

CASE NO.:
Appeal (civil) 6049 of 1998

PETITIONER:
APPROPRIATE AUTHORITY & ANR.

Vs.

RESPONDENT:
R.C.CHAWLA & ORS.

DATE OF JUDGMENT: 10/05/2001

BENCH:
S. Rajendra Babu & K.G. Balakrishnan

JUDGMENT:

RAJENDRA BABU, J. :
L...I...T.....T.....T.....T.....T.....T.....T...J

An agreement to sell was entered into on 6.5.1994 by respondent NO.3 with respondent Nos. 1 and 2 in respect of property bearing municipal No.C-590, Defence Colony, New Delhi for a total sale consideration of Rs.80 lacs. An application in Form 37(I) was filed before the Appropriate Authority as required under Section 269UC of the Income Tax Act, 1961 [hereinafter referred to as the Act]. The Appropriate Authority by an order made on 30.1.1984 under Section 269UD ordered the purchase by the Central Government of the said property for the sale consideration mentioned in the agreement to sell. This order was challenged before the High Court in C.W.P.No.3884 of 1994. The High Court by an order made on 17.10.1997 quashed the order for compulsory sale made in favour of the Union of India. Hence this appeal by special leave.

According to the Appropriate Authority, the fair market value is assessed to be Rs.96,85,650/-, thus resulting in an increase by 20 per cent of the apparent consideration of Rs.80 lacs plus conversion charges of Rs.1,04,000/-. In reaching this conclusion, the Appropriate Authority took two instances of sale of properties situate at C-77, Defence Colony, New Delhi and C-86, Defence Colony, New Delhi to show that the value has been understated by more than 15 per cent. Even assuming for the sake of argument that the valuation assigned by the Appropriate Authority to the property in question is correct, one important factor has been ignored by the Appropriate Authority, namely, that the property was under litigation and proceedings were still pending in the court of law at the time when the sale was sought to be made and the Additional District Judge in fact had issued an injunction on May 27, 1994 restraining the same, transfer or parting with the possession of the property. The Department brushed aside this important factor as regards pending litigation, which had been initiated by the step brother of the transferor in which the title of the transferor had been challenged. In those circumstances, the High Court felt that the impending

litigation altogether cannot be ignored while determining the fair market value on the ground that the transferor had agreed to indemnify the transferee or that in the long run the litigation will fail. Whatever may be the other argument that had been addressed by the parties concerned, it is clear that the pending litigation assumed sufficient importance in the matter. The High Court took note of the fact that in other cases where there is pending litigation in respect of properties which have been subjected to proceedings under Chapter XX-C of the Act had been discounted by 10 per cent. It is not necessary to determine this particular percentage. The well known principle of administrative law that if a relevant factor is ignored, the order made becomes vitiated has to be applied in the present case as well. On that basis, the order made by the Appropriate Authority is vitiated and on this short ground we find that the view taken by the High Court is correct and calls for no interference.

The appeal is, therefore, dismissed with costs quantified at Rs.10,000/-