

CASE NO.:
Appeal (civil) 1196 of 2001

PETITIONER:
Commissioner of Income Tax, Chandigarh

RESPONDENT:
M/s Pearl Mech. Engg. & Foundry Works P. Ltd.

DATE OF JUDGMENT: 16/04/2004

BENCH:
S. Rajendra Babu & G.P. Mathur

JUDGMENT:
JUDGMENT

G.P. MATHUR, J.

1. This appeal, by special leave has been preferred against the judgment and order dated 21.7.1999 of the High Court of Punjab & Haryana by which the appeal preferred by the appellant under Section 269H of Income Tax Act, 1961 against the order dated 16.8.1992 of the Income Tax Appellate Tribunal, Chandigarh, was dismissed.

2. The respondent M/s Pearl Mechanical Engineering & Foundry Works (P) Ltd., Ludhiana executed a sale deed of plot no. 427, Industrial Area-A, Ludhiana in favour of M/s. Oswal Woolen Mills Limited for Rs.10,05,000/- on 5.2.1980. The Government valuer, on receipt of a reference from the Inspecting Assistant Commissioner, estimated the fair market value of the property at Rs.18,31,000/-. Proceedings for acquisition of the property were then initiated in accordance with Chapter XXA of Income Tax Act, 1961 (hereinafter referred to as 'the Act') and notice under section 269D (1) of the Act was published in the official gazette on 15.11.1980. The notices issued under Section 269D (2) of the Act were served upon the transferor and the transferee on 10.10.1980. The competent authority, after hearing the objections, passed orders for acquisition of the property. The appeals preferred against the said order by the transferor and transferee were allowed by the Income Tax Appellate Tribunal, Chandigarh, and the order of the competent authority was set aside mainly on the ground that the notices under section 269D(2) had been served prior to the publication of the notice in the official gazette. Feeling aggrieved by the order of Tribunal the Commissioner of Income Tax, preferred an appeal under section 269H of the Act but the same was dismissed by the High Court on 21.7.1999. The High Court has held that by the publication of the notice in the official gazette proceedings for acquisition of property were initiated and the service of the notice on the transferor and the transferee under Section 269D(2) prior to the publication in the gazette is meaningless and an exercise in futility rendering the entire proceedings illegal and without jurisdiction.

3. The main question which requires consideration is whether the service of notice upon the transferor and the transferee under Section 269D(2) of the Act prior to the publication of the notice in the official gazette in accordance with Section 269D(1) of the Act would render the entire proceedings illegal and without jurisdiction. Chapter XXA comprising Sections 269A to 269S was inserted by the Taxation Laws (Amendment) Act, 1972 with effect from 15.11.1972. The Statement of Objects and Reasons shows that the amendment was incorporated to counter evasion of tax through understatement of the value of immovable property in sale deeds and also to check the circulation of black money by empowering the Central Government to acquire immovable properties and to curb the widespread practice of benami holding of property with a view to tax evasion by debarring the real owner from enforcing his claim to such property in a

court of law unless he has declared the income from that property or the property itself for purposes of income tax and wealth tax or has given notice of his claim to the property to the income-tax authorities.

4. Sub-section (a) of Section 269A defines "apparent consideration" and sub-section (b) defines "competent authority" which means an Assistant Commissioner of Income-tax authorised by the Central Government under Section 269B to perform the functions of competent authority under Chapter XXA. Section 269B provides that the Central Government may, by general or special order published in the Official Gazette, authorise as many Assistant Commissioners of Income-tax, as it thinks fit, to perform the functions of a competent authority under the Chapter and also define the local limits within which the competent authorities shall perform their functions. The relevant parts of Sections 269C, 269D and 269E, which have a bearing on controversy in hand, are being reproduced below :

269C. (1) Where the competent authority has reason to believe that any immovable property of a fair market value exceeding twenty-five thousand rupees has been transferred by a person (hereafter in this Chapter referred to as the transferor) to another person (hereafter in this Chapter referred to as the transferee) for an apparent consideration which is less than the fair market value of the property and that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object of \026

(a) facilitating the reduction or evasion of the liability of the transferor to pay tax under this Act in respect of any income arising from the transfer; or

(b) facilitating the concealment of any income or any moneys or other assets which have not been or which ought to be disclosed by the transferee for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act or the Wealth-tax Act, 1957 (27 of 1957),

the competent authority may, subject to the provisions of this Chapter, initiate proceedings for the acquisition of such property under this Chapter;

Provided that before initiating such proceedings, the competent authority shall record his reasons for doing so.

Provided further \005\005\005\005\005\005\005.. (Omitted as not relevant)

(2) \005\005\005\005\005\005\005\005.. (Omitted as not relevant)

269D. (1) The competent authority shall initiate proceedings for the acquisition, under this Chapter, of any immovable property referred to in Section 269C by notice to that effect published in the Official Gazette :

Provided that no such proceedings shall be initiated in respect of any immovable property after the expiration of a period of nine months from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act, 1908 (16 of 1908).

Provided further \005\005\005\005\005\005. (Omitted as not relevant)

(2) The competent authority shall \026

(a) cause a notice under sub-section (1) in respect of any immovable property to be served on the transferor, the transferee, the person in occupation of the property, if the transferee is not in occupation thereof, and on every

person whom the competent authority knows to be interested in the property ;

(b) cause such a notice to be published \026

(i) in his office by affixing a copy thereof to a conspicuous place;

(ii) in the locality in which the immovable property to which it relates is situate, by affixing a copy thereof to a conspicuous part of the property and also by making known in such manner as may be prescribed the substance of such notice at convenient places in the said locality.

269E. (1) Objections against the acquisition of the immovable property in respect of which a notice has been published in the Official Gazette under sub-section (1) or section 269D may be made \026

(a) by the transferor or the transferee or any other person referred to in clause (a) of sub-section (2) of that section, within a period of forty-five days from the date of such publication or a period of thirty days from the date of service of notice on such person under the said clause, whichever period expires later ;

(b) by any other person interested in such immovable property, within forty-five days from the date of such publication.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing.

(3) \005\005\005\005\005\005\005 (Omitted as not relevant)

5. A perusal of the aforesaid provisions shows that the proceedings for acquisition of any immovable property under Chapter XXA have to be initiated by publication of the notice to that effect in the official gazette. This is the mandatory requirement of sub-section (1) of Section 269D. Under sub-section (2) of the same section, the notice has also to be served upon the transferor, transferee, the person in occupation of the property, if the transferee is not in occupation thereof, and also on every person whom the competent authority knows to be interested in the property. In view of clause (b) of sub-section (2), the notice has to be published in the office by affixing a copy thereof to a conspicuous place and in the locality in which the immovable property to which it relates is situate. Section 269E enables the transferor or the transferee or any person referred to in clause (a) of sub-section (2) of Section 269D to file an objection in writing against the acquisition of the immovable property in respect of which a notice has been published in the official gazette before the competent authority. In view of the express language used, the proceedings for acquisition of property can be initiated only by publication of the notice in the official gazette and until the publication is so made, the proceedings cannot be deemed to have been initiated. The first proviso to sub-section (1) of Section 269D lays down a period of limitation for initiation of such proceedings which is nine months from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act. Therefore, in view of this provision the notice in the official gazette must be published within a period of 9 months from the end of the month in which the acquisition and transfers were registered. Sub-section (2) of Section 269D provides for service of notice (which has been referred to in sub-section (1) of Section 269D) upon the transferor, the transferee and certain other persons. It further provides for affixing a copy of the notice in the office of the

competent authority and also in the locality. The language used in sub-section (2) of Section 269D does not expressly state that the service of notice upon the transferor or the transferee can be effected only after publication of the notice in the official gazette as contemplated by sub-section (1). A period of limitation for filing objections has been provided under Section 269E, and it gives 45 days from the date of publication of notice in the gazette and 30 days from the date of service of notice on such person (transferor or transferee), whichever period expires later. In view of this provision, the service of notice under sub-section (2) of Section 269D upon the transferor or transferee prior to the publication of the notice in the official gazette cannot cause any prejudice to them as even in such a case they will get 45 days to file objections from the date of publication in the gazette. In fact, the prior service of notice will be to their advantage as they will get additional time to file objection. It is true that in sub-section (1) of Section 269D, the expression used is "shall initiate proceedings" which can also be interpreted to mean that other steps including personal service of notice can be taken only after publication in the gazette but the analysis of the relevant provisions and also the scheme of Chapter XXA does not lead to an inference that the personal service of notice upon the transferor or the transferee under sub-section (2) prior to the publication of notice in the official gazette in sub-section (1) of Section 269D would render the whole proceedings illegal and without jurisdiction.

6. Undoubtedly, the publication of the notice in the official gazette under sub-section (1) of Section 269D is the very foundation for initiation of proceedings for acquisition of immovable property under Chapter XXA and the period of limitation for initiation of proceedings has to be reckoned with reference to the said date. The competent authority gets the jurisdiction to make an order for acquisition of property only after publication of the notice in the official gazette. The word "jurisdiction" implies the Court or Tribunal with judicial power to hear and determine a cause, and such Tribunal cannot exist except by authority of law. Jurisdiction always emanates directly and immediately from the law; it is a power which nobody on whom the law has not conferred it can exercise. In other words, "jurisdiction" has reference to the power of the Court or Tribunal over the subject matter, over the res or property in contest, and to the authority of the court to render the judgment or decree it assumes to make. It is in this sense that the publication of the notice in the official gazette confers jurisdiction on the competent authority to take proceedings for acquisition of immovable properties under Chapter XXA of the Act. The service of notice under sub-section (2) of Section 269D upon the transferor and transferee meets the requirement of natural justice so that they may file objections in writing against the action which is proposed to be taken, namely for acquisition of property. Any error or mistake committed in the service of the notice does not in any manner affect the jurisdiction conferred upon the competent authority to take proceedings for acquisition of property. The service of notice prior to the publication in the official gazette is merely an irregularity committed during the course of the proceedings and cannot have the effect of nullifying the entire proceedings which are validly commenced by publication in the official gazette. In fact, no prejudice is occasioned to the transferor or transferee by service upon them of the notice prior to the publication of the gazette. We are, therefore, of the opinion that prior service of notice under sub-section (2) of Section 269D is at best an irregularity but it cannot have the effect of rendering the proceedings either illegal or without jurisdiction.

7. The question posed here has been considered by various High Courts and the decisions rendered therein may be briefly noticed. In CIT v. Amrit Sports Industries 144 ITC 113 a Full Bench of the Punjab & Haryana High Court, after analysis of the provisions of the Act, held that sub-section (1) of Section 269D of the Act is the primary and the main provision for the initiation of acquisition proceedings and sub-section (2) which obviously follows is in a way a subsidiary and a supplementary provision to the aforesaid sub-section (1). It was further held that the initiation of the proceedings for acquisition and the consequent assumption of jurisdiction by the competent authority is complete by the publication of the notice in the

official gazette under Section 269D(1) of the Act and consequently a procedural defect of compliance with sub-section (2) would not affect the jurisdiction of the competent authority and does not vitiate the whole proceedings under the said sub-section. In *Smt. Pritpal Kaur v. Inspecting Asstt. CIT* 145 ITR 19, a Division Bench of Allahabad High Court held that Section 269D(1) of the Act, requiring the publication of a notice for initiation of acquisition proceedings in the official gazette, is mandatory but the notice to be served on the transferor and the transferee of the property need not be after the publication of the notice in the official gazette. In *Prem Chand v. IAC* 153 ITR 774 a Division Bench of Karnataka High Court has held that the jurisdiction to initiate proceedings for acquisition of immovable property is conferred on the IAC by Chapter XXA of the Act and the orders made by the Government appointing him as the authority to decide the cause. Every error committed by the IAC in the exercise of his own jurisdiction cannot be treated as outside his own jurisdiction and they are all errors in but not of jurisdiction. Accordingly, the errors, if any, committed by the IAC in issuing notices under Section 269D(2)(a) before the publication of the notice in the gazette was an error within his own undoubted jurisdiction and was not a case of assumption of jurisdiction and the Tribunal in holding otherwise and invalidating the proceedings on that ground was clearly in error. In *All India Reporter v. Competent Authority* 162 ITR 697, the Bombay High Court held that the giving of individual notices and locality notice are not jurisdictional requirements, non-compliance of which must result in invalidating of initiation of acquisition proceedings. It was further held that the manner of service of this notice is only directory and not mandatory nor is it a jurisdictional fact so as to deprive the competent authority of jurisdiction to hold or initiate the proceedings. Similar view has been taken by Patna High Court in *Smt. Lalita Todi v. CIT* 123 ITR 40 and it has been held that the provisions of Section 269D (2) must be deemed to be merely directory. We are in agreement with the view expressed in these decisions.

8. A contrary view has been taken by a Division Bench of the Punjab and Haryana High Court in *CIT v. Des Raj* 220 ITR 7 and in its opinion the Full Bench decision of the same Court in *CIT v. Amrit Sports Industries* 144 ITR 113 did not hold that even where the notice is served under sub-section (2) prior to its publication under sub-section (1), the error committed by the competent authority is only procedural and not jurisdictional. On this assumption it was held that such a defect is one of jurisdiction and the competent authority cannot proceed to make an order acquiring the property. *CIT v. Vinod Gupta* 221 ITR 213 is a short judgment by the same learned Judges wherein they followed their earlier decision in *CIT v. Des Raj* (supra). In our opinion, the view taken in these two decisions does not lay down the correct law as the ratio of the Full Bench decision in *CIT v. Amrit Sports Industries* (supra) was not correctly applied. *Satya Narain Prakash Punj v. Union of India* 160 ITR 693 is a decision by a learned Single Judge of Delhi High Court wherein notice under sub-section (2) of Section 269D served prior to the publication of the notice in the official gazette was quashed. For doing so, the Court relied upon the dictum of the Privy Council in *Nazir Ahmed v. King Emperor* AIR 1936 PC 253 that when a statute requires a thing to be done in a particular manner, it must be done in that manner or not at all. As already discussed, the language of Section 269D does now show that the service of notice upon the transferor or transferee, as contemplated by sub-section (2), must necessarily be effected only after publication of the notice in the official gazette.

9. For the reasons mentioned above, we are of the opinion that the view taken by the High Court and also by the Income Tax Appellate Tribunal, Chandigarh, to the effect that service of notice upon the transferor and the transferee under Section 269D(2)(a) prior to the publication of the notice in the official gazette rendered the whole proceedings illegal and without jurisdiction, is clearly unsustainable in law. The appeal is accordingly allowed and the judgment and order dated 21.7.1999 of the Punjab and Haryana High Court and also the order dated 16.8.1992 of the Income Tax Appellate Tribunal are set aside.

JUDIS