REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.9800-9801 OF 2010

Krishna Kumar Rawat & Ors. ....Appellant(s)

VERSUS

Union of India & Ors. ...Respondent(s)

WITH

CIVIL APPEAL No.9901 2010

Union of India & Anr. ....Appellant(s)

VERSUS

Mithlesh Kumari & Ors. ...Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

C.A. Nos.9800-9801/2010

1. These appeals are directed against the final judgment and order dated 31.05.2007 passed by the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Special Appeal No.744 of 1994 whereby the Division Bench of the High Court dismissed the special appeal filed by the appellants herein and the final judgment and order dated 24.07.2007 in D.B. Civil Review Petition No.80 of 2007 by which the review petition arising out of SA 744/94 was also dismissed.

2. In order to appreciate the controversy involved in these appeals, it is necessary to set out the relevant facts *infra.*

3. The appellants are the writ petitioners whereas the respondents are the respondents of the writ petition out of which these appeal arise.

4. The dispute relates to a land measuring around 9500 sq. yards/7945 sq. meters along with two Godowns (Nos.13 and 14) and certain other structures standing thereon, which are part of Khasra No. 126 situated in village Durgapur, Tahsil Sanganeer, Jaipur (hereinafter referred to as the "suit land").

5. One-Smt. Mithilesh Kumari [respondent No. 3 herein (since deleted)] and Smt. Krishna Kumari Roongta jointly owned the suit land. The suit land then became a property of a firm called M/s Rajasthan Industrial Company, which consisted of several partners along with Smt. Mithilesh Kumari and Smt. Krishna Kumari Roongta. This partnership was later dissolved by a dissolution deed dated 31.03.1986 executed by the partners. In terms of the dissolution deed, two godowns (Nos.13 and 14) together with 1/4th undivided share in the suit land fell to the share of Smt. Mithilesh Kumari.

6. On 11.11.1993, the appellants (prospective buyers) herein entered into an agreement with Smt. Mithilesh Kumari for purchase of the suit land for a total consideration of Rs.99,84,500/- (Rs. 1051/- per sq. yard). The appellants paid a sum of Rs.40,00,000/- to Smt. Mithilesh Kumari towards the advance for purchase of the suit land. According to the appellants, they were placed in possession of the two godowns and other structures standing on the suit land. So far as 1/4th land was concerned, the appellants were given symbolical possession of the suit land.

7. The appellants then furnished the information about the purchase of the suit land in accordance with the requirements of Section 269UC of the Income Tax Act, 1961 (hereinafter referred to as "the Act") to the appropriate authority in Form No. 37 and submitted the copy of the agreement dated 11.11.1993.

8. The valuation officer of the Income Tax Department vide his letter dated 18.01.1994 informed

the appellants that he would inspect the suit land on 21.01.1994. He also sought certain information from the appellants in relation to the suit land. The valuation officer then made an inspection of the suit land and submitted his report to the appropriate authority.

9. The appropriate authority, on receipt of the report, issued a show cause notice on 08.03.1994 to the appellants under Section 269 UD (1A) of the Act stating therein that the apparent sale consideration, as disclosed by the appellants in the sale agreement, was on lower side for various reasons and that, as a matter of fact, the value of the suit land was much higher than the agreed rate specified in the agreement.

10. It was mentioned in the show cause notice dated 08.03.1994 that the Jaipur Development Authority on 07.11.1992 had sold a plot of land at A-90 Triveni Nagar, Near Durga Pura Railway Station in auction at the rate of Rs.1781/- per sq. meter. It was pointed out

that if an adjustment of 5% is made towards less development whereas 10% is allowed on account of large size of the suit land and further 12% is allowed on account of time gap, the rate of the suit land would work out to Rs.1692/- per sq. meter, i.e., Rs.1,34,39,556/- as against the agreed value of Rs.99,84,568/-. It was further pointed out that the value determined by the appropriate authority at Rs.1,34,39,556/- does not include the value of existing two godowns nor it takes into account the commercial potential of the suit land.

11. It was thus pointed out that after taking into consideration all these aspects, the value of the suit land would still be higher than what was agreed between the parties in the agreement and what the appropriate authority has determined. The show cause notice, therefore, concluded in saying as to why pre-emptive purchase order, as envisaged by Section 269 UD (1) of the Act, be not made against the appellants

in relation to the suit land. The appellants were asked to file reply to the show cause notice.

12. The appellants (prospective buyers) and the vendor (R-3) filed their respective replies to the show cause notice. According to them, firstly, comparison of small developed plot of land in Triveni Nagar with the suit land for determination of the value of the suit land was not justified; Second, development of land would need 40% deduction for amenities such as park, roads, electricity, water supply and all other civic amenities; third, the market rate of the area in question as on 01.04.1991 for the first category was fixed at Rs.550/- per sq. meter and for the second category, it was fixed at Rs.450/- per sq. meter and if one would add 12% due to time element of two years, it would work out to Rs.690/- per sq. meter; fourth, sub-division of the suit land would be required to be got approved from the JDA and, if it is done, it would leave 30% to 40% of the land open for civic amenities;

and lastly, one plot measuring 116.3 sq. meters was sold at the rate of Rs.861.10 per sq. meter whereas the rate of the area was fixed by the DAC at Rs.600/- per sq. meter and, therefore, in no case, the value determined by the Department in the show cause notice appears to be justified and hence the show cause notice be withdrawn by allowing the parties to give effect to the sale agreement, as agreed, for the consideration shown in the agreement.

13. The appropriate authority, after making inquiries and hearing the parties passed an order dated 30.03.1994 under Section 269UD (1) of the Act. The appropriate authority overruled the appellants' objections and directed compulsory purchase of the suit land by the Central Government at an amount equal to the apparent consideration fixed by the parties in the agreement dated 11.11.1993. The authority further directed the Income Tax Department to serve a copy of the order passed for purchase of the

suit land by the Central Government to the appellants for their information. The order also directed that in terms of Section 269UE (1) of the Act, the suit land stood vested in the Central Government with effect from 30.03.1994. The appellants were directed to deliver possession of the suit land to Shri RS Sagar, DVO, Income Tax Department, Jaipur who, in turn, wrote to the appellants to intimate the time and the date of handing over the possession to the Income Tax Department.

14. With these background facts, the appellants herein felt aggrieved by the pre-emptive purchase order dated 30.03.1994 passed by the appropriate authority of the Income Tax Department and filed a writ petition (W.P. No.1899/1994) on 13.04.1994 in the High Court of Rajasthan, Bench at Jaipur questioning therein the legality and correctness of the order dated 30.03.1994. The respondents (Income Tax Department) contested the writ petition and defended

the pre-emptive purchase order as being legal and proper on the reasoning stated therein.

15. The Single Judge, by order dated 14.09.1994, dismissed the writ petition and upheld the order dated 30.03.1994 as being legal and proper. The appellants felt aggrieved and filed appeal (D.B.S.A. No.744/1994) before the Division Bench of the High Court. The vendor (respondent No.3) also filed appeal (SAW No.188/95) against the order of the Single Judge. Both the appeals were disposed of by the Division Bench consisted of (Chief Justice S.M. Jha and Justice Mohammad Rafiq) by order dated 31.05.2007. So far as the appellants' appeal (No.744/1994) is concerned, it was dismissed and so far as the vendor's appeal (SAW No.188/1995) is concerned, it was partly allowed with the direction that upon department taking over possession of the suit land, prospective buyers would be entitled to claim refund of the amount paid to the vendor together with interest @ 6% p.a., out of the

maturity amount of the FDR (created by the department) and the remaining amount shall be paid to the vendor.

16. The appellants felt aggrieved and filed review petition in the High Court. The Division Bench, which heard the review petition, was consisted of (Justice R.M. Lodha (as His Lordship then was and later became the CJI) and Justice Rafiq because in the meantime, the Chief Justice S M Jha, who was member of the main judgment had retired).

17. The Review Court dismissed the review petition by a reasoned order dated 24.07.2007 which gave rise to filing of C.A. Nos.9800-9801/2010 in this Court by the prospective buyers. So far as C.A. No.9901/2010 is concerned, it is filed by the Union of India (Income Tax Department) against that part of the order which allowed the appeal (SAW 188/1995) filed by the vendor wherein directions mentioned above were issued for

compliance. This is how these three appeals are clubbed for their analogous hearing.

18. So, the question, which arises for consideration in the appeals (CA Nos.9800-9801/2010), is whether the High Court (Single Judge, Division Bench and Review Bench) was justified in dismissing the appellants' writ petition, intra court appeal and review petition and thereby was justified in upholding the pre-emptive order dated 30.03.1994 passed by the appropriate authority.

19. Mr. S. Ganesh, learned senior counsel appearing for the appellants, in substance, elaborated the same submissions, which were urged by the appellants in the writ petition, writ appeal and review petition before the High Court and also added some new arguments, which were not urged before the High Court.

20. In reply, learned senior counsel Shri Mukerjee appearing for the respondents (Union of India) while supporting the impugned order contended that no case

has been made out to interfere in the reasoning and the conclusion arrived at by the High Court and, therefore, the appeals deserve dismissal.

21. Having heard the learned counsel for the parties at length and on perusal of the record of the case, we find no merit in these appeals.

22. At the outset, it is apposite to mention that the constitutional validity of Chapter XX-C inserted in the Income Tax Act, 1961 by the Finance Act, 1986 of which Section 269 UE(1) is its part was challenged in this Court in the case of **C.B Gautam vs Union of India and Others** (1993) 1 SCC 78. Chapter XX-C deals with compulsory acquisition of property and provides for pre-emptive purchase at apparent consideration by the Government of any immovable property.

23. The then learned Chief Justice M.H.Kania, speaking for the constitution bench, upheld the constitutional validity of Chapter XX-C.

24. The question involved in these appeals is, therefore, required to be examined keeping in view the law laid down in the case of **C.B Gautam** (supra).

25. Coming first to the order dated 30.03.1994 (Annexure P-11) of the appropriate authority, which was impugned in the writ petition, we find from its perusal that it was passed by the authority, which is constituted under Section 269 UB of the Act. This consisted of three members, who are senior officials of the Income Tax Department. The order runs into 16 pages and deals with all the issues on facts and law raised in the show cause notice and its reply.

26. After setting out the facts in detail up to Para 3, the appropriate authority examined in Paras 4 and 5 the location of the suit land, its area, and its proximity with the main roads, industries and residential colonies situated in the nearby areas etc. The appropriate authority then found that having regard to

the topography of the suit land, it has a potential market value.

27. Thereafter, the appropriate authority in Para 7 examined the condition of the two existing godowns bearing Nos. 13 and 14 and other structures standing on the suit land and found as a fact that the condition of the two existing godowns was very good and these godowns were actually being used by the appellants for commercial purposes.

28. Considering the rates applicable as in the case of CPWD structures by cost index and keeping in view the relevant factors such as size, location, condition and the commercial use of the godowns, the appropriate authority fixed Rs.42 lakhs as being the market value of the two godowns.

29. The appropriate authority then in the same para worked out the rate of the suit land at Rs.1727.5 per sq. meter and accordingly determined the market

value of the suit land at Rs.1,79,21,532/- as against its declared value of Rs.99,84,500/- in the agreement.

30. It is apposite to reproduce Paras 6 and 7 *infra*:

> **"6. The subject property is very close to Tonk Road and on the main road leading to Durgapura station and connecting to Tonk Road. On the north side of the subject property is the main Road and on the eastern side, there is public road leading to residential colonies which have come up in its neighbourhood. There are residential colonies of Vishnu Puri and Mahavir Nagar across the road on the north side and residential colonies of Green Nagar and Arjun Nagar on the eastern side across the road. Immediately after this khasra No.126, there is vegetable oil factory of M/s Rohtas Industries Ltd. on the western side.**
>
> **7. We have carefully considered the facts of the case and contentions of the ld. representatives of the transferor and transferees. As stated earlier, there are existing godowns bearing Nos.13 and 14. Besides, there are offices and guard room etc. Considering the rates applicable as in the case of CPWD structures as up date by cost index, the value of the structure including godowns is estimated at Rs.42 lakhs. The main godown are of 2929 sq. meters and other structure 171 sq. meter. The godowns are lead bearing structure with Tubler trusses and AC sheet roofing having CC flooring in it. Proper electric installation and other services are provided as per the norms. It is not correct to say that the cost of removal of debris will be more than the cost of**

structure. As a matter of fact, even entire iron used has a lot of value be godowns are having internal height of 18 feet and raised platform. These were constructed some times in 1980 and are in very good condition. In view of the fact that commercial use of the property has been allowed by the Distt. Magistrate and Jaipur Development Authority, there is no need to demolish them unless the property is being exploited fro better gains. The declared land value will come to Rs.99,84,700/- minus Rs.42,00,000/- = 57,84,500/-. Therefore, the declared land rate works out to Rs.57,84,500/- divided by 7943 sq. meters = Rs.728/- per sq. meter as against the prevailing land rate of the sale instance property at Rs.1727.5 per sq. mt. The land value of the subject property on this basis works out to Rs.1727.5 x 7943 =Rs.1,37,21,532/-. If the value of depreciated structure of Rs.42 lakhs is added, the total value of the subject property comes to Rs.1,79,21,532/- as against the declared value of Rs.99,84,500/-."

31. The appropriate authority then in para 8 considered the appellants' objections to the effect that while determining the market value of suit land, deduction of 30% to 40% should have been given and, if it had been given, there would have been no difference of 15% in the value of the suit land as was

required to be made out for invoking powers under Chapter XX-C by the appropriate authority for pre-emptive purchase of the suit land.

32. The appropriate authority, however, rejected this submission finding no merit therein. The appropriate authority then examined the issue in the light of Rule 11 of the Rajasthan Urban Areas (sub division) Rules, 1975 and other relevant facts and came to a conclusion that, if several other aspects such as the location of the suit land and its commercial value is taken into consideration, the market value of the suit land would be substantially enhanced and would come to Rs.1,46,58,548/- as against the apparent consideration of Rs.99,84,500/- fixed in the agreement. The appropriate authority, therefore, held that in any case, value of the suit land was 15% higher than the amount of the apparent consideration fixed in the agreement.

33. It is apposite to reproduce paras 8 and 9, which deal with this question:

> **"8. Even though the contention of the Ld. representatives regarding deduction of 30% to 40% for roads and parks etc. is not acceptable in principle. We may work out the value of the subject property even on this basis as follows:**
>
> > **Saleable area as per rule 11 of Rajasthan Urban Areas(sub division) Rules, 1975 is about 6%. This rule further provides that this may be more if the plot size is small.**
>
> **Assuming for arguments sake that 66% of 7,943 which is equal to 5242.38 sq. meters is available for sale, the land rate will have to be worked out on the basis of sale instance by adjustment of time gap of +12% only. In other words, the rate of sale instance will be 1718x1.12 = 1994.72 per sq. meter. It is so because of the fact that the deduction of 34% contemplates absence of large size as well as "less developed". On that basis, the land value will be 1995x5242.38=1,04,58,548/- if the value of structure of Rs.42 lakhs is further out to Rs.1,46,58,548/- as against declared apparent consideration of Rs.99,84,500/-.**
>
> **9. While coming to the above noted valuation of Rs.1,46,58,548/- adjustment on account of the following aspects have not been made. If these were further considered the value arrived at will still be higher:**
>
> **i) Deduction of 34% only has been allowed. The deduction can be still less if the plot is of smaller size. This will**

enhance the saleable land area and land value.

ii) **Triveni Nagar is in the interior from main Tonk Road. The development along Tonk Road is certainly very prestigious and valuable. No factor has been added in the sale instance on this account. It has been ascertained that sale instances referred to by the Ld. representative in his written submissions dated 24.3.94 of Triveni Nagar are not at all comparable for several reasons. Plot No.B-44, Triveni Nagar (copy of sale deed in respect of this property has been filed) is near/on the nullah. The surroundings are very poor. Besides, this sale instance is not reliable as it has not been examined for pre-emptive purchase as the alleged apparent consideration is only Rs.1 lakh. Details of another sale instance property at A-256 Triveni Nagar have not been made available but this property is again very close to the nullah and its surroundings are also very poor. Both of these sale instances cannot be compared with the subject property whereas the sale instance relied by us can be comparable subject to adjustment of time gap, commercial nature etc.**

iii) **The subject property is on main road connecting Durgapura station to Tonk Road. It is very close to Tonk Road. The vacant land adjacent to two godowns of the subject property falls on the side of main road leading to newly developed colonies. In other words, the subject property has vacant land area**

on the main station road as well as on other side road leading to colonies. This factor has not been added while coming to the valuation;

iv) As pointed out earlier, the nature of the subject property is commercial. The value of commercial properties is also about 50% more than the residential properties. If this factor is added, the present market value of the subject property will be substantially enhanced."

34. The appropriate authority then in para 10 also examined the case keeping in view the market rates notified by the sub-Registrar, Jaipur for the purpose of paying stamp duty on the sale deed in relation to the lands situated in an area called "Triveni Nagar" and "Durgapura". The appropriate authority was, however, of the view that the rates notified in the circular support the case of Income Tax Department rather than the case of the appellants because the minimum reserved price notified for commercial use was at Rs.1800/- Per sq. meter.

35. The appropriate authority then in para 12 dealt with another argument of the appellants that the adjustment of Rs.10 lakhs payable towards registration charges and Rs.15 lakhs has to be provided for roads, water and electricity supply. The appropriate authority rejected this argument because it found that this amount was not a part of the apparent consideration between the parties.

36. It is after recording the aforementioned factual findings, the appropriate authority came to a conclusion that the case for pre-emptive purchase of the suit land as contemplated under Section 269UD(1) is made out against the appellants.

37. Now coming to the order of the writ Court(Single Judge) dated 14.09.1994, we find on its perusal that the writ Court rightly observed that it could not act as an appellate Court to examine the legality and correctness of the pre-emptive order dated 30.03.1994 passed by the appropriate authority under Section

269UD(1) of the Act but its jurisdiction was confined only to examine as to whether any relevant material is ignored or any erroneous material is considered or whether the order of the appropriate authority has violated the principle of natural justice or any case is made out for infraction of any statutory provision or whether the decision taken by the appropriate authority for pre-emptive purchase is such that no reasonable person could ever take such decision.

38. Despite observing this, the writ Court examined all the issues of facts arising in the case like an appellate Court and found no merit therein.

39. When the matter came up in intra court appeal at the instance of the appellants herein before the Division Bench, the appellate Court also, in detail, examined each factual issue.

40. The Division Bench, in its judgment dated 31.05.2007, minutely dealt with the contentions urged on behalf of the appellant and concurred with the

reasoning and conclusion of the Single Judge and the appropriate authority. We consider it apposite to quote the relevant extract from the judgment with a view to show as to how the issue in relation to process of valuation of the suit land was dealt with by the Division Bench. It reads as under:-

> **"....But on examination of the impugned order of preemptive purchase, we find that the Appropriate Authority in para 8 of the order has categorically noted this argument with reference to Rule 11 of the Rajasthan Urban Areas (Sub-Division, Reconstruction and improvement of Plots) Rules, 1975 and noted that the said rule provides that the saleable are would be about 66% and this may be more if the plot size is smaller but assuming that only 66% would have available are for sale, yet out of 7,943 sq. mtrs. An area equal to 5242.38 sq. mtrs. Would have been available for sale. Appropriate Authority therefore by this alternative mode worked out the rate of the land on the basis of comparable sale instance i.e. 5242.38 sq. mtrs. by adjustment of time gap of +12% which then would come to Rs. 1994.72 per sq. mtrs. It was noted that this was so because the deduction of 34% land contemplates absence of larger size as well as less development. On this basis the land value will be Rs. 1995 x 5242.38 = 1,04,58,548/-. Value of the constructed godowns of Rs. 42 lacs being added thereto, total value of the said property would come to Rs. 1,46,58,548/- as against declared**

apparent consideration of Rs. 99,84,500/-. We do not find any error in the approach taken by the Appropriate Authority because deduction of 34% of the land for making the provision of civic amenities like roads, parks, open spaces, electricity, water, sewerage, drainage, would essentially exclude the element of the land area being a large size agricultural chunk of land, which is the alternative argument made by the respondents and this would then also exclude the element of the land being less developed/under developed. In other words, making use of 1/3rd land would in fact make the remaining 2/3rd land developed and with the sub division of lands into plots of smaller sizes, it would no longer remain a large size undeveloped agricultural land. In fact, making provision of all these civic amenities and facilities by using 1/3rd of the land would considerably enhance its saleability and appreciate the value of the remaining 2/3rd of the land."

41. Now coming to the order of the Review Court, when the matter was taken up in review jurisdiction at the instance of the appellants herein against the judgment of the appellate Court, Justice Lodha speaking for the Bench, again went into each issue on facts and law in detail and found no merit in any of

the issues. The Review Court, therefore, also dismissed the review petition by a well reasoned order.

42. It is in the light of the findings recorded by the appropriate authority, writ Court, appellate Court and lastly, review Court consistently against the appellants, the question, which arises for consideration in this appeal is whether any case is made out to interfere in the impugned order.

43. Though learned counsel for the appellants with his usual fairness vehemently reiterated more or less the same submissions, which were addressed in the High Court and also added some new submissions but we are unable to accept his submissions. In our view, the appropriate authority and the High Court were right in their respective approach, the reasoning and the conclusion. This we say for the following reasons.

44. It is not in dispute that the appropriate authority laid a factual foundation in the show cause notice to prove the value of suit land, which, according to the

authority, was 15% higher than the apparent consideration. It is also not in dispute that a categorical finding was recorded by the appropriate authority that the fair market value of the suit land was 15% more than the apparent consideration mentioned in the agreement of sale by the parties. As mentioned above, these findings were examined by the writ Court, intra appellate Court and lastly the review Court in their respective jurisdiction. They were upheld.

45. In our considered opinion, these findings are based on appreciation of evidence. We do not find these findings to be either arbitrary or illegal or against any statutory provisions and nor they can be regarded as being perverse to the extent that no reasonable man could ever reach to such conclusion. We also find that these findings are in conformity with the requirements of Section 269 UD of the Act and the

law laid down by the Constitution Bench in the case of **C.B. Gautam** (supra).

46. Learned counsel for the appellants, however, argued that since there was no reference of the two godowns in the show cause notice and secondly, the appellants were also not served with the copy of the valuation report of the two godowns, the impugned orders are rendered bad in law on account of these two infirmities.

47. We find no merit in this submission for three reasons. First, the appellants did not raise this objection at any stage of the proceedings. We cannot, therefore, entertain this submission at this stage: Second, in any event, no prejudice was caused to the appellants because all relevant documents were filed on this issue in the writ proceedings. The appellants, therefore, had full opportunity to deal with these documents which they also availed of and lastly, this issue was also argued on its merits. It is for all these

reasons, we do not find any substance in this submission.

48. Learned counsel for the appellants then took us to the factual issues, such as location of the suit land, comparable sales relied on by the Department to prove the value of the suit land etc. These submissions were urged essentially with a view to show that the value of the suit land mentioned in the show cause notice was not the real market value and, therefore, the order of pre-emptive purchase of the suit land is bad in law. Learned counsel, in support of his submissions, also placed reliance on the decisions in **Sahib Singh Kalha & Ors. vs. Amritsar Improvement Trust & Ors.,** (1982) 1 SCC 419, **Lal Chand vs. Union of India & Anr.** , (2009) 15 SCC 769, and **Executive Engineer, Karnataka Housing Board vs. Land Acquisition Officer, Gadag & Ors.**, (2011) 2 SCC 246. We have examined the submissions keeping in view the decisions cited.

49. As mentioned above, these issues were gone into at four stages, i.e., first by the appropriate authority then by writ Court followed by intra court appeal and lastly by review Court on facts and were rejected finding no merit. In an appeal filed under Article 136 of the Constitution, we cannot hold *de novo* inquiry into these issues again. In our view, these findings have been recorded in conformity with the requirements of Section 269UD(1) of the Act and hence deserve to be upheld. They are accordingly upheld.

50. In view of the foregoing discussion, we find no merit in C.A. Nos.9800-9801/2010. The appeals are accordingly dismissed.

CIVIL APPEAL No.9901 2010

1. This appeal is directed against the final judgment and order dated 31.05.2007 passed by the High Court of Judicature for Rajasthan Bench at Jaipur in Division Bench Special Appeal No.188 of 1995 whereby the appeal filed by the vendor (respondent

No.1 in this appeal) was partly allowed with a direction to the appellants(Income Tax Department) that the prospective buyers would be entitled to the refund of the amount paid to the vendor together at the rate of 6% p.a. out of the maturity amount of the aforesaid FDR and remaining amount be paid to the vendor.

2. On perusal of the record, we find that the Single Judge of the High Court had passed an interim order dated 14.09.1994 directing the parties to maintain status quo. He also directed that the period of stay order would be excluded for making the payment by the respondent to the seller depending upon the outcome of the writ petition. This order was later modified on 27.09.1994. While extending the stay order, the Single Judge, however, clarified that in case, if the action impugned is held bad in law, the vendor would be entitled for reimbursement of the loss occasioned to her. It was, however, submitted before the Division Bench of High Court in the appeal that

the concerned authorities had invested the amount of apparent sale consideration, i.e., Rs.99,88,500/- in a fixed deposit (FDR) and the period of FDR was being extended from time to time, pending appeal.

3. Taking into consideration these facts and other relevant circumstances, the Division Bench while dismissing the appeal filed by the prospective buyers, partly allowed the appeal filed by the vendor and issued the following directions:-

> **" .....but the appeal filed by the vendor (SAW No. 188/95) is partly allowed with the direction that upon department taking over possession of the subject property, prospective buyers would be entitled to refund of the amount paid to the vendor together with interest @ 6% p.a., out of the maturity amount of the aforementioned FDR and remaining amount shall be paid to the vendor. In the facts of the case, however, we leave the parties to bear their own costs."**

4. We find that while passing the aforesaid order, the provisions contained in Section 269UG (4) of the Act were not taken into consideration by the Division Bench, which *inter alia* provide as to how the issue in

relation to amount of consideration is finally required to be dealt with by the appropriate authority in a case of this nature.

5. Section 269UG (4) of the Act 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 the 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."**

6. We are, therefore, of the view that instead of issuing the aforementioned impugned directions in relation to the disbursement of the amount of FDR, the High Court should have left the matter to be decided by the appropriate authority as required under Section 269UG (4) of the Act.

7. We are, therefore, inclined to allow the appeal filed by Union of India to the extent that the above-mentioned directions issued by the High Court are hereby set aside and the matter is left open for the decision to be taken by the appropriate authority as required under Section 269UG(4) of the Act in accordance with law.

8. The appeal is accordingly allowed in part. The impugned directions contained in the concluding para of the impugned order are set aside.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[DINESH MAHESHWARI]

New Delhi;
July 29, 2019