Diksha Rane

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1018 OF 1993

Jugal Kishore Jajodia
karta of the Jugal Kishore Jajodia (HUF)
Indian Inhabitant, residing at
4, Jagmohan Mallik Lane, Calcutta. ..Petitioner.

VS.

1. S.C. Prasad, Chief Engineer,
2. S.C. Tiwari, Commissioner of Income Tax
3. C.M. Betgeri, Commissioner of Income Tax,
all members of the Appropriate Authority,
Constituted under Chapter XXC of the
Income-tax Act, 1961, having their
Office at Mittal Court, A Wing,
3rd floor, Nariman Point,
Bombay 400 021.

4. Union of India
5. Rev. Pramod H. Waskar
6. Robert Reid
7. G. Cornelias
8. Suman Dhalwani
9. Lorence Smith
10. Ebesemer S. Lall
11. Paul Jairaj
Trustees for the time being of
The Evangelical Alliance Ministries
Trust, having its office at Tutors
Bungalow, Shaharnpur,
Nashik 422 002. ..Respondents

Mr. Ankit Lohia a/w. Mr. Sachin Kudalkar and Ms. Aditi Bhat i/b. Madekar & Co. for petitioner.

Mr. Ashok Kotangale i/b. Mr. A.K. Saxena for respondents – Revenue.

C0RAM : K. R. SHRIRAM
M. S. KARNIK, JJ.
DATE : SEPTEMBER 23, 2021

ORAL JUDGMENT :

This is a Petition impugning an order dated 28th April, 1993 passed by respondent nos. 1, 2 and 3 under sub-section (1) of Section 269UD of the Income Tax Act (the Act). Section 269 UD contained in Chapter XX-C as it was then in force reads as under :

"Order by appropriate authority for purchase by Central Government of immovable property.

***269UD**. (1) Subject to the provisions of sub-sections (1A) and (1B), the section (3) of section 269UC in respect of any immovable property, may, notwithstanding anything contained in any other law or any instrument or any agreement for the time being force, make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration :*

***Provided** that no such order shall be made in respect of any immovable property after the expiration of a period of two months from the end of the month in which the statement referred to in section 269UC in respect of such property is received by the appropriate authority :*

***Provided further** that where the statement referred to in section 269UC in respect of any immovable property is received by the appropriate authority on or after the 1st day of June, 1993, the provisions of the first proviso shall have effect as if for the words "two months", the words "three months" had been substituted :*

***Provided also** that the period of limitation referred to in the second proviso shall be reckoned, where any defect as referred to in sub-section (4) of section 269UC has been intimated, with* *reference to the date of receipt of the rectified statement by the appropriate authority :*

***Provided also** that in a case where the statement referred to in section 269UC in respect of the immovable property concerned is given to an appropriate authority, other than the appropriate authority having jurisdiction in accordance with the provisions of section 269UB to make the order referred to in this sub-section in relation to the immovable property concerned, the period of limitation referred to in the first and second provisos shall be reckoned with reference to the date of receipt of the statement by the appropriate authority having jurisdiction to make the order under this sub-section :*

***Provided also** that the period of limitation referred to in the second proviso shall be reckoned, where any stay has been granted by any court against the passing of an order for the purchase of the immovable property under this Chapter, with reference to the date of vacation of the said stay.*

(1A) Before making an order under sub-section (1), the appropriate authority shall give a reasonable opportunity of being heard to the transferor, the person in occupation of the immovable property if the transferor is not in occupation of the property, the transferee and to every other person who the appropriate authority knows to be interested in the property.

(1B) Every order made by the appropriate authority under sub-section (1) shall specify the grounds on which it is made.

(2) The appropriate authority shall cause a copy of its order under sub-section (1) in respect of any immovable property to be served on the transferor, the person in occupation of the immovable property if the transferor is not in occupation thereof, the transferee, and on every other person whom the appropriate authority knows to be interested in the property.”

2. Section 269UP of the Act says the provisions of this Chapter shall not apply to, or in relation to, the transfer of any immovable property effected on or after the 1st day of July, 2002.

3. Petitioner purchased a bungalow being bungalow no. 4A in Indu-Park Co-operative Housing Society Ltd. at Andheri (West), Bombay (the said bungalow) along with five shares of the said society. The transferor is the Evangelical Alliance Ministries Trust, a Public Trust registered under the provisions of the Bombay Public Trusts Act (the transferor trust). The transferor trust decided to sell the said bungalow and therefore invited offers for sale of said bungalow by issuing advertisement in five prominent local newspapers. The advertisement appeared on 23rd June, 1990 and 25th June, 1990. The transferor trust received various offers and two offers were for Rs.22,10,796/- and Rs.18,50,000/-. The higher offer made by petitioner, after some negotiation, was increased to Rs.23,10,000/- and the sale was closed. The acceptance of offer in response to advertisement was approved by a resolution passed by the Board of Trustees of the transferor. Since the transferor was a trust, the agreement which was reached on 26th July, 1990 was subject to permission of the Charity Commissioner to be obtained for the proposed sale, the permission from the concerned society for proposed transfer and receiving a no

objection from the appropriate authority under Section 269UC under Chapter XX-C of the Act.

4. An application under Section 36 of the Bombay Public Trusts Act for sanction was filed on 6th May, 1991 and the Charity Commissioner by an order dated 24th November, 1992 accorded his sanction for the sale of the said bungalow to petitioner for Rs.23,10,000/-. The society also granted its permission vide a letter dated 25th January, 1993. The no objection under Chapter XX-C of the Act was rejected by the appropriate authority by an order dated 28th April, 1993 which is impugned in this Petition.

5. Petitioner and transferor trust had received a show cause notice dated 13th April, 1993 from the office of the appropriate authority calling upon to show cause as to why an order should not be made in accordance with the provisions of Section 269UD (1) of the Act. The show cause notice reads as under :

> *"Sir/Madam,*
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> *Please refer to your application in form No. 37-I under section 269 UC of the Income-tax Act, 1961 submitted in this office on 4.2.1993 in connection with transfer of property being Bungalow No.4A, Indu Park Co-*

op. Housing Society Ltd., of Society Bearing Nos. 106 to 110.

This letter is to request you to please show cause as to why an order should not be made in your case in accordance with the provisions of Sec. 269 UD (1) of the Income-tax Act, 1961. For this purpose, you are requested to please attend before the Members of the Appropriate Authority in their Office situated at Mittal Court, A-Wing, 3rd floor, Nariman Point, Bombay 400021 on 23.4.1993 at 11.20 a.m. or to make your written submissions so as to reach this office on or before 23.4.1993 during Office hours."

6. If one sees this show cause notice, it is bereft of any materials or details. It does not contain any material to show as to why the appropriate authority felt that an order under Section 269 UD(1) was required to be made. Reply was filed on 22 April 1993 on behalf of the transferor trust and petitioner. In the impugned order the appropriate authority has relied upon a valuation report. Admittedly the same was not provided to petitioner. Moreover, the appropriate authority has given six sale instances but none of these details were provided to petitioner with the show cause notice or at any stage.

7. The appropriate authority has accepted that the Charity Commissioner has accorded his sanction for sale of the said bungalow but the appropriate authority simply

dismisses the same by saying that the order passed by the Charity Commissioner only has persuasive effect but is not binding. In the impugned order the appropriate authority says that even if the bungalow had remained unoccupied and required heavy repairs, in its opinion, this could affect the price only marginally, say to the extent of Rs.100/- per sq.ft. which amount would be sufficient to renovate and beautify the row house. But there is nothing to show how they arrived at the figure of Rs.100/- per sq.ft. No opportunity was given to petitioner to respond to said renovation cost.

8. It is settled law that issuance of a show-cause notice is not an empty formality. Its purpose is to give a reasonable opportunity to the affected persons to contend that the apparent consideration as per the agreement to sell is the market price or that there is no undervaluation because of peculiar facts. The appropriate authority should give to the person likely to be affected by the order proposed to be made a notice of the action intended to be taken, inform him about the materials on the basis of which the

appropriate authority proposes to take action for pre-emptive purchase and give a fair and reasonable opportunity to such person to represent his case and to correct or controvert the material sought to be relied upon against him. Hence, in the show-cause notice under Section 269UD of the Act, provisional conclusions are required to be briefly specified. These provisional conclusions are required to be briefly specified so that the affected persons could correct or controvert the same effectively. If a vague show-cause notice is given without specifying anything as has been done in this case or without specifying the grounds for holding that the property is required to be purchased under Section 269UD of the Act, then it can be held that reasonable opportunity of showing cause has not been given. The transferor and transferee would be totally unaware of the grounds which had prompted the appropriate authority to arrive at *prime facie* conclusion that the power under Section 269UD(1) of the Act was required to be exercised and the property should be compulsorily purchased. The Division Bench of Gujarat High Court in ***Om Shri Jigar Association vs. The Union of India and***

others[1] at paragraphs 7,8 and 9 held as under :-

> "7. In our view, considering the findings given above, it is not necessary to deal with the aforesaid contention exhaustively. However, it should be noted that issuance of a show-cause notice is not an empty formality. Its purpose is to given a reasonable opportunity to the affected persons to contend that the apparent consideration as per the agreement to sell is the market price or that there is no undervaluation because of peculiar facts. Therefore, before taking any action under section 269UD(1) of the Income-tax Act, the appropriate authority should give to the person likely to be affected by the order proposed to be made a notice of the action intended to be taken, inform him about the material on the basis of which the appropriate authority proposes to take action for pre-emptive purchase and give a fair and reasonable opportunity to such persons to represent his case and to correct or controvert the material sought to be relied upon against him. Hence, in the show-cause notice under section 269UD of the Income-tax Act, provisional conclusions are required to be briefly specified. If a vague show-cause notice is given without specifying anything or the grounds for holding that the property is required to be purchased under section 269UD of the Income-tax Act, then it can be held that reasonable opportunity of showing cause against an order for pre-emptive purchase being made by the appropriate authority was not given, because the transferor and the transferee would be totally unaware of the grounds which had prompted the appropriate authority to arrive at prime facie conclusion that the power under section 269UD(1) of the Income-tax Act was required to be exercised and the property should be compulsorily purchased. Issuance of a show-cause notice is the preliminary step which is required to be undertaken before giving opportunity of hearing under Section 269(UD)(1)of the Income-tax Act.
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> 8. While considering the contents of show-cause notice in the matter arising in connection with a disciplinary proceeding under the Punjab Civil Services (Punishment and Appeal) Rules, 1952, the Supreme Court has in the case of B.D. Gupta v. State of Haryana, (1973) 3 SCC 149 : AIR 1972 SC 2472 observed as under (at page 2474) :
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>> "There is nothing, however, in the 'Show-Cause Notice' of 26th October 1966 to indicate clearly that the

1 1994 SCC OnLine Guj 77

> dissatisfaction of Government with the appellant's reply of 18 December 1956 had nothing to do with Charge 1(a). The 'Show-Cause-Notice' merely states in vague general terms that the appellant's reply to the charges and allegations was unsatisfactory. Even if we were to assume, though there is no reasonable ground for this assumption, that Government did not have in mind the contents of Charge 1(a) while serving this 'Show-Cause-Notice', there is nothing in the 'Show-Cause-Notice' to give any indication that the particular allegations regarding which the appellant had failed to furnish a satisfactory explanation were referable only to Charge 1(b). The notice is vague on other grounds as well. As one reads the first paragraph of the notice, the questions that at once assail one's mind are many : In what way was the explanation of the appellant unsatisfactory ? Which part of the appellant's explanation was so unsatisfactory ? On what materials did the Government think that the appellant's explanation was unsatisfactory ? It is to our mind essential for a 'Show-Cause-Notice' to indicate the precise scope of the notice and also to indicate the points on which the officer concerned is expected to give a reply."

> 9. The same would be the position here. It would be difficult for the transferor and the transferee to show cause as to why the property should not be compulsorily purchased or to point out that there is no undervaluation of the property or even if there is undervaluation, it is because of the peculiar facts regarding the property.

9. As regards the effect of the sanction granted by the Charity Commissioner, the Division Bench of this Court in **Madhukar Sunderlal Sheth and others vs. S.K. Laul and others**[2] held that approval by the Charity Commissioner ensures reasonableness of the agreement of sale and it was a factor which has to be borne in mind by

2 1992 SCC OnLine Bom 283

the Income Tax authorities while exercising its power under Section 269UD of the Act. The Court held that the Charity Commissioner, under the Bombay Public Trusts Act, is required to give his sanction bearing in mind interest, benefit and protection of the trust. He has to apply his mind, *inter alia*, to the price at which the property is to be sold under the agreement and the Charity Commissioner has the power, in a given case, to come to the conclusion that the price at which the trustees have agreed to sell the property is not the price which would secure adequate benefit to the trust and he may reject the agreement on that ground. Even the terms of the agreement of sale which the trustees may have entered into, are also liable to be examined by the Charity Commissioner at the time when he grants sanction. The Charity Commissioner's sanction cannot be simply disregarded by the appropriate authority by saying that though it has persuasive effect, it is not binding upon them. The appropriate authority ought to have dealt in its order as to why the Charity Commissioner was not correct. Paragraph 5 of Madhukar Sunderlal Sheth and others (*supra*) reads as under :-

> *"5. The Charity Commissioner, under the Bombay Public Trusts Act is required to give his sanction bearing in mind the interest, benefit and protection of the trust. He has to apply his mind, inter alia, to the price at which the property is to be sold under the agreement. The Charity Commissioner has the power, in a given case, to come to the conclusion that the price at which the trustees have agreed to sell the property is that the price at which the trustees have agreed to sell the property is not the price which would secure adequate benefit to the trust and he may reject the agreement on that ground. Even the terms of the agreement of sale which the trustees may have entered into, are liable to be examined by the Charity Commissioner at the time when he grants his sanction. Approval by the Charity Commissioner ensures the reasonableness of the agreement of sale. These factors will also have to be borne in mind by the income-tax authorities while exercising their power under section 269UD. The discretionary power under that section cannot be exercised arbitrarily. It will have to be exercised bearing in mind the purpose for which it is conferred. Hence, the submission of the petitioner that if there is delay on the part of the Charity Commissioner in granting sanction, and there is a rise in the property market, the purchaser of such a property will be at a disadvantage, loses its force. The question of consideration has to be considered by the income-tax authorities in the context of the special circumstances which accompany a sale by a public trust. The purchaser can also apply in accordance with law for early sanction by the Charity Commissioner."*

10. Respondents have not filed any reply. Mr. Kotangale submitted that there was no requirement to give details of the sale instances referred to in paragraph 5 of the impugned order to petitioner because three of the instances are of bungalows in the same complex where the said bungalow is situated and therefore, petitioner should be deemed to be aware of the sale instances. We are not

impressed by Shri Kotangale's submissions. First of all, that is not the case of the appropriate authority in the impugned order. Secondly, the appropriate authority is duty bound to give all materials on the basis of which it proposes to take action of pre-emptive purchase. It cannot absolve of its duty and responsibility to give all materials on the basis of which it proposes to take action. It cannot give a vague show cause notice and thereby deprive petitioner of a reasonable opportunity to effectively correct or controvert the material sought to be relied against him.

11. Mr. Kotangale relied upon a judgment dated 10th March, 1993 in ***Smt. Vimla Devi G. Maheshwari vs. S.K. Laul, Chief Engineer and others***[3] to submit that it was the obligation of petitioner to furnish sale instances to prove that value he agreed to pay to the trust was a correct value and there was no undervaluation. The judgment is of no help to Mr. Kotangale since in that case petitioner relied upon certain sale instances and hence the Court held that it was for petitioner to adduce appropriate material in support of his contention.

3 Writ Petition No. 514/1993 (unreported)

12. In the circumstances, the impugned order dated 28th April, 1993 is hereby quashed and set aside.

13. The appropriate authority is directed to issue 'no objection certificate' under sub-section (1) of Section 269UL of the Act to petitioner within four weeks of receiving a copy of this order. If there is no such authority, this order should be considered as 'no objection certificate' for the transfer.

14. All to act on copy of this order authenticated by the Associate of this Court and not to insist on a certified copy.

15. Petition disposed with no order as to costs.

(M.S.KARNIK, J.) **(K.R. SHRIRAM, J.)**