PA (Stage-I) 8.10.2023 (Typing)

Shift-01 Paragraph

In the scheme, the illustrated price of various categories of flats were mentioned. The likely cost of MIG flats with which we are concerned in these appeals was indicated to be Rs. 42,000. On 30th of September 1979, registration was closed. About 1,70,000 persons registered themselves in the scheme. In 1981, allotment started taking place by draw of lots based on randomized allotment. It may please be noted that the plinth area of the flats indicated and the estimated prices mentioned in the brochure are illustrative and are subject to modification depending upon the exigencies or lay out, cost of construction etc. Due to certain reasons with which we are not concerned at the moment, the allotments could not be made. On 6th of December, 1990 fresh rates of land to be taken into account for costing of flats were approved by the Lt. Governor. Whereas in 1979 the prevailing land rate was fixed at Rs. 62 per sq. meter, the same was revised in 1990 to Rs. 870 per sq. meter for MIG flats, Rs. 660 per sq. meter for LIG flats and Rs. 500 per sq. meter for Janta flats. The increased rate was approved after taking into consideration all the relevant factors involved. The respondents-writ petitioners--whose turn for allotment came in 1991 were allotted flats. The demand letters were sent to them. The Respondents filed the writ petition No. 3267 of 1991 in Delhi High Court challenging the rate at which the flats were being allotted. The case put up by them was that the amount being charged for the flats was much higher than what was indicated in the scheme itself. Writ Petitions filed by the respondents were allowed by the High Court despite the fact that several similar writ petitions had already been dismissed on merits. By the impugned judgment the High Court struck down the revision in the rate of land. The Authority was directed to make allotment of flats at a tentative price of four and a half time of the price offered in the year 1979. Further the Authority was directed to constitute an Expert Committee to go into the costing of the flats taking the land rate at Rs. 62 per sq. meter. The Expert Committee was to work out the price after taking into account the actual cost of construction made by it for the construction of the flats. If the Expert Committee after working out the cost on the basis of aforesaid works out cost to be more than the price that was provisionally fixed, then the Authority was put at liberty to revise the cost and intimate to the respondents requiring them to make the payment within a month of such intimation. The Arguments were heard and orders were reserved. A miscellaneous application being

CM No. 6491 of 1993 was filed in writ petition No. 1121 of 1991 to report that another Division Bench had pronounced judgment in Writ Petition No. 3267 of 1991 on August 25, 1993 which had a direct bearing on the controversy involved, in which similar issues had been considered and decided. The relief similar to the one claimed in petition had been granted. A prayer was made that the writ petitions be disposed of in terms of the said judgment. On notice, the authority resisted the application swaying that important decisions vital to the issue raised had escaped attention of the Court in CWP 3267 of 1991 and as such the same was not binding. Keeping in mind the divergent views expressed by different Benches of equal strength, the Division Bench felt it appropriate that the matter be decided by a larger bench and in particular the following questions. The fact that the matter had been referred to a larger Bench doubting the correctness of the view expressed in the impugned judgment was brought to the notice of this Court in the present appeals. This Court on 7th February, 1994 adjourned the case sine die to await the decision of the Full Bench and passed the following order. We are told at the bar that the instant decision under appeal has been doubted by another Division Bench of the High Court. Apparently there exists a conflict of opinion raging in the High Court on the question raised herein. We feel that in this situation it would be appropriate that the High Court itself puts to order its own views. We, therefore, send a request to the Chief Justice of the High Court to constitute a Full Bench, if possible, within 3 weeks and have the matter listed and heard as expeditiously as possible. We on our part hold over this matter awaiting the decision of the Full Bench. The authority filed a detailed affidavit before the Full Bench along with the documents explaining as to how likely cost of the flats mentioned in 1979 was arrived at, the component of land price in the said cost, the basis thereof and increase in the land price, if any, between 1979 and 1990. The basis on which the price was enhanced was also indicated which ultimately resulted in the issuance of the notification by the Lt. Governor of Delhi dated 6th December, 1990 and fixing the revised rates which was impugned in the writ petitions filed in the High Court. The points which were referred to the Full Bench were answered in the negative, in favour of the authority and against the allottees. It was held that the scope of judicial review in the cases involving costing and fixation of prices was very much limited. In the concluding portions, the two points referred to the Full Bench were answered. We may now advert to the questions referred to the Full Bench. In keeping without observations and findings

recorded above, we are of the opinion that this court cannot interfere under the Constitution in the matter of costing of flats, including escalation of cost of land. The answer to the first question has to be negative.

PA602-23

Shift-02 Paragraph

Assesse before us is an individual, engaged in the medical profession, inter alia, running a premier private hospital by the name -- JeevanJyoti -- in the holy town of Allahabad. As per the department, during this search, cash jewellery and other valuables, apart from the stock of medicines and various other documents were found by the search party. In support of the preliminary objection raised, Shri S. K. Garg, learned counsel for the assesse made manifold submissions. Making a preface, he submitted which was introduced w.e.f. 1-7-1995 brought about significant changes in the assessments relating to search. While sections 132 and 132A still survived, the necessity of passing any order under sub-section and consequently appeal before the CIT under sub-section 12 of Section 132 of the Act was dispensed with. In the submission of ShriGarg, a block assessment had to be completed strictly in accordance with the provisions, which provided special procedure for assessment of search cases. It was a complete and exhaustive code by itself. Elaborating, it was contended that it required taking of various steps. The second, the Assessing Officer to serve a notice to the assesse subjected to search requiring him to furnish the details of his total income including the undisclosed income for the block period, within the specified period of 15 days. The third, determination of the undisclosed income of the block period as laid down in section 158BB of the Act. It was only then that finally the Assessing Officer would pass an order of assessment on the basis of the determination by him of the undisclosed income for the block period with the previous approval of the Commissioner of Income-tax. ShriGarg contended that both on factual basis and in law the assesse was fully entitled to know the reasons which actuated the competent authority to form, reason to believe, for authorising the search. In this connection he placed reliance on a decision of the jurisdictional High Court and submitted that although this decision related to the provisions of section 148 of the Act, yet its analogy applied on all fours to the facts of the present case. As per this decision, to eliminate the possibility of an arbitrary action, an officer who is required to record reasons was equally bound to give reasons, which inter alia could be looked into by a superior authority to satisfy himself that action had not been initiated arbitrarily. It was, however, open to him to withhold the name of informants and/or identify of sources if it was thought necessary to protect the sources and informants as per which after the assesse had participated in the

proceedings if asked for, the reasons for forming the belief should be disclosed to him. ShriGarg submitted that this position held good only till before chapter 14-B was enacted in his submission in the earlier provisions relating to the completion of assessments of the Act, the Legislature has not drawn any distinction for the completion of assessments in search cases and in cases otherwise, while Chapter 14-B has specifically provided a procedure for the completion of an assessment, but only as a result of search under section 132. Strongly opposing, ShriBharatjiAgarwal, learned senior standing counsel contended that the question about the validity of search was in point of time prior to the initiation of assessment proceedings and had nothing to do with the formation of the assessment order. Referring to the provisions of section 158BC, ShriAgarwal submitted that various steps for the completion of a bloc assessment did not visualise anything relating to search, which term had been used only to show a matter of fact to convey that the procedure prescribed by this section shall be followed in a case where a search had been conducted under section 132 of the Act. The search, ShriAgarwal submitted, was a pre-assessment stage. Elucidating, the learned Senior Standing Counsel submitted that the appeal to the Appellate Tribunal was provided only against an assessment order framed under the provisions as pointed out by him since the search was not a part of the assessment, the Tribunal did not have the jurisdiction to adjudicate any controversy or objection raised by an assessed in respect thereof. According to him, the position that was obtainable in respect of such a challenge before the codification of the same chapter still held good, i.e., an assessed if he so chooses could file a petition under Article 226 of the Constitution of India to assail the search itself. In reply to the contention of the assesse that even where a matter had reached the CBDT, an Assessing Officer could go into it, ShriAgarwal submitted that this pertained to the reopening of an assessment where the reasons had to be recorded by the Assessing Officer but were to be submitted to the C.B.D.T. as the reopening of the assessment was for a very early period. This approval was considered necessity by the Legislature for a variety of reasons including administrative exigency. The Appellate Authority could go into such reasons, its legal quality and validity mainly because the reasons were recorded by none else than the Assessing Officer himself. This too was permissible as the reasons so recorded formed the basis for reopening and making the fresh assessment by the Assessing Officer. To the non-adjudication of the issue by the Assessing Officer despite being

raked up several times by the assesse, ShriAgarwal submitted that it should be impliedly taken to have been rejected by the Assessing Officer particularly in view of the fact that it was abundantly clear that the he had no jurisdiction to decide this question. In reply, ShriGarg reiterating his submissions contended that he also agreed with the learned Senior Standing Counsel that once the intention of the Legislature was clear, it had to be implemented but it was impermissible to say that the term used by the Legislature would not mean as a valid search of the matter.

RA (O) -23

Shift-03 Paragraph

The matter arises under the Kerala General Sales Tax Act, 1963. The assesse is the revision petitioner. It is a dealer in provisions. The assessment year concerned is 1988-89. The original assessment of the assesse for the year was completed on November 27, 1990. The assesse took up the matter in first appeal before the Additional Deputy Commissioner, Agricultural Income-tax and Sales Tax, who by his order dated May 6, 1991 modified the assessment. The assesse and the State filed appeal before the Sales Tax Appellate Tribunal. The Appellate Tribunal disposed of the said appeals by order dated August 5, 1994 whereby the appeal filed by the assesse was partly allowed and the State appeal was dismissed. In the meantime, the assessing authority gave effect to the first appellate authority order by passing a revised order dated June 26, 1993. After the order of the Tribunal the Deputy Commissioner, Agricultural Income-tax and Sales Tax, Ernakulam issued a notice dated June 27, 1995 under Section 35 of the Act proposing to set aside the assessment. Though the assesse had sought for time to file objections and the same was granted as per communication dated July 6, 1995 the assesse did not respond to the notice. In the above circumstances, the Deputy Commissioner by his order dated July 27, 1995 set aside the revised order dated June 26, 1993 passed by the assessing authority and remanded the matter to the assessing authority for doing the assessment afresh in accordance with law. Aggrieved by this order the assesse filed appeal before the Sales Tax Appellate Tribunal, Additional Bench, Ernakulam. The Tribunal allowed the said appeal and cancelled the order passed by the Deputy Commissioner holding that the Deputy Commissioner has no power to reopen the assessment based on materials which were not in existence at the time when the original assessment was made. Hence the revenue is in revision before this Court. Sri Raju, learned Special Government Pleader appearing for the revision petitioner, submits that the Deputy Commissioner in exercise of his power under Section 35 of the Act is exercising a supervisory power as distinct from the original power and that while exercising such power the Deputy Commissioner can look into every material available before him at the time of consideration of the correctness of the order or other proceedings of the subordinate authorities under the Act. He also submits that Section 35 itself gives power to the Deputy Commissioner to conduct such enquiry with reference to the order sought to be interfered with. He further submitted that

in the instant case the Deputy Commissioner had before him the order passed by the Intelligence Officer on May 18, 1992 based on the vehicle check conducted by him during the very same assessment year and the assessment order clearly showed that the assessing authority did not consider the said order since the said materials came into existence only after the completion of the assessment. The Special Government Pleader further submitted that though the assessing authority can also invoke the jurisdiction vested under Section 19 of the Act by reopening the assessment with reference to the said materials if it comes to his knowledge before the expiry of the time granted under Section 19 of the Act for such reopening that will not in any way fetter the power of the Deputy Commissioner to invoke the supervisory power under Section 35. He further submitted that the question raised in this case is squarely covered by the decision of the Full Bench of this Court. Sri Sarangan, learned Senior Counsel along with Shri Kumar appearing for the assesse has raised the following contentions; 1. The Deputy Commissioner in exercise of his suomoto powers under Section 35 cannot travel beyond the records of the assessment as it obtained before the assessing authority. In other words, the Deputy Commissioner must confine himself to the records based on which the assessing authority has passed the order, confers power on the Deputy Commissioner only to call for and examine any order passed or proceedings recorded under this Act by any officer subordinate to him and to make such enquiry or cause such enquiry to be made and subject to the provisions of the Act may pass orders thereon. In other words, according to the Senior Counsel the Deputy Commissioner can go into the question of legality, regularity or propriety of the order passed by the assessing authority only on the basis of the materials available before the assessing authority while making the assessment; 2. Going by the scheme of the Act there is a distinction between the powers of the assessing authority to reopen the assessment under Section 19 of the Act for getting at escaped turnover and the power of the Deputy Commissioner to correct illegalities in the orders passed by certain authorities under the Act. According to him, only the assessing authority, exercising powers under Section 19, has got the power to conduct roving enquiries to find out whether there is any escapement of turnover or under-assessment whereas the Deputy Commissioner has no power to conduct any such roving enquiry for collecting materials to find out whether there is any escapement of turnover under assessment. The counsel submitted that the powers of the assessing authority under Section 19 to assess escaped turnover and the

powers of the Deputy Commissioner to correct the illegalities in the orders of the subordinate authorities are distinct and different powers with different conditions and therefore the said powers are mutually exclusive and one authority cannot trench upon the power vested in the other authority; 3. The illegality, if at all, is only in the original assessment order for 1988-89 passed on November 27, 1990 and, therefore, the order that could be corrected under the Section 35 is only that order. In the instant case the Deputy Commissioner had sought to correct only the revised order dated June 26, 1993 passed by the assessing authority pursuant to order of the appellate authority.

Undue sympathy to impose inadequate sentences would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could no longer accept such serious threats. After giving due consideration to the facts and circumstances of each case for deciding a just and appropriate sentence to be awarded for an offense, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced based on really relevant circumstances in an objective manner by the court. Such an act of balancing is indeed a difficult task. It has been very aptly indicated in a case that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the unlimited variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula that may provide any basis for reasonable criteria to correctly assess various circumstances relevant to the consideration of the gravity of the crime, the discretionary judgment in the facts of each case is the only way in which such judgment may be equitably distinguished. The object should be to protect society and to deter the criminal from achieving the affirmed object of law by imposing an appropriate sentence. It is expected that the courts would operate the sentencing system to impose such sentence which reflects the conscience of the society and the sentencing process has to be firm. Imposition of a sentence without considering its effect on the social order in many cases may be in reality a futile exercise. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offenses will be result wise ineffective in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system. The court will be failing in its duty if appropriate punishment is not awarded for a crime that has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The court must not

only keep in view the rights of the criminal but also of the victim of the crime and the society at large while considering the imposition of appropriate punishment. The purpose of imposition of fine or grant of compensation to a great extent must be considered having the relevant factors. Before issuing a direction to pay compensation, the capacity of the accused to pay the same must be judged. An inquiry on this behalf may be necessary. Some reasons which may not be very elaborate may also have to be assigned. The purpose is that the power to impose a fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same but Section 357 does not impose any such limitation.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way it may convict or may acquit on the testimony of a single witness. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases that the court has to be careful and has to look for validation in material particulars by reliable testimony. The court naturally has to consider carefully such testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon the same. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offenses or of the testimony of an approver both these are cases in which the oral testimony is being that of a participator in crime. But where no such exceptional reasons are operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness which is the only reliable evidence in support of the prosecution. Lastly, it was urged that assuming that the court was inclined to act upon the testimony of the first witness and to record a conviction for murder as against the first appellant, the court should not impose the extreme penalty of law and in the state of the record as it is the lesser punishment provided by law should be deemed to meet the ends of justice. We cannot agree with this line of argument. The first question that the court has to consider in a case like this is whether the accused has been proved to the satisfaction of the court, to have committed the crime. If the court is convinced about the truth of the prosecution story, conviction has to follow. The question of the sentence has to be determined not concerning the volume or character of the evidence presented by prosecution in support of the case but regarding the fact whether there are any justifying circumstances which

can be said to mitigate the wickedness of the crime. If the court is satisfied that there are such mitigating circumstances only then, it would be justified in imposing the lesser of the two sentences provided by law. In other words, the nature of the proof has nothing to do with the character of the punishment. The nature of the proof can only bear upon the question of conviction whether or not the accused has been proven to be guilty. If the court concludes that the guilt has been brought home to the accused, then the process of proof is at an end.

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