Calcutta High Court
Ashwika Kapur vs Union Of India & Others on 24 February, 2022

A.P.O NO. 287 OF 2018

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

RESERVED ON: 10.02.2022
DELIVERED ON: 24.02.2022

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

A.P.O NO. 287 OF 2018
ARISING OUT OF
W.P NO. 2821 OF 1993

ASHWIKA KAPUR

VERSUS

UNION OF INDIA & OTHERS.

Appearance:-
Mr. J P Khaitan
Mr. Akhilesh Gupta
Mr. Debasish De

....For the Appellant.

Mr. P K Bhowmik
Mr. A Bhowmik

....For the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

1. This intra court appeal is directed against the order passed in W.P No. 2821 of 1993 dated 14.08.2018. The said writ petition was filed challenging the order dated 29.07.1993 passed by the Appropriate Authority, under Section 269 UD of the Income Tax Act, 1961 (the act for brevity).

2. The original writ petitioner is Mr. Ashwani Kapur, and the appellant before us is his daughter Ms Ashwika Kapur, as the original writ petitioner passed away on 27.03.2020.

3. Before we proceed further, it would be necessary to note as to who were the parties to the writ petition. As mentioned, the original writ petitioner was Mr. Ashwani Kapur, the first respondent Union of India through the Secretary, Ministry of Revenue, Government of India, New Delhi, the second respondent, the Appropriate Authority, Income Tax Department, Calcutta, the third respondent, Superintending Engineer, Appropriate Authority, Income Tax Department, Kolkata, the fourth respondent Mrs. Mina Gupta, the fifth respondent Dr. Ambar Gupta and the sixth respondent M/s. Stewart Hall (India) Limited.

4. An agreement dated 05.08.1988, was entered into between Mrs. Mina Gupta and Dr. Ambar Gupta with M/s. Stewart Hall (India) Limited, agreeing to let out a flat bearing No. D-113, Tower Block, Saptaparni Cooperative Housing Society Limited, Ballygunge, Kolkata agreeing to lease out the said flat for a monthly rent of Rs. 4,000/-initially for a period of three years, renewable for a further period of two years. The original writ petitioner Mr. Ashwani Kapur was employed in a senior position in M/s. Stewart Hall (India) A.P.O NO. 287 OF 2018 Limited and he was permitted by his employer to occupy the flat as a licensee under the company. During February 1993, Mrs. Mina Gupta and Dr. Ambar Gupta wrote to M/s. Stewart Hall (India) Limited for increase of rent by Rs. 500/- per month, agreeing that the company can continue as a tenant as long as they paid the rent on time. The company agreed to the said demand and paid increased rent of Rs. 4500/- per month from January 1, 1993 with a condition that the tenancy would continue as long as the company desired to which Mrs. Mina Gupta and Dr. Ambar Gupta agreed. As mentioned, the original writ petitioner Mr. Ashwani Kapur was occupying the flat as a licensee of the company. An agreement for sale dated 21.04.1993 was entered into between Mrs. Mina Gupta and Dr. Ambar Gupta and the original writ petitioner/licensee agreeing to sell the flat, subject to the subsisting tenancy, in favour of Mr. Ashwani Kapur for a sale consideration of Rs. 13,00,000/-. Mrs. Mina Gupta and Dr. Ambar Gupta filed Form 37 I dated 04.05.1993 before the Appropriate Authority, the original second respondent, under Chapter XX-C of the Act, in the capacity of transferors and the original writ petitioner was the transferee. It was specifically stated that the flat was occupied by Stewart Hall (India) Limited as a tenant and possession would be granted to the original writ petitioner (licensee) only after no objection certificate is issued by the Appropriate Authority. On 17.05.1993, a team of valuers from the office of the Appropriate Authority visited the flat. Thereafter, on 15.07.1993 the Appropriate Authority addressed both the transferors and the transferee raising

various queries. This communication is said to have been received on 17.07.1993 to which the original writ petitioner filed a reply on 20.07.1993. The case of the original writ petitioner is that on 26.07.1993 A.P.O NO. 287 OF 2018 late in the afternoon, he received a show cause notice dated 21.07.1993 fixing the date of hearing on 27.07.1993 at 11:00 AM. Along with the show cause notice, a valuation report valuing the flat at Rs. 28,35,000/- was enclosed wherein there was reference to three sale instances. The writ petitioner's case is that no documents relating to the sale instance were provided along with the show cause notice and in none of the sale instances, the property was shown to be a tenanted property or a property developed by a Cooperative Housing Society, as in the case of the subject flat. On 27.07.1993, the transferors also filed their reply to the show cause notice and on the same day, the tenant namely Stewart Hall (India) Limited also filed their reply. The original writ petitioner challenged the valuation report provided along with the show cause notice and requested for the report of the valuating team which had visiting the flat in May 1993. No reply was received by the original writ petitioner and an order dated 29.07.1993 was passed by the Appropriate Authority exercising their right of pre-emptive purchase. This order was put to challenge in the writ petition.

5. The writ petitioner contended that the order of pre-emptive purchase of the flat under Section 269 UD (1) of the Act is arbitrary and unreasonable and in violation of the principles of natural justice. The valuation of the property as adopted by the Appropriate Authority was challenged as being excessive, irrationally prepared based on incorrect valuation method. Further it was contended that the rent capitalisation method should have been adopted in computing the valuation of the flat as the lease executed by the transferors in favour of the company was subsisting. It was further contended that the Appropriate Authority without any material came to an erroneous A.P.O NO. 287 OF 2018 conclusion that there is a likelihood of the company to forego the tenancy right which was contrary to the statement made in the declaration and therefore such inference by the Appropriate Authority was perverse. Further the Appropriate Authority erroneously held, that the tenancy right expired on 04.08.1993 in the absence of any document or evidence to the said effect. Further the Appropriate Authority ignored the fact that the transferors were transferring the flat pending litigation between themselves and the society and the flat was mortgaged to UCO Bank and in the event, the bank was successful in such litigation the society would have to pay substantial amount and the individual flat owner including the transferee would have to pay proportionate amount which will exceed the actual consideration of Rs. 13,00,000/-. Further it was contended that the Appropriate Authority over looked the fact that the flat in question was part of a cooperative complex and the transferee would never become a full owner as in the case of an ownership flat and all future transfers would be subject to the approval of the society and this was not the case in respect of the three sale instances referred to by the Appropriate Authority in the pre-emptive purchase order. Further the Appropriate Authority ought to have noted that the vendors were in urgent need of funds as a surgery was required to be performed on Mr. Ranjit Gupta and he was also under treatment for cancer and owing to the circumstances and encumbrances on the property, no purchaser was willing to pay more than Rs. 6,00,000/- and this important fact ought to have been considered by the Appropriate Authority while determining the value of the property. It was further submitted that since the show cause notice was served only in the late afternoon of 26.07.1993 for the hearing fixed on A.P.O NO. 287 OF 2018 27.09.1993, the writ petitioner had less than a day to prepare for the hearing and the opportunity granted was inadequate and therefore after the

purchase order was passed, the writ petitioner filed an application for rectification of mistake which was rejected by the Appropriate Authority without application of mind. That apart, the writ petitioner had pleaded that the Appropriate Authority should have applied the rental method in valuing the property and it failed to appreciate the meaning and purport of Section 3 of the West Bengal Premises Tenancy Act, 1956. With regard to the valuation of the property, the petitioner placed reliance on the decision of the Hon'ble Supreme Court in C.B. Gautam Versus Union of India and Others1.

6. The Appropriate Authority and the other official respondents resisted the prayers in the writ petition by contending that the case involves decision on disputed question of facts which cannot be decided in the writ petition under Article 226 of the Constitution of India, this Court would not go into merits of the decision taken by the Appropriate Authority or re-appreciate the facts which were available on record before the Appropriate Authority. It was further submitted that the valuation adopted by the department determined the fair market value of the property at Rs 26,35,000/-as against the apparent sale consideration of Rs. 12.98,250/- which was 118.37 % more than the apparent sale consideration. The valuation was done by relying upon three sale instances all of which are in respect of properties situated in similar localities and near to the property in question, after giving due allowance to various relevant factors. The transferors, the transferee and the company were issued show cause notices, they had filed their written (1993) 199 ITR 530 (SC) A.P.O NO. 287 OF 2018 submissions and the transferors/transferee were represented by counsel and after considering all the materials placed on record by the parties and upon hearing the oral submission, the pre-emptive purchase order came to be passed. Further it was contended that, after the agreement of tenancy dated 05.08.1988 there was no agreement for continuing of the tenancy for a further term of two years. However, it appears that the company wrote a letter dated 26.03.1993 to the transferors in which it is stated that rent was increased from Rs. 4000/- to 4500/- per month and the tenancy may be continued for such period as the company may desire. The said letter was not signed by the owners. Another letter dated 11.02.1993, which was produced before the Appropriate Authority was signed only by Dr. Ambar Gupta. Therefore, the Appropriate Authority held that the tenancy had expired on 04.08.1993. Thus, it was contended that the order under Section 269 UD (1) was passed after giving proper opportunity to all the parties and making full enquiry and there is nothing illegal about it. On the above grounds, the official respondents sought to sustain the order passed by the Appropriate Authority.

7. The Learned Single Bench after noting the facts framed two issues for consideration:-

> (i) Whether the purchase order dated 29.07.1993 under Section 269 UD (1) was vitiated on account of breach of principles of natural justice.
>
> (ii) Whether the authorities took note of extraneous material into consideration while passing the order dated 29.07.1993.
>
> A.P.O NO. 287 OF 2018

8. On the first issue, the petitioner placed reliance on the decision of the Hon'ble Supreme Court in Sona Builders Versus Union of India and Others. 2 The Learned Single Bench took note of the submission that the writ petitioner did not have adequate time to reply to the show cause notice, however, did not accept the contention on the ground that he did not seek for adjournment of the hearing but participated in the hearing and therefore cannot contend that there was violation of principles of natural justice. With regard to the decision in Sona Builders, the Learned Single Bench held that in the said case a request for adjournment was made which was turned down, hence the decision is distinguishable.

9. With regard to the second issue, which largely pertains to the valuation of the property, upon noting the facts as also the encumbrance with UCO Bank, the Learned Single Bench observed that the right of an individual flat owner will be affected only minimally. Further the Court approved the valuation report prepared by the authorities. Taking note of the decision relied on by the writ petitioner in the case of Appropriate Authority and Another Versus Kailash Suneja and Another 3, the Court held that in the case on hand the Appropriate Authority has not questioned the validity of the agreement to transfer the property or the title of the vendor, it has only questioned the quality of the encumbrances i.e. the tenancy which the Appropriate Authority was entitled to do so. With regard to the contention of the writ petitioner that valuation should be on rental basis, the Learned Single Bench held that the Appropriate Authority had doubted the tenancy (2001) 251 ITR 197 (SC) (2001) 251 ITR 1 A.P.O NO. 287 OF 2018 itself and there were good reasons to do so. It also observes that the writ petitioner was in possession of the flat and at the time of entering into the agreement for sale, he was in employment of the company, Stewart Hall (India) Limited, but retired from service on 01.01.2007. Further the Learned Single Bench observed that the tenant company will continue to remain as such and unless the company surrenders tenancy, although it is not in possession, it will continue to remain liable for payment of rent to the owner which will be the Central Government. With regard to the decisions relied on by the petitioner to adopt the rental valuation method, the Learned Writ Court observed that those were all cases which were decided based on relevant fact situations and cannot be applied to the writ petitioner's case and accordingly by order dated 14.08.2018, the writ petition was dismissed. Challenging the order, the daughter of the original writ petitioner Ms Ashwika Kapur has preferred this appeal.

10. We have heard Mr. JP Khaitan, Learned Senior Council assisted by Mr. Akhilesh Gupta and Mr. Debashis Dey, Learned counsel for the appellant and Mr. P.K. Bhowmik, Learned Senior Standing Council, assisted by Mr. Ashok Bhowmik, Learned Junior Standing Counsel for the respondents.

11. The correctness of the order passed in the writ petition is questioned largely on two grounds:-

12. Firstly, on the ground that the order passed by the Appropriate Authority impugned in the writ petition, was liable to be set aside on the ground of gross violation of principles of natural justice. The second ground is with regard to the valuation of the property in which certain other factual matters were also considered. We recapitulated certain dates and events. An A.P.O NO. 287 OF 2018 agreement for sale was entered into on 21.04.1993 between Mrs. Mina Gupta and Dr. Ambar Gupta, the original respondents 4 and 5, the owners of the flat with the father of the appellant Mr. Ashwani Kapur agreeing to sell the flat in question along with the existing tenancy in favour of

Stewart Hall (India) Limited, the original 6th respondent in which the appellant's father was employed as a senior executive. The sale consideration agreed to be paid was Rs. 13,00,000/-. On 04.05.1993 the transferors and the transferee filed an application before the Appropriate Authority in Form No. 37 (ix). In the said application, it has been specifically stated that the flat is in occupation of M/s. Stewart Hall (India) Limited who is the tenant and possession would be handed over to the transferee, appellant's father, only after obtaining no objection certificate from the Appropriate Authority. After about 13 days after filing the statutory form, a team of valuers from the office of the Appropriate Authority have visited the flat, after which nothing happened for one month and letter dated 15.07.1993 was sent by the Appropriate Authority, received by the transferors and the transferee on 17.07.1993, raising certain queries. The writ petitioner sent reply dated 20.07.1993 stating that the agreement between the landlord and the tenant enclosing vouchers, evidencing payment of rent and other documents were enclosed along with form 37 I, however, one more set of copies of those documents were also furnished along with the letter dated 20.07.1993. The writ petitioner stated that the tenancy is governed by The West Bengal Premises Tenancy Act, 1956 and that there is no litigation between the transferors and the tenant (Stewart Hall India Limited). Further it was stated that the tenant is the company and the transferee is in occupation of the said flat as an employee of the company as A.P.O NO. 287 OF 2018 the company provides accommodation to its senior employees. The flat in question is in a cooperative housing society exclusively meant for residential purpose. Further the encumbrance on the property and the disadvantages, to be faced as the property is with the cooperative society were set out in detail and the writ petitioner stated that he is taking enormous risk in entering into such an agreement and if he is not admitted as a member of the cooperative society, it will end in long drawn litigation. It was further stated that unless the transfer is executed in his favour, he would not be entitled to apply for membership to the society. Further the writ petitioner emphasised the property is not a freehold property, it can be transferred only to eligible individuals not to any corporate body subject to the acceptance of the membership by the society. Further the property is in tenancy with the company which is governed by the Tenancy Act, of 1956 and the tenant cannot be evicted in terms of the procedure laid down therein. Further the property is under mortgage to UCO Bank and litigation is pending, the bank is taking all steps to block all transfers pending resolution of the dispute which may take several years to be resolved. With regard to the valuation, as the flat has been rented out, it was submitted that the valuation should be on the basis of rental method. Further the writ petitioner stated that the vendors are in emergent need of money for medical treatment which is a very relevant factor to be taken into consideration. On 26.07.1993, sometime during late afternoon, the writ petitioner is stated to have received the show cause notice dated 21.07.1993, fixing the date of hearing on the next date i.e on 27.07.1993 at about 11:00 AM. A valuation report valuing the flat at Rs. 28,35,000/- was enclosed along with the show cause notice. Thus, within a A.P.O NO. 287 OF 2018 day the writ petitioner was required to attend the hearing as well as the transferors and the tenant company. There appears to have been a hurried approach in the matter, as on and after 30.07.1993 the Appropriate Authority would be denuded of jurisdiction to pass orders. It has to be borne in mind that Form 37 I was filed by the transferors and the transferee on 04.05.1993 and at the fag end of the expiry of the period of limitation for passing the order, a hearing was fixed on 27.07.1993 which intimation was received by the writ petitioner only on 26.07.1993 in the late afternoon. The official respondents have not denied the said submission of the writ petitioner as regards the date and time of receipt of the show cause notice. The question would be whether such

an opportunity was really an opportunity, was it adequate, considering the facts and circumstances of the case. It is no doubt true that the transferors, the transferee (writ petitioner) as well as the tenant company had filed their objections. The further question would be merely because the writ petitioner had filed his objection/reply to the show cause notice and participated in the hearing, would negate compliance of the principles of natural justice. We note the reply given by the transferors, dated 27.07.1993, that is on the date fixed for personal hearing. In the first paragraph, it has been stated that the vendors have received the show cause notice on 26.07.1993 in the evening and had no time to prepare a reply and submit before the hearing because the hearing was fixed at 11:00 AM on 27.07.1993. The vendors reiterated the submissions made by the writ petitioner in his letter dated 20.07.1993 in response to the query raised by the Appropriate Authority in his letter dated 15.07.1993. Further it was pointed out that no documents relating to the three sale instances referred to A.P.O NO. 287 OF 2018 for determining the value of the property at Rs. 28,35,000/- was enclosed along with the show cause notice. Further, the writ petitioner sought for the copy of the valuation report prepared by the officers of the department after they visited the flat in May 1993. The transferors have also pointed out that they belong to a very respectable family and the need for money was on account for medical emergency for surgery to be performed on their father who was a retired Inspector General of Police of repute. The circumstances under which the transferors took the decision to sell the property was elaborately set out as to how they were unable to obtain any offers more than Rs. 6,00,000/- owing to the fact that the property is not a freehold property, there are pending litigations, the property is mortgaged with UCO Bank and tenancy is subsisting with the company among other matters. If such was the fact situation, can it be said that there has been compliance of principles of natural justice. Principles of natural justice cannot be put in a straight-jacket formula and has to be considered taking note of the fact and circumstances of each case. In our view, the decision in Sona Builders should enure in favour of the appellant. In the said case, the show cause notice was issued on 21.05.1993 from Delhi to the appellant therein who was in Jaipur, fixing the hearing on 31.05.1993. The Hon'ble Supreme Court took note of the fact that it would take two or three days for the notice to be received in Jaipur, even though despatched by speed post and therefore the notice gave only five days to the addressees to respond out of which two days were Saturday and Sunday. The Hon'ble Supreme Court noted that under Section 269 UD, the Appropriate Authority had two months to act commencing from the end of the month in which form 37 I was filed. It noted that the form was filed on March A.P.O NO. 287 OF 2018 09, 1993 and the Appropriate Authority had two months and twenty one days to take action but did not take action until one week from the last available date and gave the appellant therein only three days to respond which was held to be most inadequate. The Learned Single Bench had distinguished the decision on the ground that the appellant therein sought for adjournment of the hearing whereas the writ petitioner before us did not do so. In our respectful view, that is not the manner in which the ratio laid down by the Hon'ble Supreme Court in Sona Builders has to be interpreted or distinguished. The opportunity granted to the aggrieved should not be illusory but should be effective and reasonable. In the preceding paragraphs, we have set out the relevant dates and one day before last day, after which the Appropriate Authority cannot exercise jurisdiction the pre-emptive purchase order was passed. The power exercised under Section 269 UD(1) is a very serious matter as the department seeks to exercise its right of pre- emptive purchase, thereby compelling the vendor to sell the property to the Government and not in accordance with the agreement they had entered into with the prospective purchaser. Therefore, the opportunity should

be adequate, reasonable and not illusory. Assuming the writ petitioner had sought for an adjournment, obviously the Appropriate Authority could not grant one as within a day thereafter, he would loose jurisdiction to pass any orders. Thus, even if such a representation had been made, the Appropriate Authority would have not acceded to the request as he was statutorily barred from doing so. In DLF Universal Ltd. Versus Appropriate Authority,4 it was held that the provisions of Section 269 UD are to be strictly construed, there is no (2000) 243 ITR 730 (SC) A.P.O NO. 287 OF 2018 power to extend time lines stipulated in the said provision. Thus we are of the clear view that the transferors and the transferee did not have adequate opportunity to put forth their objections apart from failure to furnish the copy of the valuation report of the subject property as done by the department. The documents pertaining to the three sale instances which were referred in the show cause notice were also not provided. Therefore, it is amply clear that there has been gross violation of principles of natural justice which would be sufficient to set aside the order passed by the Appropriate Authority by allowing the writ petition.

13. The next aspect is with regard to the valuation of property. The Appropriate Authority came to the conclusion that the tenancy was not subsisting. This is a factually incorrect finding. According to the Appropriate Authority, the tenancy expired on 04.08.1993, whereas the agreement for sale was on 21.04.1993. The Appropriate Authority lost sight of this important fact which would go to show that on the date of the agreement of sale the tenancy was subsisting. Therefore, such finding is perverse.

14. The next aspect is with regard to the valuation of the property. The transferors and the transferee contended that the appropriate method of valuation shall be the rent capitalisation method. The Appropriate Authority rejected such contention by observing that since the tenancy is not recognised, such rent capitalisation method cannot be adopted. We fail to understand as to the meaning of the expression "tenancy is not recognised." The Appropriate Authority had two options firstly to examine and ascertain as to whether there was a valid tenancy or to hold that there is no tenancy subsisting. There cannot be a finding or in other words, there cannot be a A.P.O NO. 287 OF 2018 conclusion, that the tenancy is not recognised and there is no such power vested with the Appropriate Authority by piercing into the transactions which were much ahead of the agreement for sale. The Appropriate Authority has no right to question the validity of the agreement for sale, nor it can go into the legality of the transaction or the title of the vendors. Therefore, the finding of the Appropriate Authority to the effect that the tenancy is not recognised is perverse and unsustainable. The Learned Single Bench while considering this issue has made an observation that the Appropriate Authority doubts the tenancy. On a careful reading of the order passed by the Appropriate Authority dated 29.07.1993, we find that there is no such finding rendered by the authority. As the authority has used the expression that the "tenancy is not recognised."As pointed out, as on the date of the agreement of sale i.e. 21.04.1993, the tenancy was subsisting. Hence the Appropriate Authority exceeded its jurisdiction in assuming certain events which were to take place much after the agreement for sale. These are all aspects which are beyond the jurisdiction of the Appropriate Authority. Therefore, in our view the decision in K.L Suneja would apply to the facts and circumstances of the case, wherein it was held that only question which the Appropriate Authority can decide is whether the property is undervalued or not; it cannot go beyond terms of the agreement; it cannot question the validity of the agreement, legality of the transaction or the title of

the vendor. Thus, we are fully satisfied that the Appropriate Authority clearly breached all the above legal principles rendering the order to be wholly illegal. Thus, if the tenancy was subsisting, the Appropriate Authority was required to adopt the rent capitalisation method. In C.B.Gautam, it was argued by the revenue that if the expression A.P.O NO. 287 OF 2018 "free from all encumbrances" if to be struck down, it would be left open to an intending seller of immovable property to undervalue the property by creating a bogus lease or bogus encumbrance and this would defeat the purpose for which chapter XX-C was introduced. Considering the said submission of the revenue, the Hon'ble Supreme Court pointed out that if the lease or an encumbrance found to be bogus, it can be treated as of no legal effect and it could not affect any of the rights of the Central Government on the vesting of the property in the event of an order for purchase being made under Section 269 UD (1) of the Act. In the case on hand, there is no finding rendered by the Appropriate Authority that the lease was bogus rather curiously the Appropriate Authority states that the tenancy is "not recognised". This in our view is not sustainable. Further in C.B. Gautam the Hon'ble Supreme Court, has pointed out as to what are all the factors which may be looked into while valuing a property. Moreover, in a given transaction of an agreement to sell, there might be several bona fide considerations which might induce a seller to sell his immovable property at less than what might induce a seller to sell his immovable property at less than what might be considered to be the fair market value. For example: he might be in immediate need of money and unable to wait till a buyer is found who is willing to pay the fair market value for the property. There might be some disputes as to the title of the immovable property as a result of which it might have to be sold at a price lower than the fair market value or a subsisting lease in favour of the intending purchaser. There might similarly be other genuine reasons which might have led the seller to agree to sell the property to a particular purchaser at less than the market value even in cases where the purchaser A.P.O NO. 287 OF 2018 might not be his relative. This clearly shows that an order for compulsory purchase results in the rights of holders of encumbrances and leasehold rights being destroyed or significantly diminished. It was further held that in a given case, it might happen that property is intended to be sold under an agreement to sell subject to encumbrances and leasehold rights, and very often agreements to sell immovable property do not provide that the property sold would be free from encumbrances or leasehold rights. In such a case, the apparent consideration, even if it is equivalent to the fair market value, would be indicative of the market value of the property subject to such encumbrances. If, in such a case, an order for compulsory purchase is made, the result would be that the property would be compulsorily purchased and the amount to be paid for the purchase would be only equal to the apparent consideration and the apparent consideration would not take into account the value of the encumbrances on the property like mortgages and so on or the leasehold rights. It was further held that a property may be heavily encumbered and its value can be considerably depressed if it were sold subject to encumbrances. Further it was observed that it is equally well known that a property in respect of which there is a subsisting lease for a substantial period of time would fetch a comparatively low price because the purchase thereof would not carry with it the right to possession or occupation during the subsistence of the leasehold interests, in such cases, the amount of apparent consideration could be even less than the value of the encumbrances or the leasehold interests.

15. The facts pointed out in the above decisions are manifest/apparent on record in the case on hand which had been conveniently ignored by the A.P.O NO. 287 OF 2018 Appropriate Authority. The

specific plea of the transferors as regards the compelling circumstances to sell the property was not noted by the Appropriate Authority. The other factors which diminish the value of the property were not taken into consideration. As laid down by the Hon'ble Supreme Court in Kailash Suneja in case of pre-emptive of purchase of property, the method of valuation of the fair market value has to be just and reasonable. The writ petitioner was not provided with the copies of the relevant documents pertaining to the three properties which were referred to as the sale instances to arrive at the value of the subject property. The writ petitioner has specifically stated that none of those three properties are tenanted properties. In Kailash Suneja, it has been held that while considering comparable instances, the instances of tenanted properties has to be taken into consideration. This aspect has been brushed aside by the Appropriate Authority.

16. The revenue placed reliance on the decision in Mrs. Sunny Uppal Versus Appropriate Authority (Income Tax Department) and Others 5. This decision deals with scope of judicial review under Article 226 and 227 of the Constitution. The Hon'ble Supreme Court after taking into consideration various decisions culled out the situations where the court can exercise the power of judicial review:-

(i) Erroneous assumption or excess of jurisdiction;

(ii) Refusal to exercise jurisdiction;

(iii) Error of law apparent on the fact of the record as distinguished f

a mere mistake of law or error of law relating to jurisdiction;

(2003) 261 ITR 446 (Delhi)

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(iv) Violation of the principles of natural justice;

(v) Arbitrary or capricious exercise of authority or discretion;

(vi) Arriving at a finding which is perverse or based on no material;

(vii) A patent or flagrant error of procedure;

(viii) Order resulting in manifest injuries.

17. In our view, the above decision would support our conclusion, as a writ petition would be maintainable when there is violation of principles of natural justice, when the finding of the authority is perverse or based on no materials and when the authority has committed an error of law relating to jurisdiction. The facts in the decision in Mrs. Sunny Uppal are distinguishable, the Court

held that the writ petitioners therein had never complained about non supply of valuation report and only in the writ petition such a plea was raised. That apart, the writ petitioner therein did not raise that rent capitalisation method has to be adopted. Therefore, the Court found that the writ petitioner therein cannot raise the same for the first time before the Writ Court. Thus the decision is clearly distinguishable on such aspects as the parties before us had sought for the copies of the reports/documents, consistently pleaded that rent capitalisation method has to be adopted as there was a valid tenancy subsisting. The revenue placed reliance on the decision in Appropriate Authority Versus Smt. Sudha Patil and Another 6. This decision was with regard to the jurisdiction of this Court under Article 226/227 of the Constitution of India. As pointed out by us, when there has been gross violation of principles of natural justice and when there is a perversity in the approach of the authority, failure to take (1999) 235 ITR 118 (SC) A.P.O NO. 287 OF 2018 into consideration relevant materials, ignoring settled legal principles more particularly regarding the valuation of the property, undoubtedly this Court would be well justified in exercising its jurisdiction under Article 226 of the Constitution. Therefore, the decision in Smt. Sudha Patil would not render assistance to the case of the revenue considering the facts and circumstances of the case on hand.

18. The valuation of the property must be made by taking into consideration all relevant facts which has not been done by the Appropriate Authority. The valuation adopted by the authority has not been done in an objective manner, without reference to the materials placed by the transferors and transferee. More importantly proper and adequate opportunity was not granted to the transferors/transferee/tenant. Fair hearing is a postulate of decision making by a statutory authority exercising quasi-judicial powers. The rules of natural justice operates as implied mandatory requirement, non-observance whereof invalidates the exercise of power. [Refer: Government of India Versus Maxim A Lobo, 7 Vidyavathi Kapoor Trust Versus CCIT 8 affirmed in C.B. Gautam Versus Union of India 9

19. In Kamala (Ch.) Versus Appropriate Authority,10 it was held that sufficient opportunity should be given to the concerned parties and copies of relevant documents should be furnished, failure to do so was held to be gross breach of natural justice, as held in Sona Builders (supra). (1991) 190 ITR 101 (Mad) (1992) 194 ITR 584 (Kar) (1993) 199 ITR 530 (SC), (supra) (1999) 240 ITR 63 (Mad) A.P.O NO. 287 OF 2018

20. In Appropriate Authority Versus Naresh M Mehta,11 it was held that the Appropriate Authority has no jurisdiction to go into the objects or the purpose of the transaction, or its legality and validity. In Amudha (T) Versus Members, Appropriate Authority,12 it was held that the Appropriate Authority should exercise power under Section 269 UD with great care and utmost fairness. Market value should be determined in a fair and just manner.

21. Thus, for all the above reasons, we are of the clear view that the order passed by the Appropriate Authority dated 29.07.1993 is unsustainable, in gross violation of principles of natural justice, perverse and liable to be set aside.

22. In the result, the appeal is allowed, the order passed in the writ petition is set aside. Consequently the writ petition is allowed and the order passed by the Appropriate Authority dated

29.07.1993 is set aside and the Appropriate Authority is directed to issue necessary certificate under Section 269 UL of the Act within two weeks from the date of receipt of the server copy of this judgment and the vendors are directed to proceed further to complete the sale transaction in favour of the appellant within four weeks from the date of receipt of the certificate under Section 269 UL of the Act. No costs.

(1992) 64 Taxman 241 (Mad) (1993) 202 ITR 525 (Mad) A.P.O NO. 287 OF 2018 (T.S. SIVAGNANAM, J) I agree.

(HIRANMAY BHATTACHARYYA, J) (P.A- SACHIN)