

PETITIONER:
ADAIR DUTT & CO. INDIA PVT. LTD.

Vs.

RESPONDENT:
THE APPROPRIATE AUTHORITY INCOME TAX DEPARTMENT.

DATE OF JUDGMENT: 25/09/1996

BENCH:
KULDIP SINGH, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

THOMAS, J.

Whether a bona fide statutory tenant has the right to continue in possession even after an order of purchase was made under Section 269-UE (1) in Chapter XX-C of the Income Tax Act, 1961 (for short 'the Act'), is the question sought to be raised in this appeal. According to the appellant the answer to the said question must be in the affirmative.

A brief sketch of the facts:

The appellant - a Private Limited Company - is tenant on the ground floor of a building situate on the Mount Road (now called Anna Salai), Madras. On 30.3.1989, owner of the building entered into an agreement with another person for sale of the building, for a sum of Rs.26 lacs. The Appropriate Authority constituted under Chapter XX-C of the Act, on coming to know of the aforesaid agreement initiated proceedings, in exercise of its powers under the said Chapter for purchase of the building. He ordered the building to be purchased by the Central Government for the same consideration as shown in the agreement in accordance with section 269-UA(c) of the Act. Appropriate Authority then issued a communication to the appellant informing it that the building stood vested in the Central Government by virtue of Section 269-UE(1) of the Act free from all encumbrances with effect from 22.6.1989. The appellant was requested to surrender possession of the building. A writ petition was filed before the High Court of Madras challenging the said communication and the subsequent request. A Division Bench of the Madras High Court dismissed the writ petition. This appeal by special leave has been filed against the judgment of the Division Bench.

The two sub-sections of Section 269-UE of Chapter XX-C of the Act which are relevant for this appeal are quoted below:

"269-UE. Vesting of property in Central Government - (1) Where an order under Sub-section (1) of Section 269-UD is made by the appropriate authority in respect of an immovable property referred to

in sub-clause (i) of clause (d) of Section 269-UA, such property shall, on the date of such order, vest in the Central Government free from all encumbrances.

(2) The transferor or any other person who may be in possession of the immovable property in respect of which an order under sub-section (1) of Section 269-UD is made, shall surrender or deliver possession thereof to the appropriate authority or any other person duly authorised by the appropriate authority in this behalf within fifteen days of the service order on him."

The contention of the appellant before the Madras High Court was two-fold. First is that as the Constitution Bench of this Court in *C.B. Gautam vs. Union of India & Ors.*, (1983) 1 SCC 78, has struck down the expression "free from all encumbrances" in sub-section (1) of section 269-UE, what was vested with the Central Government is only the right of the erstwhile owner of the building without affecting the leasehold right of the appellant. Second is that appellant's right in the building has been protected by the Tamil Nadu (Lease and Rent Control) Act, 1960 (for short 'the T.N. Act') and as such his statutory right cannot be by-passed through the vesting process.

Division Bench of Madras High Court repelled both contentions. Learned Judges pointed out that the transferor has stipulated in the agreement for sale dated 30.3.1989 (which led to the action taken by the Appropriate Authority) that the transfer of the premises shall be free from all encumbrances and then held: "when the agreement in this case provides for a sale free of all encumbrances, the property agreed to be sold would also vest in the Central Government free of such encumbrances. Only in a case where the agreement does not provide that the sale would be free from all encumbrances holder of leases in possession may not be obliged to deliver possession of the property". Regarding the second contention the High Court pointed out that even otherwise the provisions of the T.N. Act do not afford any protection to the tenants of the buildings owned by Central Government.

The Constitution Bench of this court has struck down the words "free from all encumbrances" in sub-section (1) of Section 269-UE of the Act. The material portion of the judgment is extracted below:

"In view of the express provision in section 269-UE that the property purchased would vest in the Central it is not possible to read down the section as submitted by learned Attorney General. In the result, the expression 'free from all encumbrances' in sub-section (1) of Section 269-UE is struck down and sub-section (1) of Section 269-UE must be read without the expression 'free from all encumbrances' with the result the property in question would vest in the Central Government subject to such encumbrances and leasehold

interests as are subsisting thereon except for such of them as are agreed to be discharged by the vendor before the sale is completed."

However, the Bench approved the distinction that in case the agreement for sale contains the stipulation to the effect that the property would be sold free from all encumbrances or certain encumbrances then the vesting in the Central Government would be free from such encumbrances. The following passage in the judgment makes the position clear:

"As we have stated earlier where an agreement for sale provides that the property is intended to be sold free of all encumbrances or leasehold rights, the order for purchase of such property under Section 269-UD (1) in the said Chapter would result in the said property such encumbrances or leasehold interests. In such a case the holders of the encumbrances and leasehold interests from the amount awarded as the purchase price to the owner of the property. This appears to be fair construction because in such a case the apparent consideration such leasehold interests or encumbrances....."

It was not disputed before us that the agreement for sale executed by the erstwhile owner, regarding the property in question, contained a stipulation that the property would be sold free of all encumbrances. However, learned counsel tried to get support for this contention from a decision of the Karnataka High Court in Tata Consulting Engineers and another vs. Union of India and others (1994) 206 ITR 237, wherein it has been observed that "the Supreme Court did not specifically consider a case which ignoring or suppressing the fact that the premises were in the occupation of a monthly tenant who had not agreed to vacate, the agreement of sale, without referring to such tenancy, provided for delivery of vacant possession at the time of sale. Chapter XX-C also does not provide for a case where the agreement of sale contained an incorrect information regarding possession, that is agreeing to deliver vacant possession even though vacant possession could not be delivered having regard to the fact that the premises were in the occupation of a bona fide tenant." The Karnataka High Court concluded that "on the facts and circumstances set out above, in so far as the tenant is concerned, the term of the sale agreement providing for delivery of vacant possession should be read down as only providing for delivery of vacant possession of the remaining portions of the premises."

The said view of the learned single judge of the Karnataka High Court is not in consonance with the reasoning of this Court in C.B. Gautam (supra). The position has been clearly stated by this Court in the judgment as follows:

"The holders of the encumbrances and leasehold interests which would be destroyed in this manner can be said to be persons interested as contemplated in clause (e) of sub-section (2) of Section 269-UD. In this connection, we may refer to sub-section (5) of Section 269-UE

which declares that nothing in the said Section which deals with the vesting of property in the Central Government shall operate to discharge the transferor or any other person (not being the Central Government) from liability in respect of any encumbrances on the property and notwithstanding anything contained in any other law for the time being in force such liability may be enforced against the transferor or such other person. This provision makes it amply clear that in the case we have just referred to, the encumbrance holder or the holder of the leasehold rights could claim the fair value of his encumbrance or the leasehold interest out of the amount paid on account of the purchase price to the owner of the immovable property acquired by the Central Government under Section 269-UD."

In this context we may point out that the Constitution Bench in C.P. Gautam (supra) considered whether such vesting in the Central Government would affect monthly tenancies. The following observation has been made regarding that aspect:

"As far as monthly tenancies are concerned, they do not pose any difficulty because monthly tenants are also lessees in law although their right is a very limited one. If the agreement to sell does provide for vacant monthly tenancies such tenancies would continue even on an order for purchase by the Central Government being made by the appropriate authority concerned under Section 269-UD (1) ; but such tenants would lose the protection laws because such laws are not made applicable to properties owned by the Central Government with the result that their tenancies could be terminated by the Central Government."

(emphasis supplied)

Learned counsel for the appellant, however contended that the T.N. Act applies even to buildings owned by the Central Government and hence the aforesaid observation cannot apply to the tenancy rights protected by the said Act. We agree that the Constitution Bench has not considered the situation where the monthly tenancy is protected by a rent control legislation. No doubt, learned judges have stated in the impugned judgment that "in relation to such statutory tenancy rights there is no protection as such available, as the rent control laws are inapplicable to properties owned by the Central Government and such tenancies could be terminated by the Government."

The aforesaid finding in the impugned judgment is also challenged in this appeal. Learned counsel contended that though the T.N. Act excludes government buildings from its

purview such exclusion is confined to buildings owned by the State Government because of the definition contained in the T.N. Act for the word "building" as meaning "State Government".

We think that the question regarding application of T.N. Act to buildings owned by the Central Government must be considered afresh by the High Court in view of the aforesaid contention. We, therefore, set aside the judgment under challenge and remit this case to the High Court for disposal of the writ petition afresh in the light of the observations made above.

JUDIS