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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9574/2005

% **Date of Decision : 23rd November, 2011.**

G/CAPTAIN J.C.SEN GUPTA (RETD) Petitioner
Through Mr. Upamanyu Hazarika, Sr. Adv.
with Mr. Paul Roy Paske, Adv.

versus

APPRO.AUTHORITY INCOME TAX Respondent
Through Ms. Rashmi Chopra, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest?

SANJIV KHANNA,J: (ORAL)

The present writ petition was filed by Group Captain J.C.Sen Gupta (Retired), who is now represented by his legal representative and widow, Shiela Sen Gupta, for quashing letter dated 20.5.2005 written by the Appropriate Authority of Income Tax Department for vacating area of



896 sq.ft on first floor A-3/4, Vasant Vihar, New Delhi. By the impugned letter, the petitioner was requested to vacate the premises within 10 days and hand over possession to the officers of the Appropriate Authority.

2. The petitioner claims and states that in 1976 he was inducted as a tenant in the said portion of the property and has been in occupation since then. The petitioner claims that he is a protected tenant under the Delhi Rent Control Act, 1956 and had successfully resisted attempts of eviction by the erstwhile landlord and owner M S Bhatnagar and Madhuri Bhatnagar.

3. The aforesaid erstwhile owners entered into an agreement to sell with a third person and had filed Form 37-I on 27th September, 1996 before the Appropriate Authority. By an order dated 26th March, 1997 under Section 269 UD (1), the entire property including the tenanted portion was purchased by the Central Government. Pre-emptive purchase was made subject matter of challenge in writ proceedings but the said writ petition was dismissed on 4th August, 2005. The said decision has become final. Thus the order under Section 269 UD(1) of the Act has also attained finality.

4. The petitioner herein cannot challenge/question the order under Section 269 UD(1). The question is what are rights and obligations of a tenant when the property has been acquired under the aforesaid section. This issue is no longer res integra and has been settled by Supreme Court in *C.B. Gautam Vs. UOI* (1993) 199 ITR 530 (SC) and the Constitutional Bench struck down the words “free from encumbrances” in sub-section 1



of Section 269UE. The Supreme Court approved the distinction in cases where the agreement to sell had a stipulation to the effect that the property would be sold free from all encumbrances or certain encumbrances and cases in which the property was to be sold with encumbrances and existing rights. It was held: -

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

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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 269UD(1) in the said Chapter would result in the said property vesting in the Central Government free of such encumbrances or leasehold interests. In such a case, the holders of the encumbrances or leasehold interests would have to obtain their compensation from the amount awarded as the purchase price to the owner of the property. This appears to be a fair construction because, in such a case, the apparent consideration can be expected to include the value of such leasehold interests or encumbrances..."



6. This aspect was further clarified and decided by the Supreme Court in *Adair Dutt and Co. India Pvt. Ltd. v. Appropriate Authority* (1996) 222 ITR 438 (SC) as under :

“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 v. Union of India* [1994] 206 ITR 237, wherein it has been observed that (at page 251) : " The Supreme Court did not specifically consider a case where 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 (page 252) : "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's case* [1993] 199 ITR 530. The position has been clearly stated by this court in the judgment as follows (at page 560 of 199 ITR) :



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

In this context, we may point out that the Constitution Bench in C. B. Gautam's case [1993] 199 ITR 530 considered whether such vesting in the Central Government would affect monthly tenancies. The following observation has been made regarding that aspect (at page 559 of 199 ITR) :

" 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 not provide for vacant possession or the determination of 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 269UD(1) ; but such tenants would lose the protection given to tenants under the rent 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).”

7. In the present case, the Revenue has not placed on record the agreement to sell, which was subject matter of Form 37-I. It is not the case of the Revenue that the property was to be sold “free from all encumbrances”. On the other hand, the case set up by the Revenue in the counter affidavit is that the tenancy period agreed between the erstwhile owner/landlord and the petitioner had come to an end on 14th November, 1978 and after the said date, the petitioner was a statutory tenant or month to month tenant. In other words, the stand put up by the Revenue is that they are entitled to evict the petitioner from the portion in his occupation. As the property now vests with the Central Government, the Delhi Rent Control Act, 1956 is not applicable. In the counter affidavit the Revenue has stated that as per the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 notice can be issued and the petitioner can be evicted. This is the correct position in law.

8. In view of the stand taken by the Revenue in the counter affidavit it is apparent that it is not the intention of the Revenue to physically and by force throw out the petitioner from the portion in his occupation but they shall evict him/her legally as per law i.e. by due process of law. This right and power vests with Central Government and they are entitled to initiate eviction proceedings under the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 and the protection of Delhi Rent Control Act, 1956



is no longer available. If we carefully read the impugned order/letter dated 20.5.2005 the same states that the petitioner was requested to vacate the premises within 10 days. It also states that petitioner was an unauthorized occupant and therefore, should vacate the property.

9. At this stage, ld. counsel for the petitioner states that the petitioner is a widow and about 83 years of age. She has been staying in the property since 1976. He states that the petitioner and her children will file an undertaking in this Court that they shall vacate the premises on or before 30th November, 2012. The said undertaking will be filed by Shiela Sen Gupta within two weeks and by her children within 4 weeks as it is stated that one of the children is residing abroad. The property will not be sub-let or transferred. The petitioner will continue to pay rent/occupation charges/damages at the rate of existing rate. In case there are any arrears, the same will be paid within a period of one month.

10. We are inclined to accept the said undertaking keeping in view the old age of the petitioner and also the factum that proceedings under Public Premises (Eviction of Unauthorized Occupation) Act, 1971 may take some time before an order is passed. The undertaking will bring this litigation to an end and curtail any further proceedings which may arise. It is clarified that in case there is any breach in the undertaking it will be open to the respondent to forcefully evict the petitioner or any person in occupation of the premises without taking recourse to eviction proceeding under the Public Premises (Eviction of Unauthorized Occupation) Act, 1971. Undertaking will be executed as an eviction order under the said



Act. Copy of the undertaking will be also furnished to the ld. counsel for the Revenue.

11. Writ petition is disposed of. No costs.

SANJIV KHANNA, J

R.V.EASWAR, J

NOVEMBER 23, 2011

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