petitioners who would have got the benefit of the interest on the said amounts, in fact more, considering the delay in making the payments from 30.09.1994 to 21.07.1995.

33. As discussed above, sub-section (4) of Section 269UG empowers the appropriate authority to invest the consideration amount deposited with it in Government or other securities and may thereafter direct the interest or other proceeds that may accrue on such investment to be paid to the interested party. This is to be paid as a benefit which the interested party might have had from the immovable property in respect of which such amount was deposited.

34. In view of the aforesaid statutory provisions, it was not justified on the part of the appropriate authority to refuse payment of interest to the petitioners when it had actually earned interest on the two principal amounts by taking the plea that there was no direction from the Court for payment of interest. In fact the interest was earned on the money that belonged to the petitioners. It would be wholly unfair and unjust if the appropriate authority is allowed to appropriate the interest amount accrued on the money legitimately belonging to the petitioners.

35. At this stage, it is submitted that following order passed by this Court on 01.09.1999, the interest amount of Rs.12,99,625.00 (Rs.8,66,417.00 plus Rs.4,33,208.00) was deposited with the office of the Prothonotary.

36. Accordingly, we direct the Prothonotary to release the aforesaid amount to the petitioners with further interest accrued thereon.

37. Writ petition is accordingly allowed. However, there shall be no order as to costs.

(MILIND N. JADHAV, J.) **(UJJAL BHUYAN, J.)**

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