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C.B. GAUTAM

v.

UNION OF INDIA AND ORS.

NOVEMBER 17, 1992/NOVEMBER 27, 1992

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[M.H. KANIA, CJ. J.S. VERMA, S.C. AGRAWAL, YOGESHWAR
DAYAL AND DR. A.S. ANAND, JJ.]

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*Income Tax Act, 1961: Chapter XX-C—Sections 269-UD, 269
UE—Compulsory pre-emptive purchase of property by Government to check
tax evasion—Constitutional validity of—Reasons for such purchase
recorded—Whether a substitute for opportunity of hearing—Such reasons to
be incorporated in the order or recorded separately and communicated—Op-
portunity to show cause—Need for—Vesting of property in Central Govern-
ment—‘Free from all encumbrances’—Whether violative of Article 14 of the
D Constitution—Whether could be read down—Monthly tenancies in such
properties—Whether terminated on acquisition by Government—Section 269
UD(1)—To clarify that encumbrance or lease created to defeat provisions of
Chapter XX-C would be void—Amendment—Suggested.*

E

*Constitution of India, 1950: Article 14—Chapter XX-C of Income Tax
Act—Check on Tax evasion—Compulsory purchase of property by Govern-
ment—Free from all encumbrances—Whether violative of.*

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*Administrative Law: Principles of Natural Justice—Provisions for
recording reasons—Whether a substitute for opportunity of hearing—Com-
municating reasons—Necessity of—Show cause notice—Affording of—Need
for even though not provided in the statute.*

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The petitioner proposed to purchase a plot of land from its owner
who held it under a lease executed by the Delhi Development Authority
(DDA). Initially the owner entered into an agreement to transfer the
leasehold rights in the said property to the petitioner and paid an advance.
On the same day an agreement for the construction of a structure on the
said plot was entered into between the owner and the petitioner. Thereafter
a fresh agreement to sell the said plot along with the leasehold rights in
the said land was executed, wherein the owner agreed to transfer to the
H petitioner his leasehold rights in the said land along with the ownership

of the building put up thereon for Rs.16 lakhs. The petitioner was also liable under the agreement to pay Rs.3.4 lakhs to DDA on account of unearned increase. As per the requirements of Section 269 UC of the Income Tax Act, 1961 the said agreement to sell the property along with Form 37-I giving the required particulars, was furnished to the appropriate authority. After getting the report of the registered valuer, the appropriate authority passed an order for purchase of the property by the Central Government under Section 269 UD (1) of the Income Tax Act and served the same on the petitioner. No specific reason was given for the compulsory purchase of the property. The order of the appropriate authority was challenged by the petitioner before the High Court by way of a Writ Petition. This Court transferred to itself the said Writ Petition.

On behalf of the petitioner, it was contended that no guidelines were prescribed in Chapter XX-C of the Income Tax Act for the exercise of the drastic power of pre-emptive purchase wherein the Government was not even required to comply with the provisions of the Transfer of Property Act in regard to title of the property, and so the provisions of Chapter XX-C confer unfettered discretion on the appropriate authority, which is arbitrary; that the provisions of Chapter XX-C were bad in law as they did not comply with principles of Natural Justice as no opportunity was to be given to the intending purchaser; that the requirement of recording reasons was not sufficient in the absence of recording them in the order of purchase or communicating the reasons to the transferor or the transferee along with the Order; that there has been failure to provide the mode of valuation of property where the title was disputed or the sale was part of a resolution of some dispute between the transferor and the transferee or where there was an adjustment in the price on account of tenancy rights vested in the transferee or on account of encumbrance etc.; and that a law providing for the acquisition or compulsory purchase of immovable property, even in the absence of any proof of tax evasion, would violate the provisions of Articles 14 and 19(1)(g) of the Constitution of India as being excessive and unreasonable. It was also contended that the provisions of Chapter XX-C were bad in law as there was no appeal or revision provided against orders made by appropriate authorities and such order had serious civil consequences and cast aspersion on the parties of attempted tax evasion; and that the rights of monthly tenants and mortgages and

- A other encumbrance holders would be affected, as they could only claim a share in the compensation awarded to the owner, which cannot substitute their secured rights in the immovable property.

On behalf of the respondents, it was contended that in pursuance of

- B Wanchoo Committee's report, Chapter XX-A was introduced in the Income Tax Act, but as those provisions were found inadequate for dealing with the evil of under-valuation of immovable properties in sale deeds and agreements to sell, Chapter XX-C was introduced into the Income Tax Act and these very reasons furnish adequate guidelines for the exercise of
- C power conferred under Chapter XX-C; that the provisions of Chapter XX-C were not penal in nature and the rights of the Transferor were not prejudicially affected as he would get the consideration for which he agree to sell the property under the agreement to sell; that where the price might have been lowered for *bona fide* reasons like sale to close relatives specific
- D provisions exist; that the interest of transferee was not affected since an agreement by itself would create no interest in the property under the provisions of Transfer of Property Act; that after the deletion of Article 19(f), there was no fundamental right to acquire any immovable property; that there was no violation of principles of Natural Justice as the affected person could challenge the order of purchase as arbitrary by filing a
- E petition before a Court of law and the authorities would have to disclose the reasons to satisfy the Court that they acted on relevant considerations germane to the object of Chapter XX-C in taking the decision to purchase the property; that since the decision to purchase a property was taken by three high officers who have adequate knowledge in the matter, lack of
- F provision for appeal or revision would not make any difference, that Chapter XX-C did not provide for communicating the reasons; that as regards tenants and mortgagages the property purchased under Section 269 UD would vest in the government free from all encumbrances; that however, the provisions could be read down in such a way that encumbrances on the property in question and long term leases thereon which created
- G interests in favour of parties who might have nothing to do with tax evasion attempted in the sale of immovable property would not be affected by the acquisition; that unless the agreement provided for sale of the property free from encumbrances or leasehold rights, such encumbrances or leaseholds rights in the property would not be affected; that since tenancies
- H created no interest in the properties, the monthly tenants could not have

any grievance; and that the property vested in the Government only on possession being taken by it and till such time the owner continued to be in possession, he had no right to claim interest. A

Allowing the Writ Petition, this Court,

HELD: 1.1. The very historical setting in which the provisions of Chapter XX-C of the Income Tax Act, 1961 were enacted suggests that it was intended to be resorted to only in cases where there is an attempt at tax evasion by significant under-valuation of immovable property agreed to be sold. This conclusion is strengthened by instruction No.1A88 issued by the Central Board of Direct Taxes, Government of India, Ministry of Finance, Department of Revenue which emphasised that the main objective of the provisions of Chapter XX-C is to check proliferation of black money in real estate transactions and to enforce declaration of the true value of immovable properties that are the subject of transfer between the parties. The Central Board has pointed out in the said Instructions that, in administering the provisions of the said Chapter, it has to be ensured that no harassment is caused to *bona fide* and honest purchasers or sellers of immovable property and there is no erosion of the confidence of the public in the sense of justice and fair play of the Income Tax Department. B C D

[36-E-H, 37-A]

1.2. The powers of compulsory purchase conferred under the provisions of Chapter XX-C of the Income Tax Act, 1961 are intended to be used only in cases where in an agreement to sell an immovable property in an urban area to which the provisions of the said Chapter apply, there is a significant undervaluation of the property concerned, namely, of 15 percent or more. If the appropriate authority concerned is satisfied that in an agreement to sell immovable property in such areas as set out earlier, the apparent consideration shown in the agreement for sale is less than the fair market value by 15 per cent or more it may draw a presumption that this under-valuation has been done with a view to evade tax. Of course, such a presumption is rebuttable and the intended seller or purchaser can lead evidence to rebut such a presumption. Moreover, an order for compulsory purchase of immovable property under the provisions of Section 269 UD requires to be supported by reasons in writing and such reasons must be germane to the object for which Chapter XX-C was introduced in the Income Tax Act, namely, to counter attempts to evade tax. E F G

[38-F, H; 39-A, B] H

A 1.3. It cannot therefore said that the provisions of Chapter XX-C confer an unfettered discretion on the appropriate authorities to order the purchase by the Central Government of immovable properties agreed to be sold. The provisions cannot also be regarded as conferring arbitrary discretion on the appropriate authorities. Hence the provisions of the said Chapter are not violative of Article 14 of the Constitution. [41-D]

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CIT, Gujarat-II v. Smt. Vimlaben Bhagwandas Patel & Anr., (1979) 118 ITR 134, approved.

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K.P. Varghese v. Income Tax Officer, Emakulam & Anr., (1981) 131 ITR 597, referred to.

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2.1. It must be borne in mind that courts have generally read into the provisions of the relevant sections a requirement of giving a reasonable opportunity of being heard before an order is made which would have adverse civil consequences for the parties affected. This would be particularly so in a case where the validity of the section would be open to a serious challenge for want of such an opportunity. [43-F]

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2.2. The time frame within which the order for compulsory purchase has to be made is a fairly tight one but the urgency is not such as would preclude a reasonable opportunity of being heard or to show cause being given to the parties likely to be adversely affected by an order of purchase under Section 269 UD(1). The enquiry pursuant to the explanation given by the intending purchaser or the intending seller might be a somewhat limited one or a summary one but it cannot be said that the time limit provided is so short as to preclude an enquiry or show cause altogether.

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[43-G, H; 44-A]

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2.3. Therefore the requirement of a reasonable opportunity being given to the concerned parties, particularly to the intending purchaser and the intending seller must be read into the provisions of Chapter XX-C. Before an order for compulsory purchase is made under Section 269 UD, the intending purchaser and the intending seller must be given a reasonable opportunity of showing cause against an order for compulsory purchase being made by the appropriate authority concerned. The provisions of Chapter XX-C can be resorted to only where there is a significant under-valuation of property to the extent of 15% or more in the agreement of sale, as evidenced by the apparent consideration being lower

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than the fair market value by 15% or more. Although a presumption of an attempt to evade tax may be raised by the appropriate authority concerned in case of the aforesaid circumstances being established, but such a presumption is rebuttable and this would necessarily imply that the concerned parties must have an opportunity to show cause as to why such a presumption should not be drawn. Moreover, in a given transaction of an agreement to sell there might be several *bona fide* consideration which might induce a seller to sell his immovable property at less than what might be considered to be the fair market value. There might to some dispute 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 might not be his relative. Unless an intending purchaser or intending seller is given an opportunity to show cause against the proposed order for compulsory purchase, he would not be in a position to rebut the presumption of tax evasion. To give an interpretation to the provisions which would lead to such a result would be utterly unwarranted. The very fact that an imputation of tax evasion arises where an order for compulsory purchase is made and such an imputation casts a slur on the parties to the agreement to sell lead to the conclusion that before such an imputation can be made against the parties concerned, they must be given an opportunity to show cause that the under-valuation in the agreement for sale was not with a view of evade tax. Although Chapter XX-C does not contain any express provision for the affected parties being given an opportunity to be heard before an order for purchase is made under Section 269 UD, not to read the requirement of such an opportunity would be to give too literal and strict an interpretation to the provisions of Chapter XX-C. There is no express provision in Chapter XX-C barring the giving of a show cause notice nor is there anything in the language of Chapter XX-C which would lead to such an implication. The observance of principles of natural justice is the pragmatic requirement of fair play in action. Therefore, the requirement of an opportunity to show cause being given before an order for purchase by the Central Government is made by an appropriate authority under Section 269 UD must be read into the provisions of Chapter XX-C. There is nothing in the language of Section 269 UD or any other provision in the said Chapter which would negate such an opportunity being given. Moreover, if such a requirement

A were not read into the provisions, they would be seriously open to challenge
on the ground of violation of the provisions of Article 14 on the ground of
non-compliance with principles of natural justice. The provision that when
an order for purchase is made under Section 269 UD, reasons must be
recorded in writing is no substitute for a provision requiring a reasonable
B opportunity of being heard before such an order is made. [44-B-H; 45-A-E]

Union of India v. J.N. Sinha & Anr., [1971] 1 SCR 791 and *Olga Tellis
& Ors. v. Bombay Municipal Corporation & Ors. etc.*, [1985] Suppl. 2 SCR
51, relied on.

C 3. Section 269 UD(1), in express terminology, provides that the
appropriate authority may make an order for the purchase of the property
"for reasons to be recorded in writing". Section 269 UD(2) casts an obliga-
tion on the authority that it "shall cause a copy of its order under
sub-section (1) in respect of any immovable property to be served on the
transferor". It is, therefore, inconceivable that the order which is required
D to be served by the appropriate authority under sub-section (2) would be
the one which does not contain the reasons for the passing of the order or
is not accompanied by the reasons recorded in writing. It may be permis-
sible to record reasons separately but the order would be an incomplete
order unless either the reasons are incorporated therein or are served
E separately along with the order on the affected party. The reasons for the
order must be communicated to the affected party. [46-B-D]

Government of India and Anr. v. Maxim A. Lobo and Anr., (1991) 190
ITR 101, approved.

F *Vidyavati Kapoor Trust v. Chief Commissioner of Income Tax and Ors.*,
(1992) 194 ITR 584, overruled.

4.1. An order for compulsory purchase results in the rights of
holders of encumbrances and leasehold rights being destroyed or sig-
nificantly diminished. In a given case it might happen that the property is
G intended to be sold under an agreement to sell subject to encumbrances
and leasehold rights, and very often agreement to sell the immovable
property may not provide that the property sold would be free from
encumbrances or leasehold rights. In such a case, the apparent considera-
tion, even if it is equivalent to the fair market value, would be indicative
H 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 which would not take into account the value of the encumbrances on the property like mortgages or the leasehold rights and so on. A property may be heavily encumbered and its value can be considerably depressed if it were sold subject to encumbrances. So also 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. An order for compulsory purchase in such cases would necessarily result in gross injustice to the encumbrance holders and lessees and to their being deprived of their rights without they being in the any way involved in an attempt at tax evasion. It is, therefore, difficult to uphold the last part of sub-section (1) of Section 269 UE insofar as it provides that the property in respect of which an order under sub-section (1) of Section 269 UD is made shall vest in the Central Government *free of all encumbrances*. The expression "free of all encumbrances" is liable to be struck down as arbitrary, without any rational nexus with the object of the legislation in question and violative of Article 14 of the Constitution. Similarly, the provisions of sub-section (2) of Section 269 UE must be read down so as to make them inapplicable to *bona fide* lessees in possession or *bona fide* encumbrance holders in possession. [47-F-H; 48-A-E]

4.2. In order to save a statute or a part thereof from being struck down it can be suitably read down. But such reading down is not permissible where it is negated by the express language of the statute. Reading down is not permissible in such a manner as would fly in the face of the express terms of the statutory provisions. In view of the express provision in Section 269 UE that the property purchased would vest in the Central Government "*free from all encumbrances*" it is not possible to read down the section. [49-F, G]

4.3. The expression "*free from all encumbrances*" in sub-section (1) of Section 269 UE is struck down and sub-section (1) of Section 269 UE must be read without the expression "*free from all encumbrances*" with the result the property in question would vest in the Central Government subject to

- A 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. If under the relevant agreement to sell the property it is agreed to be sold free of all encumbrances or certain encumbrances it would vest in the Central Government free of such encumbrances.
- B Similarly, sub-section (2) of Section 269 UE will be read down so that if the holder of an encumbrance or a lessee is in possession of the property and under the agreement to sell the property it is not provided that the sale would be free of such encumbrances or leasehold interests, the encumbrance holder or the lessee who is in possession will not be obliged to deliver the possession of the property to the appropriate authority or any
- C person authorised by it and the provisions of sub-section (3) also would not apply to such persons. If the provisions of Section 269 UE are read down in the manner indicated above then the provisions of sub-section (6) of that section do not present any difficulty because the vesting in the Central Government would be subject to such encumbrances and leasehold rights. [49-G, H; 50-A-C]
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Rambhai Manja Nayak v. Union of India, (1983) 142 ITR 239, distinguished.

- E 5. 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
- F 269 UD(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. The loss of the protection of the rent control acts cannot be regarded as an interest for which any compensation is liable to be paid. [50-D-F]
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- 6.1. 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 269 UD (1) 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
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encumbrances and 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. The holders of the encumbrances and leasehold interests which would be destroyed in this manner can be said to be persons interested as contemplated in clause (e) of sub-section (2) of Section 269 UA. Sub-section (5) of Section 269 UE makes it amply clear that such persons viz., 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 269 UD. [50-G, H; 51-A-D]

6.2. If a lease or an encumbrance is found to be bogus it can be treated as of no legal effect and in that event it would 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). If it is so considered necessary the provisions of the Chapter might be so amended as to clarify that if any lease or encumbrance is created with a view to defeat the provisions of Chapter XX-C such lease or encumbrance will be regarded as void or ignored for the purposes of the said Chapter. That, however, is for the Parliament to consider. [51-E, F]

7. In the instant case, the order for compulsory purchase under Section 269 UD (1) of the Income Tax Act which was served on the petitioner on the night of 15th December, 1986, has been made without any show cause notice being served on the petitioner and without the petitioner or other affected parties having been given any opportunity to show cause against an order for compulsory purchase nor were the reasons for the said order set out in the order or communicated to the petitioner or other concerned parties along with the order. Hence the order is clearly bad in law and it is set aside. [51-H; 52-A]

8. In view of the fact that the object of the provisions of Chapter XX-C is a laudable object, namely, to counter evasion of tax in transactions of a sale of immovable property, it is necessary to limit the retrospective operation of this judgment in such a manner as not to defeat the acquisitions altogether. If the original time frame prescribed in Chapter XX-C is

- A rigidly applied it would not be possible for the appropriate authority concerned to pass an order under Section 269 UD (1) at all in respect of the property in question. In order to avoid that situation and, yet to ensure that no injustice is caused to the petitioner, the statement in Form 37-I submitted by the petitioner shall be treated as if it were submitted on the date of this judgment. Thereafter if the appropriate authority considers it fit, it may cause a show cause notice calling upon the petitioner and other concerned parties to show cause why an order for compulsory purchase of the property in question should not be made under the provisions of sub-section (1) of Section 269 UD and give a reasonable opportunity to the petitioner and such other concerned parties to show cause against such an order being made. In view of the limited time-frame this will have to be done with a sense of urgency. It after such an opportunity is given the appropriate authority so considers it fit, it may hold an enquiry, even though summary in nature, and may pass an order for compulsory purchase by the Central Government of the property in question under Section 269 UD (1). The appropriate authority will have to decide whether an inquiry is called for in the facts and circumstances of the case after the show cause notice is issued. [52-B-F]

India Cement Ltd. v. State of Tamil Nadu, [1990] 1 SCC 12, relied on.

- E 9. If the order for compulsory purchase of the property is made hereafter the intending vendor will suffer to some extent by reason of the fact that he will get the purchase amount several years after the time he would have got it had the order under challenge been held valid. However, he would have retained the possession of the property in question. Taking into account these factors and taking note of the fact that immovable properties in urban areas have gone up steeply in value during the last few years, it is directed that in case an order for compulsory purchase is made the Central Government shall pay to the intending seller the amount of the apparent consideration plus interest at 9 per cent per annum from the date the order challenged against was made. [53-A-C]

- G 10. As far as completed transactions are concerned, namely, where after the order for compulsory purchase under Section 269 UD of the Income Tax Act was made and possession has been taken over, compensation paid to the owner of the property and accepted without protest, H there is no reason to upset those transactions and hence, nothing said in

this judgment will invalidate such purchases. The same will be the position where public auctions have been held of the properties concerned and they are purchased by third parties. In those cases also nothing which is stated in this judgment will invalidate the purchases. [53-C, D]

11. In respect of cases pending before Courts, the period of two months referred to in Section 269 UD(1) shall be reckoned with reference to the date of disposal of each of such pending matters either before this Court or before the High Courts as the case may be. Where, however, the stay orders inhibiting the authorities from taking further proceedings are vacated, the period referred to in Section 269 UD (1) shall be reckoned with referred to the date the stay orders are vacated. [54-H; 55-A]

12. In respect of matters pending at various stages before the authorities, Form 37-I shall be deemed to have been filed as on the date of the main judgment (17.11.1992) for purposes of completion of proceedings in terms of Section 269 UD (1). [55-B, C]

Ed. : (The clarifications contained in paras 11 and 12 above were issued by this Court in its order dated 27.11.1992 on an application filed by the Union of India. The said order forms part of the main judgment).

ORIGINAL JURISDICTION : Transferred Case No.26 of 1987.

Civil Writ Petition No.2821 of 1986 of the Delhi High Court.

Harish N. Salve, Ravinder Narain, Ms. Amrita Mitra, Rajan Narain, D.N. Mishra, Vibhu Bakhru, Vivek Kohli and P.A.S. Rao (For M/s J.B.D. & Co.) for the Petitioner.

G. Ramaswamy, Attorney General, Dipankar Gupta, Solicitor General, Dr. Gauri Shankar, Ranbir Chandra, C.V.S. Rao and P. Parmeswaran for the Respondents.

The Judgment/Order of the Court were delivered by

KANIA, CJ. The petitioner herein filed Civil Writ Petition No.2821 of 1989 in the Delhi High Court challenging the validity of the provisions of Chapter XX-C inserted in the Income Tax Act, 1961 (referred to herein as 'the Income Tax Act') by the Finance Act of 1986. That writ petition has been transferred to this Court as a test case. The order transferring

A the said Writ Petition was made on 20.9.89.

B The relevant facts lie within a narrow compass. The petitioner is the intending purchaser of a plot of land bearing No. B-7/108A, situated at Safdarjung Enclave, New Delhi, admeasuring 253 sq. mtrs. The owner of the property is one Jai Lal s/o Ghazi Ram. The said owner held the said plot under a lease executed by the Delhi Development Authority on 25.2.81. On 4.2.85 the owner entered into an agreement to transfer the leasehold rights in the said property to the petitioner and a sum of Rs.4.5 lakhs was paid as the advance price. On the same day an agreement for the construction of a structure on the plot was entered between the said parties. On 9.7.86 a fresh agreement to sell the residential house put up on the aforesaid plot of land along with the leasehold rights in the said land was executed between the parties wherein the owner agreed to transfer to the petitioner his leasehold rights in the said land along with the ownership of the construction, namely, the building put up thereon, for Rs.16 lakhs. In addition, the petitioner was liable under the agreement to pay Rs.3.4 lakhs to the Delhi Development Authority on account of the unearned increase. On the coming into force of Chapter XX- C of the Income Tax Act, which was brought into effect from 1st October, 1986 by a Notification dated 7.8.86 in the area with which we are concerned, the said agreement to sell the said property along with Form No.37-I in duplicate were furnished to the appropriate authority as per the requirements of Section 269UC of the Income Tax Act. After getting the report of the registered valuer, the appropriate authority passed an order for the purchase by the Central Government of the said property, namely, the lease hold rights in the land and the ownership of the said building under section 269UD (1) of the Income Tax Act and served the same on the petitioner in the night of December 15, 1986. No specific reason was given in the said order for the compulsory purchase of the said property. All that was stated was "...considering all the relevant facts and for the reasons recorded as required. It is decided that the said property is fit for purchase by the Central Government at an equal amount of the apparent consideration..." The said order has been challenged in this petition on various grounds.

H As we will presently show, the controversy which remains after analysing the respective stands of Mr. Salve, learned counsel for the petitioner, and learned Attorney General, who appears for the respondents, is fairly narrow. It is, therefore, not necessary to set out the submis-

sions of respective counsel in much detail or to cite all the authorities referred to by counsel. A

In brief, it was submitted by Mr. Salve that the effect of Chapter XX-C of the Income Tax Act is to confer on the authority concerned, referred to in the said Chapter as "appropriate authority" powers of compulsory purchase of immovable property as a punitive measure where the said authority takes the view that there was under-valuation of the property in an agreement for sale with a view to avoid tax. He submitted that the factors which supported this conclusion were that the order of the appropriate authority for purchase of the property *ipso jure* operates to vest the property in the Government, and the scope of the vesting is far in excess of the right proposed to be transferred. To complete the title of the Government no further requirement like the execution of a conveyance is required and the Government is not even required to comply with the provisions of the Transfer of Property Act. It was submitted by him that on the plain language of Chapter XX-C there was no guideline prescribed as to where this drastic power of pre-emptive purchase was to be exercised. It was submitted by him that in the absence of such guidelines the provisions of Chapter XX-C confer an unfettered discretion on the appropriate authority under Chapter XX-C to compulsorily purchase immovable properties and such a provision conferred unfettered power which was liable to be exercised arbitrarily and, therefore, violated the provisions of Article 14 of the Constitution. It was urged by him that, if a view were taken that the legislative history of Chapter XX-C shows that the power to purchase immovable property conferred thereunder was to be exercised only to counter tax evasion, the provisions were still bad in law as they did not comply with the principles of natural justice which are now accepted as a requirement for compliance with Article 14 of the Constitution. There is no provision in Chapter XX-C for any opportunity being given to the intending purchaser or intending vendor of the immovable property concerned to show cause against the compulsory purchase of the property. There is no provision even for given them a notice of the intention of the appropriate authority to order purchase of the property. The mere requirement of recording, reasons is not sufficient in the absence of any requirement that they must be set out in the order of purchase or communicated to the transferor or the transferee. It was further submitted by him that the provisions of the said Chapter were unconstitutional on account of their failure to provide for the mode of valuation of property taking into account

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A the requisite factors for adjustment of the value as where the title of the property is disputed or the sale is a part of the resolution of some dispute between the transferor and transferee or where there is an adjustment in the price on account of tenancy rights vested in the transferee or on account of encumbrances and so on. It was urged by him that the want of these provisions made the legislation totally unreasonable and this lacuna could not be cured by framing rules. It was further submitted by him that

B a law providing for the acquisition or compulsory purchase of immovable property, even in the absence of any proof of tax evasion would violate the provisions of Article 14 and Article 19(1)(g) of the Constitution as being excessive and unreasonable.

C It was further urged by Mr. Salve that the provisions of the said Chapter were bad in law as there was no appeal or revision provided against orders made by appropriate authorities for compulsory purchase of immovable properties which orders had serious civil consequences and cast an aspersion on the parties of attempted tax evasion. It was submitted

D that this was all the more so in view of the other factors pointed by him, namely, that the appropriate authorities are not required to give any show cause notice to the parties concerned before an order for compulsory purchase is made, and are not required to supply any reasons to the parties concerned which led the appropriate authorities to the conclusion that

E there was an intended tax evasion in the agreement to sell the immovable property concerned. It was submitted by him that the provisions of the said Chapter are clearly arbitrary, excessive and they infringe the provisions of Article 14 of the Constitution in so far as under the provisions when an order for compulsory purchase the rights of leaseholders, monthly tenants and mortgagees and other encumbrance holders are destroyed without any

F adequate provision for compensation to them. The mere provision that such encumbrance holders and the holders of the leasehold rights on the premises could claim a share in the compensation awarded to the owner is no substitute for their secured rights in the immovable property concerned.

G It was, on the other had, submitted by learned Attorney General that the history leading to the enactments of Chapter XX-C and the circumstances under which Chapter XX-C was introduced have been elaborately dealt with in paragraphs 7 and 8 of the main counter affidavit. A perusal of

H paragraphs 7 and 8 of the counter affidavit shows that the main reason

behind the introduction of this Chapter in the Income Tax Act was the desire to curb the large scale evasion of income-tax and to counter other modes of tax evasion adopted by various assesseees to deprive the Government of its legitimate tax dues. It was felt that a lot of tax evasion was involved in transfers of immovable properties in urban areas. Reference is made in the affidavit to the recommendations of Direct Taxes Inquiry Committee chaired by the Hon'ble Mr. Justice Wanchoo, retired Chief Justice of India and known as the Wanchoo Committee. In its interim report in 1970 the Wanchoo Committee took the view that understatement of prices in the sale deeds of the immovable properties was a widespread method of tax evasion and recommended, by way of a drastic remedy, that the Government should empower itself to acquire property where the consideration was found to be understated in the sale deeds. It was in pursuance of this recommendation that the provisions of Chapter XX-A were introduced in the Income Tax Act. However, provisions of that Chapter were found inadequate for dealing with the evil of under-valuation of immovable properties in sale deeds and agreements to sell with a view to evade tax and certain difficulties emerged in the effective enforcement of the provisions of Chapter XX-A. It was in these circumstances that Chapter XX-C was introduced into the Income Tax Act. It may be mentioned here that the provisions of Chapter XX-A ceased to operate in respect of transfers of immovable properties made after September 30, 1986 and as from October 1, 1986 the provisions of Chapter XX-C came into force. It was submitted by learned Attorney General that the very reason which led to the incorporation of that Chapter in the Income Tax Act, namely, to counter the evil of tax evasion by under-valuation of immovable properties in agreements to sell and sale deeds, itself furnishes adequate guidelines for the exercise of the power conferred under that Chapter. It was contended by him that the provisions of that chapter are not penal in nature as, in so far as the transferor of the immovable property is concerned, no right of his was seriously prejudiced by an order of purchase under Section 269 UD, as he would get the consideration for which he had agreed to sell the property under the agreement to sell and cases where the price might have been lowered for *bona fide* reasons like sales to close relatives were specifically provided for in this Section itself. It should not matter to the transferor whether he got his price from the Government or from the purchaser. It was submitted by him that as far as

A the transferee is concerned, he could not be said to have any legal interest in the property agreed to be purchased by him because all that he would have in his favour is an agreement to purchase and such an agreement by itself creates no interest in property under the provisions of the Transfer of Property Act. After the deletion of Article 19(f) of the Constitution an intending purchaser could not be said to have any fundamental right to acquire any immovable property. It was submitted that although a transferee might be a person aggrieved for the purposes of Article 226 of the Constitution he could not have any serious grievance on the ground of violation of principles of natural justice as he could always challenge the order of purchase as arbitrary by filing a petition in a court of law and on such a petition authorities would have to disclose the reasons to satisfy the court that they had acted on relevant considerations germane to the object of Chapter XX-C in taking the decision to purchase the property. Learned Attorney General agreed and, in fact, supported the view that the order for purchase passed by the authorities must have some nexus to the tax evasion and it was, in fact, submitted by him that every order passed for purchase under Section 269UD could be tested on the touch-stone of its having a rational nexus with an attempt at tax evasion. He urged that the decision to purchase the property is required to be taken by three high officers who have adequate knowledge in the matter and hence the lack of provision in the Chapter for any appellate or revisional powers made no difference. It was submitted that a requirement for the communication of reasons was not necessary. Chapter XX-C did not provide for such communication and the fact that recording of reasons was required and that the aggrieved parties could get the reasons by filing a writ petition were adequate to meet the requirements of Article 14. As far as tenants and mortgagees are concerned, it was pointed out by him that although the property, on purchase under the provisions of Section 269UD, would be vested in the Government free from all encumbrances yet it must be kept in mind that similar provisions were upheld in cases for compulsory acquisition of property. It was faintly urged by him that compulsory or pre-emptive purchase of property must be treated on the same footing as acquisition of property. It was further submitted by him that even if a view were taken that Chapter XX-C did not provide for compulsory acquisition of immovable property but for pre-emptive purchase of the same yet the provisions could be read down in such a way that encumbrances on the

property in question and long term leases thereon which created interests A
 in favour of parties who might have nothing to do with the tax evasion
 attempted in the intended sale of the immovable property would not be
 affected by the acquisition. It was urged that if the case was regarded as
 one of compulsory or pre-emptive purchase all that was purchased was
 what was sought to be sold under the agreement to sell and hence, unless B
 the agreement provided for the sale of the property free from encumbran-
 ces or leasehold rights, such encumbrances or leasehold rights in the
 property would not be affected. As far as monthly tenancies were con-
 cerned, it was submitted by him that these tenancies created no interest in
 the properties and hence the monthly tenants were not entitled to challenge C
 the order for compulsory purchase under Section 269UD on the ground
 that the purchase by the Government of the property would bring such
 tenancies to an end. He lastly contended that there was no justification for
 the claim that any interest should be paid by the Government on the
 amount of consideration when an order for purchase was made in favour D
 of the Government because the property vested in the Government only
 on possession being taken and the right to possession was more valuable
 than a right to claim interest.

Before discussing the merits of the respective arguments of counsel, we E
 may point out that after arguments were advanced for some time the learned
 Attorney General made it clear that he did not press his contention that no
 reasons were required to be supplied to the affected parties when an order for
 compulsory purchase was made. He did not seriously contest the position that
 the parties aggrieved by a proposed order of purchase were entitled to have an
 adequate opportunity to show cause against the order of purchase by the F
 Central Government being made by the appropriate authority in exercise of
 the powers conferred under Section 269 UD of the Income-Tax Act. It was,
 however, clarified by him that the inquiry which would have to be made to
 determine the objections raised by the aggrieved parties would necessarily
 have to be somewhat summary because of the limited time frame within which
 the decision whether to purchase the immovable property in question or not G
 had to be taken by the appropriate authority. In view of this fair stand taken by
 the Attorney General, the controversy has become somewhat narrow as we
 have pointed out earlier.

Before considering the respective arguments of learned counsel, it H

A would not be out of place to take note of the relevant provisions of the said Chapter.

Section 269UA of Chapter XX-C is the defining section. An agreement to transfer is defined as an agreement, whether registered under the Indian Registration Act, 1908 or not, to transfer an immovable property.

B Sub-section (b) of the said section gives the definition of the term "apparent consideration". The relevant portion of the said sub-section is as follows:

"(b) 'apparent consideration' -

C (1) in relation to any immovable property in respect of which an agreement for transfer is made, being immovable property of the nature referred to in sub-clause (i) of clause (d), means, -

D (i) if the immovable property is to be transferred by way of sale, the consideration for such transfer as specified in the agreement for transfer:

(ii) if the immovable property is to be transferred by way of exchange,-

E (A) in a case where the consideration for the transfer consists of a thing or things only, the price that such thing or things would ordinarily fetch on sale in the open market on the date on which the agreement for transfer is made;

F (B) in a case where the consideration for the transfer consists of a thing or things and a sum of money, the aggregate of the price that such thing or things would ordinarily fetch on sale in the open market on the date on which the agreement for transfer is made, and such sum;

G (iii) if the immovable property is to be transferred by way of lease,-

H (A) in a case where the consideration for the transfer consists of premium only, the amount of premium as

specified in the agreement for transfer;

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(B) in a case where the consideration for the transfer consists of rent only, the aggregate of the moneys (if any) payable by way of rent and the amounts for the service or things forming part of or constituting the rent, as specified in the agreement for transfer;

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(C) in a case where the consideration for the transfer consists of premium and rent, the aggregate of the amount of the premium, the moneys (if any) payable by way of rent and the amounts for the service or things forming part of or constituting the rent, as specified in the agreement for transfer,

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and where the whole or any part of the consideration for such transfer is payable on any date or dates falling after the date of such agreement for transfer, the value of the consideration payable after such date shall be deemed to be the discounted value of such consideration, as on the date of such agreement for transfer, determined by adopting such rate of interest as may be prescribed in this behalf;"

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"Appropriate authority" is defined under sub-section (c) of Section 269UA as the authority constituted under section 269UB to perform the functions of an appropriate authority under Chapter XX-C. The relevant portion of the definition of the term "immovable property" reads as follows:

"(d) 'immovable property' means -

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(i) any land or any building or part of a building, and includes, where any land or any building or part of a building is to be transferred together with any machinery, plant, furniture, fittings or other things, such machinery, plant, furniture, fittings or other things also.

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Explanation: For the purposes of this sub-clause, 'land, building, part of a building, machinery, plant, furniture, fittings and other things' include any rights therein."

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A "Person interested" is defined as follows:

"(e) 'person interested' in relation to any immovable property, includes all persons claiming, or entitled to claim, an interest in the consideration payable on account of the vesting of that property in the Central Government under this Chapter"

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The term "transfer" has been defined very widely in sub-section (f) so as to include within its ambit transfer by way of sale or exchange or lease for a terms of not less than 12 years, Sub-section (2) of Section 269UB which deals with the Constitution of appropriate authorities reads as follows:-

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"269 UB (2): An appropriate authority shall consist of three persons, two of whom shall be members of the Indian Income-tax Service, Group A, holding the post of Commissioner of Income-tax or any equivalent or higher post, and one shall be a member of the Central Engineering Service, Group A, holding the post of Chief Engineer or any equivalent or higher post."

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Section 269UC prescribes restrictions on transfer of immovable property. In brief it provides that no transfer of any immovable property of a value exceeding Rs. five lakhs or such other amount as may be prescribed shall be effected except after an agreement for transfer is entered into between the person who intends transferring the immovable property and the person to whom it is proposed to be transferred at least

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three months before the intended date of transfer. Sub-section (2) of this section provides that such an agreement as aforesaid must be reduced to writing in the form of a statement and sub-section (3) provides that this statement must be in a prescribed form. Rule 48L of the Income-tax Rules, 1962 deals with the statement to be furnished under Section 269UC (3)

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and sub-Rule 2 of Rule 48L provides that the statement in Form 37-I shall be furnished in duplicate to the appropriate authority. The sub-clauses of sub-Rule (2) of Rule 48L deal with the time limits within which the statement under Section 269UC (3) must be furnished. The relevant portion of Section 269UD which deals with orders of appropriate authority for purchase of immovable property by the Central Government runs as follows:

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"269UD(1) The appropriate authority, after the receipt of the statement under sub-section (3) of section 269UC in respect of any immovable property, may, notwithstanding anything contained in any other law or any instrument or any agreement for the time being in force, and for reasons to be recorded in writing, make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration:

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Provided that no such order shall be made in respect of any immovable property after the expiration of a period of two months from the end of the month in which the statement referred to in section 269UC in respect of such property is received by the appropriate authority:

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Provided further that in a case where the statement referred to in section 269UC in respect of the immovable property concerned is given to an appropriate authority, other than the appropriate authority having jurisdiction in accordance with the provisions of section 269 UB to make the order referred to in this sub-section in relation to the immovable property concerned, the period of limitation referred to in the preceding proviso shall be reckoned with reference to the date of receipt of the statement by the appropriate authority having jurisdiction to make the order under this sub-section.

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(2) The appropriate authority shall cause a copy of its order under sub-section (1) in respect of any immovable property to be served on the transferor, the person in occupation of the immovable property if the transferor is not in occupation thereof, the transferee, and on every other person whom the appropriate authority knows to be interested in the property."

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Section 269UE deals with the vesting of properties. The relevant portion of the said section runs as follows:

"269UE (1) Where an order under sub-section (1) of

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A Section 269UD is made by the appropriate authority in respect of an immovable property referred to in sub-clause (i) of clause (d) of section 269UA, such property shall, on the date of such order, vest in the Central Government free from all encumbrances.

B (2) The transferor or any other person who may be in possession of the immovable property in respect of which an order under sub-section (1) of section 269UD is made, shall surrender or deliver possession thereof to the appropriate authority or any other person duly authorized by the appropriate authority in this behalf within fifteen days of the service of such order on him."

C (3) x x x x x x x x x

(4) x x x x x x x x x

D (5) For the removal of doubts, it is hereby declared that nothing in this section 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.

E (6) Where an order under sub-section (1) of section 269UD is made in respect of an immovable property, being rights of the nature referred to in sub-clause (ii) of clause (d) of section 269UA, such order shall have the effect of -

F (a) vesting such right in the Central Government; and

G (b) placing the Central Government in the same position in relation to such rights as the person in whom such a right would have continued to vest if such order had not been made."

H Sub-section (1) of Section 269UF runs as follows:

"269UF.(1) Where an order for the purchase of any immovable property by the Central Government is made under sub-section (1) of section 269UD, the Central Government shall pay, by way of consideration for such purchase, an amount equal to the amount of the apparent consideration."

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Section 269UH deals with re-vesting of property in the transferor on failure of payment or deposit of consideration by the Central Government. It reads as follows:

"269UH. (1) If the Central Government fails to tender under sub-section (1) of section 269UG or deposit under sub-section (2) or sub-section (3) of the said section, the whole or any part of the amount of consideration required to be tendered or deposited thereunder within the period specified therein in respect of any immovable property which has vested in the Central Government under sub-section (1) or, as the case may be, sub-section (6) of section 269UE, the order to purchase the immovable property by the Central Government made under sub-section (1) of section 269UD shall stand abrogated and the immovable property shall stand re-vested in the transferor after the expiry of the aforesaid period."

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There is a proviso to this sub-section which is not material for the purposes of this judgment.

Section 269UK imposes restrictions on revocation or alteration of certain agreements for the transfer of immovable property or on transfer of certain immovable property. Sections 269UM, 269UN and 269UO provide as under:-

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"269UM. Notwithstanding anything contained in any other law or in any instrument or any agreement for the time being in force, when an order for the purchase of any immovable property by the Central Government is made under this Chapter, no claim by the transferee shall lie against the transferor by reason of such transfer being not in accordance with the agreement for the transfer of the

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A immovable property entered into between the transferor and transferee:

Provided that nothing contained in this section shall apply if the order for the purchase of the immovable property by the Central Government is abrogated under sub-section (1) of section 269UH."

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269UN. Save as otherwise provided in this Chapter, any order made under sub-section (1) of section 269UD or any order made under sub-section (2) of section 269UF shall be final and conclusive and shall not be called in question in any proceeding under this Act or under any other law for the time being in force."

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"269UO. The provisions of this Chapter shall not apply to or in relation to any immovable property where the agreement for transfer of such property is made by a person to his relative on account of natural love and affection, if a recital to that effect is made in the agreement for transfer."

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We shall first discuss the question whether the provisions of Chapter XX-C confer an unfettered discretion on the appropriate authorities concerned to acquire immovable properties which are agreed to be sold in the areas to which the provisions of the Chapter are applicable. In this regard, as we have already pointed out, the very historical setting in which the provisions of this Chapter were enacted suggests that it was intended to be resorted to only in cases where there is an attempt at tax evasion by significant under-valuation of immovable property agreed to be sold. This conclusion is strengthened by Instruction No.1A88 issued by the Central Board of Direct Taxes of the Government of India, Ministry of Finance, Department of Revenue, which was filed in the Court by learned Attorney General. In the said document it is emphasised by the Central Board that the main objective of the provisions of Chapter XX-C is to check proliferation of black money in real estate transactions and to enforce declaration of the true value of immovable properties that are subject of transfer between the parties. The Central Board has pointed out in the said Instructions that, in administering the provisions of the said Chapter, it has to be ensured that no harassment is caused to *bona fide* and honest purchasers or sellers of immovable property and there is no erosion of the

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confidence of the public in the sense of justice and fair play of the Income Tax Department. Paragraph 3 of the Instruction makes it clear that the right of pre-emptive purchase has to be exercised by the appropriate authority only when it has good reason for acquiring the property. When the property purchased by the Central Government by an order of an appropriate authority is put up for sale the reserve price is required to be fixed at a minimum of 15% above the purchase price shown as the apparent consideration under the agreement between the parties. Thus it is pointed out by the Board that the right of pre-emptive purchase has to be exercised only if the fair market value is found to be at least 15% more than the apparent consideration. The Instruction further provides that in coming to a conclusion as aforesaid a reasonable margin of probable errors in estimation needs to be kept in view particularly as the law does not provide for any opportunity of being heard. The contents of the affidavit filed by one H.K. Sarangi, Under Secretary, Central Board of Direct Taxes, Department of Revenue is also to the effect that the provisions of the said Chapter ought to be resorted to only in cases of undervaluation of immovable properties in agreements of sale to the extent of 15% or more. The said H.K. Sarangi has further pointed out that right from the time when the provisions of the said Chapter were brought into force, they are being applied in such manner that the rights and interests of third parties unconnected with the tax evasion are not affected. This has also been pointed out in the main counter affidavit of the Union of India, referred to by us earlier, in paragraph 40. The said affidavit points out that where an order is made under sub-section (1) of Section 269UD for the purchase by the Central Government of any immovable property, there is no compulsory acquisition involved and hence no solatium is payable and that what the Chapter provides for is pre-emptive purchase of a property already offered for sale. It has been set out in the said affidavit that only properties with an apparent consideration above Rs.10 lakhs are at present covered by the scheme which applies to only certain large metropolitan conglomeration. Transfers to a relative, on account of natural love and affection, are excluded from the provisions of the scheme. The appropriate authority consists of two Commissioners of Income Tax and one Chief Engineer from the Central Engineering Service. The said affidavit repeats that the pre-emptive purchase has to be resorted to only if the fair market value of the property concerned is found to be at least 15% more than the apparent consideration and this limit has not to be mechanically applied but a reasonable margin for probable error taken into account. The af-

A affidavit of Hemant Sarangi further states that the following types of properties should not ordinarily be purchased:

(a) cases of doubtful or disputed titles;

B (b) transactions by and with Government, semi-Government Organisations, Public Sector Undertakings, Universities etc.:

(c) properties with *bona fide* tenancies of long standing; and

(d) properties with too many restrictions on user.

C It is clarified in the affidavit (para 14) that, although the appropriate authorities will not normally purchase buildings which are leased, in a few cases they may do so when it is felt that even taking into account that the property was encumbered with lease the apparent consideration was grossly understated. The affidavit of Sarangi states that the practice uniformly followed in compulsory purchase of immovable properties under the provisions of Chapter XX-C is as set out earlier. Statements annexed to the affidavit of H.K. Sarangi show that the several properties which were purchased under the provisions of Chapter XX-C have brought much higher amounts than the purchase price when sold at public auctions which would clearly suggest that the in the relevant agreements for sale the apparent consideration was significantly understated.

The legislative history of Chapter XX-C, the stand taken by the Union of India and the Central Board of Direct Taxes as shown in the main counter affidavit and the affidavit of H.K. Sarangi, which has been filed after obtaining instructions from the Income Tax Department and the Central Board of Direct Taxes makes it clear that the powers of compulsory purchase conferred under the provisions of Chapter XX-C of the Income-Tax Act are being used and intended to be used only in cases where in an agreement to sell an immovable property in an urban area to which the provisions of the said Chapter apply, there is a significant undervaluation of the property concerned, namely, of 15 per cent or more. If the appropriate authority concerned is satisfied that in an agreement to sell immovable property in such areas as set out earlier, the apparent consideration shown in the agreement for sale is less than the fair market value by 15 per cent or more it may draw a presumption that this undervaluation has been done with a view to evade tax. Of course, such a

presumption is rebuttable and the intended seller or purchaser can lead evidence to rebut such a presumption. Moreover, an order for compulsory purchase of immovable property under the provisions of Section 269UD requires to be supported by reasons in writing and such reasons must be germane to the object for which Chapter XX-C was introduced in the Income Tax Act, namely, to counter attempts to evade tax.

The conclusion that the provisions of Chapter XX-C are to be resorted to only where there is significant undervaluation of the immovable property to be sold in the agreement of sale with a view to evading tax finds support from the decision of this Court in the case of *K.P. Varghese v. Income-Tax Officer, Ernakulam & Anr.*, (1981) 131 I.T.R. 597. Section 52 in the Income-Tax Act, 1961, which has now been deleted, came up for consideration before a Bench comprising two learned Judges of this Court. Very briefly put that section provided that where a person acquired a capital asset from an assessee connected with him and the Income-Tax Officer had reason to believe that the transfer was effected with a view to avoid or reduce the liability of the assessee under Section 45 to the tax on capital gains and with that object that the transfer of the capital asset was being made at an under-value of not less than 15%, for the purposes of taxing the assessee, the full value of the consideration was taken to be its fair market value on the date of the transfer. It was pointed out by the Bench that sub-section (1) of Section 52 did not deal with income to accrue or to be received, which in fact was never accrued and was never received. It sought to bring within the net of taxation only that income which has accrued or is received by the assessee as a result of the transfer of the capital asset and since it would not be possible for the Income-Tax Officer to determine possibly how much more consideration is received by the assessee than that declared by him, sub-section (1) provides that the fair market value of the property as on the date of transfer shall be taken to be the full value of the consideration which has accrued or has been received by the assessee. The onus of establishing that the conditions of taxability are fulfilled is always on the revenue. In that case it was urged on behalf of the revenue that under the provisions of Section 52(2) once the Income-Tax Officer is satisfied that the condition of the consideration declared by the assessee in respect of the transfer is less by 15% or more than the fair market value, the capital gains can be computed on the footing that the fair market value was the consideration received by the assessee. This submission was rejected by this Court. It was pointed out that the

- A submission would be justified only on a strict literal reading of sub-section (2) of Section 52 but that such a construction could not be adopted. The Court observed that the task of interpretation of a statutory enactment is not a mechanical task. The famous words of Judge Learned Hand of the United States of America that ".... it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable source of interpreting the meaning of any writing; be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning" were quoted with approval. After considering various authorities and the historical setting in which the provisions of the said Section were enacted, it was held that the fair and reasonable construction to put on the provisions of sub-section (2) of Section 52 would be to so construe it that it would apply only when the consideration for the transfer is under-stated or, in other words, only where the assessee has actually received a larger consideration for the transfer than that what is declared in the instrument of transfer and it could have no application in the case of a *bona fide* transaction where the full value of the consideration for the transfer is correctly declared by the assessee (See page 606 of the Report).
- E We may point out that although it was submitted by the learned Attorney General that the decision in the case of *K.P. Varghese* (supra) requires reconsideration, he did not seriously challenge the correctness of that decision. No argument has been advanced by him which could lead us to the conclusion that the said case was not correctly decided nor has he pointed out any error in the judgment in that case.

- G In *Commissioner of Income-tax, Gujarat-II v. Smt. Vimlaben Bhagwandas Patel & Anr.*, (1979) 118 I.T.R. 134, a Division Bench of the Gujarat High Court took the view that the entire scheme as conceived and incorporated in Chapter XX-A of the Income-tax Act, 1961, postulates a basic premise that the under-statement of consideration in an instrument of transfer of sale is untruly made if it falls short of the fair market value by 15% and the ulterior motive should be presumed to be concealment of income or tax evasion unless rebutted by the parties to the transfer. Parliament has provided artificial rules of evidence so as to raise the presumption about the guilt of the parties to the transfer in respect of the

offence of tax evasion or concealment. It has been pointed out that, before resorting to the provisions of the said Chapter, the competent, authority must have reason to believe that the fair market value of the property of more than Rs.25,000 exceeds the apparent consideration stated in the instrument of transfer and the parties have agreed to make the untrue statement with the ulterior motive of tax evasion or concealment of income. The satisfaction of the competent authority for initiation of the acquisition proceedings is a subjective satisfaction of the objective facts set out above. The reason for formation of belief must have a rational and direct connection with the material coming to the notice of the competent authority, though the question of sufficiency or adequacy of the material is not open to judicial review.

In these circumstances, in our opinion, it cannot be said that the provisions of the said Chapter confer an unfettered discretion on the appropriate authorities to order the purchase by the Central Government of immovable properties agreed to be sold and hence they cannot be regarded as conferring arbitrary or unfettered discretion on the appropriate authorities. The challenge to the provisions of the said Chapter as being violative of Article 14 of the Constitution must, therefore, fail.

The next question to which we propose to address ourselves is whether the provisions of Chapter XX-C are bad in law as there is no provision for giving the concerned parties an opportunity of being heard before an order is passed under the provisions of Section 269UD of the said Chapter for the purchase by the Central Government of an immovable property agreed to be sold in an agreement of sale. In this regard a plain reading of the provisions of the said Chapter clearly shows that they do not contain any provision for giving the concerned parties an opportunity to be heard before an order for compulsory purchase of the property by the Central Government is made. In connection with the requirement of opportunity of being heard before an order for compulsory purchase is made we find that somewhat similar questions have been considered by this Court on a number of occasions. In the case of *Union of India v. Col. J.N. Sinha & Anr.*, [1971] 1 SCR 791 at 794-795 the facts were that the first respondent who was in the class-I service of the Survey of India and rose to the position of Deputy Director was compulsorily retired by an order under rule 56(j) of the Fundamental Rules, no reasons were given in the

A order. Respondent No.1 challenged the order on the ground that it violated principles of natural justice and no opportunity had been given to the first respondent to show cause against his compulsory retirement. A Division Bench of this Court in its judgment in that case observed as follows:-

B "Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in *Kraipak and Ors. v. Union of India*, A.I.R. 1970 S.C. 150 'the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law out supplement it.' It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if, on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

In the case of *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors. etc.*, [1985] Suppl. 2 SCR 51 at 89, a Constitution Bench comprising five learned Judges of this Court had occasion to deal with the provisions of Section 314 of the Bombay Municipal Corporation Act, 1888. Chandrachud, C.J., (as he then was) delivering the judgment of the Court held that "the said Section confers on the Commissioner the discretion to cause an encroachment to be removed with or without notice. That discretion has to be exercised in a reasonable manner so as to comply with the constitutional mandate that the procedure accompanying the performance

of a public act must be fair and reasonable. The Court must lean in favour of this interpretation because this helps sustain the validity of the law." A
Chandrachud, C.J., went on to observe as follows:-

"It must further be presumed that, while vesting in the Commissioner the power to act without notice, the Legislature intended that the power should be exercised sparingly and in cases of urgency which brook no delay. In all other cases, no departure from the *audi alteram partem* rule ('Hear the other side') could be presumed to have been intended. Section 314 is so designed as to exclude the principles of natural justice by way of exception and not as a general rule. There are situations which demand the exclusion of the rules of natural justice by reason of diverse factors like time, place the apprehended danger and so on. The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence." B
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It must, however, be borne in mind that courts have generally read into the provisions of the relevant sections a requirement of giving a reasonable opportunity of being heard before an order is made which would have adverse civil consequences for the parties affected. This would be particularly so in a case where the validity of the section would be open to a serious challenge for want of such an opportunity. F

It is true that the time frame within which the order for compulsory purchase has to be made is a fairly tight one but in our view the urgency is not such as would preclude a reasonable opportunity of being heard or to show cause being given to the parties likely to be adversely affected by an order of purchase under Section 269UD(1). The enquiry pursuant to G
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A the explanation given by the intending purchaser or the intending seller might be a somewhat limited one or a summary one but we decline to accept the submission that the time limit provided is so short as to preclude an enquiry or show cause altogether.

B In the light of what we have observed above, we are clearly of the view that the requirement of a reasonable opportunity being given to the concerned parties, particularly, the intending purchaser and the intending seller must be read into the provisions of Chapter XX-C. In our opinion, before an order for compulsory purchase is made under Section 269UD, the intending purchaser and the intending seller must be given a reasonable opportunity of showing cause against an order for compulsory purchase being made by the appropriate authority concerned. As we have already pointed out the provisions of Chapter XX-C can be resorted to only where there is a significant under-valuation of property to the extent of 15% or more in the agreement of sale, as evidenced by the apparent consideration being the lower than the fair market value by 15% or more. We have further pointed out that although a presumption of an attempt to evade tax may be raised by the appropriate authority concerned in case of the aforesaid circumstances being established, but such a presumption is rebuttable and this would necessarily imply that the concerned parties must have an opportunity to show cause as to why such a presumption should not be drawn. 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 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 dispute 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 might not be his relative. Unless an intending purchaser or intending seller is given an opportunity to show cause against the proposed order for compulsory purchase, he would not be in a position to rebut the presumption of tax evasion and to give an interpretation to the provisions which would lead to such a result would be utterly unwarranted. The very fact that an imputation of tax evasion arises where an order for compulsory

purchase is made and such an imputation casts a slur on the parties to the agreement to sell lead to the conclusion that before such an imputation can be made against the parties concerned, they must be given an opportunity to show cause that the under-valuation in the agreement for sale was not with a view to evade tax. Although Chapter XX-C does not contain any express provision for the affected parties being given an opportunity to be heard before an order for purchase is made under Section 269UD, not to read the requirement of such an opportunity would be to give too literal and strict an interpretation to the provisions of Chapter XX-C and in the words of Judge Learned Hand of the United States of America "to make a fortress out of the dictionary." Again, there is no express provision in Chapter XX-C barring the giving of a show cause notice or reasonable opportunity to show cause nor is there anything in the language of Chapter XX-C which could lead to such an implication. The observance of principles of natural justice is the pragmatic requirement of fair play in action. In our view, therefore, the requirement of an opportunity to show cause being given before an order for purchase by the Central Government is made by an appropriate authority under Section 269 UD must be read into the provisions of Chapter XX-C. There is nothing in the language of Section 269UD or any other provision in the said Chapter which would negate such an opportunity being given. Moreover, if such a requirement were not read into the provisions of the said Chapter, they would be seriously open to challenge on the ground of violations of the provisions of Article 14 on the ground of non-compliance with principles of natural justice. The provision that when an order for purchase is made under Section 269UD -- reasons must be recorded in writing is no substitute for a provision requiring a reasonable opportunity of being heard before such an order is made.

The recording of reasons which lead to the passing of the order is basically intended to serve a two-fold purpose:

- (1) that the "party aggrieved" in the proceeding before acquires knowledge of the reasons and, in a proceeding before the High Court or the Supreme Court (since there is no right of appeal or revision), it has an opportunity to demonstrate that the reasons which persuaded the authority to pass an order adverse to his interest were erroneous, irrational or irrelevant, and

- A (2) that the obligation to record reasons and convey the same to the party concerned operates as a deterrent against possible arbitrary action by the quasi-judicial or the executive authority invested with judicial powers.
- B Section 269UD(1), in express terminology, provides that the appropriate authority may make an order for the purchase of the property "for reasons to be recorded in writing". Section 269UD(2) casts an obligation on the authority that it "shall cause a copy of its order under sub-section (1) in respect of any immovable property to be served on the transferor". It is, therefore, inconceivable that the order which is required
- C to be served by the appropriate authority under sub-section (2) would be the one which does not contain the reasons for the passing of the order or is not accompanied by the reasons recorded in writing. It may be permissible to record reasons separately but the order would be an incomplete order unless either the reasons are incorporated therein or are served
- D separately along with the order on the affected party. We are, of the view, that reasons for the order must be communicated to the affected party.

- We may also, in this connection, refer here to the decision of a Division Bench of the Madras High Court in *Government of India and another v. Maxim A. Lobo and another*, (1991) 190 I.T.R. 101 to which one
- E of us (Anand, CJ, Madras High Court, as he then was) was a party where a somewhat similar view regarding the requirement of compliance with principles of natural justice in making an order under sub-section (1) of Section 269UD has been taken. In so far as the decision of the Karnataka High Court in *Vidyavati Kapoor Trust v. Chief Commissioner of Income - Tax and others*, (1992) 194 I.T.R. 584 takes a contrary view, it does not lay
- F down the correct law.

- We now take up the submissions of the learned counsel for the petitioner that the provisions of the said Chapter are arbitrary and violate the provisions of the Fundamental Rights Chapter insofar as an order for
- G compulsory purchase under Section 269UD of the said Chapter has the effect of vesting the property in the Central Government free from all encumbrances or leasehold rights the value of which might not be reflected in the apparent consideration mentioned in the agreement for sale. It was submitted by him that these encumbrance holders and holders of leasehold
- H rights might not have anything to do with the attempt at tax evasion in the

intended sale, assuming that such an attempt is made by the intending A
seller or the intending purchaser by undervaluing the property concerned
in the agreement for sale and yet they would be deprived of their valuable
rights practically without any compensation in the event of an order for
compulsory purchase being made. In our view, the submissions of learned B
counsel are not without merit. Under the provisions of sub-section (1) of
Section 269UD on an order for purchase by the Central Government of a
immovable property, the government would be liable to pay as compensa-
tion to the owner of the property an amount equal to the amount of
apparent consideration. Under the express provisions sub-section (1) of C
Section 269UE which we have set out above, in case an order for compul-
sory purchase is made under sub-section (1) of Section 269UD, the prop-
erty in respect of which the order is made shall vest in the Central
Government *free from all encumbrances*. (emphasis supplied) Sub-section
(2) of Section 269UE provides that the transferor or any other person who
may be in possession of the immovable property in respect of which an D
order under sub-section (1) of Section 269UD is made is required to
surrender or deliver possession of the property to the appropriate authority
or any other person duly authorised by the appropriate authority within 15
days of the service of the order on him. If there is a lessee in occupation
of the property concerned, his leasehold rights would be destroyed and he E
would have to handover the possession of the property to the appropriate
authority or any other person nominated by the appropriate authority.
Similarly if an encumbrance holder like a usufructuary mortgagee were in
occupation he would loss his valuable right to remain in possession and
enjoy the usufruct. This clearly shows that an order for compulsory pur- F
chase result in the rights of holders of encumbrances and leasehold rights
being destroyed or significantly diminished. In a given case it might happen
that the property is intended to be sold under an agreement to sell subject
to encumbrances and leasehold rights, and very often agreements to sell
the immovable property do not provide that the property sold would be
free from encumbrances or leasehold rights. In such a case, the apparent G
consideration, even if it is equivalent to the fair market value, would be
indicative of the market value of the property subject to such encumbran-
ces. 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 H

A consideration and this 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 is well known that a property may be heavily encumbered and its value can be considerably depressed if it were sold subject to encumbrances. It is equally well known that a property in respect of which term 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 to apparent consideration could be even less than the value of the encumbrances or the leasehold interests. An order for compulsory purchase in such cases would necessarily result in gross injustice to the encumbrance holders and lessees and to their being deprived of their rights without their being in any way involved in the attempt at a tax evasion. It, therefore, appears to us difficult to uphold the last part of sub-section (1) of Section 269UE insofar as it provides that the property in respect of which an order under sub-section (1) of Section 269UD is made shall vest in the Central Government *free of all encumbrances*. In our opinion the expression "free of all encumbrances" is liable to be struck down as arbitrary, without any rational nexus with the object of the legislation in question and violative of Article 14 of the Constitution. Similarly the provisions of sub-section (2) of Section 269UE set out by us earlier must be read down so as to make them inapplicable to *bona fide* lessees in possession or *bona fide* encumbrance holders in possession.

Our attention was drawn by learned counsel for the respondent to the judgment of a Division Bench of the Gujarat High Court in *Rambhai manja Nayak v. Union of India*, (1983) 142 I.T.R. 239. In that case the provisions of Chapter XX-A of the Income-tax Act came up for consideration before the Gujarat High Court. It was held that the scheme of Chapter XX-A is essentially to penalise the tax dodgers who seek to evade payment of tax by resorting to the dubious methods of undervaluation of properties under the instruments of transfer. It was held that under the provisions of the said chapter the property in question vested in the Central Government free from all encumbrances under the provisions of sub-section (4) of Section 269 I. The Gujarat High Court took the view that it is only after all interests -- proprietary, as well as possessory are extinguished on the acquisition of the property that the property vests absolutely in the Central

Government free from all encumbrances. In the context "encumbrances" must be given the widest possible meaning and would certainly include leasehold or tenancy rights. It was submitted that the said decision lays down that although a property may be subject to encumbrances or leasehold interests it can be compulsorily acquired by the Central Government free from all encumbrances. In our view, the aforesaid judgment is clearly distinguishable. The case before the Gujarat High Court was one of compulsory acquisition as Chapter XX-A provided for compulsory acquisition of immovable properties in the circumstances set out therein and that case cannot be compared with the case before us which is one of compulsory purchase by the Central Government which is in the nature of a pre-emptive purchase. In case of pre-emptive purchase of the type before us what could be purchased was that which was offered for sale and nothing beyond it.

It was submitted by learned Attorney General that the provisions of sub-section (1) of Section 269UD might be read down so as to mean that the property compulsorily purchased under an order made under Section 269UD(1) would vest in the Central Government subject to *bona fide* encumbrances and leasehold interests subsisting thereon other than monthly tenancies. It was urged by him that in a pre-emptive purchase normally what would be purchased is only that which was put up for sale or sold and, if the same principle was applied to the compulsory purchase by the Central Government under Section 269UD, the rights of the encumbrance holders and the holders of leasehold interests subject to which the property was agreed to be sold could be protected. We agree that in order to save a statute or a part thereof from being struck down it can be suitably read down. But such reading down is not permissible where it is negated by the express language of the statute. Reading down is not permissible in such a manner as would fly in the face of the express terms of the statutory provisions. In view of the express provision in Section 269UE that the property purchased would vest in the Central Government "free from all encumbrances" (emphasis supplied) it is not possible to read down the section as submitted by 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 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

- A them as are agreed to be discharged by the vendor before the sale is completed. If under the relevant agreement to sell the property is agreed to be sold free of all encumbrances or certain encumbrances it would vest in the Central Government free of such encumbrances. Similarly, sub-section (2) of Section 269UE will be read down so that if the holder of an
- B encumbrance or a lessee is in possession of the property and under the agreement to sell the property it is not provided that the sale would be free of such encumbrances or leasehold interests, the encumbrance holder or the lessee who is in possession will not be obliged to deliver the possession of the property to the appropriate authority or any person authorised by it and the provisions of sub-section (3) also would not apply to such persons.
- C If the provisions of Section 269UE are read down in the manner indicated above then, in our opinion, the provisions of sub-section (6) of that section do not present any difficulty because the vesting in the Central Government would be subject to such encumbrances and leasehold rights as stated earlier.

- D The next controversy posed was regarding the monthly tenancies. 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
- E 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
- F be terminated by the Central Government. The loss of the protection of the rent control acts cannot be regarded as an interest for which any compensation is liable to be paid.

- 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
- G 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 and leasehold interests would have to obtain their compensation from the amount awarded as the purchase
- H 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. The holders of the encumbrances and leasehold interests which would be destroyed in this manner can be said to be persons interested as contemplated in clause (e) of sub-section (2) 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.

It was urged by learned counsel for the Revenue that in case a view is taken that the expression "free from all encumbrances" should be struck down it would be left open for an intending seller of immovable property to undervalue the property by creating a bogus lease or a bogus encumbrance thereon and this would defeat the purpose for which the Chapter XX-C was introduced. We are unable to agree. If a lease or an encumbrance is found to be bogus it can be treated as of no legal effect and in that event it would 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 269UD(1). If it is so considered necessary the provisions of the Chapter might be so amended as to clarify that if any lease or encumbrance is created with a view to defeat the provisions of Chapter XX-C such lease or encumbrance will be regarded as void or ignored for the purposes of the said Chapter. That, however, is for the Parliament to consider.

This brings us to the question of relief. We find that the order for compulsory purchase under Section 269UD(1) of the Income Tax Act which was served on the petitioner in the night of 15th December, 1986, has been made without any show cause notice being served on the petitioner and without the petitioner or other affected parties having been

A given any opportunity to show cause against an order for compulsory purchase nor were the reasons for the said order set out in the order or communicated to the petitioner or other concerned parties with the order. In view of what we have stated earlier the order is clearly bad in law and it is set aside.

B The next question is as to the consequence to follow. In view of the fact that the object of the provisions of Chapter XX-C is a laudable object, namely, to counter evasion of tax in transactions of a sale of immovable property, we consider it necessary to limit the retrospective operation of our judgment in such a manner as not to defeat the acquisitions altogether.

C We find that if the original time frame prescribed in Chapter XX-C is rigidly applied it would not be possible for the appropriate authority concerned to pass an order under Section 269UD(1) at all in respect of the property in question. In order to avoid that situation and, yet to ensure that no injustice is caused to the petitioner, we order, in the facts and

D circumstances of the case, that the statement in Form 37-I submitted by the petitioner as set out earlier shall be treated as if it were submitted on the date of the signing of this judgment. Thereafter if the appropriate authority considers it fit, it may issue a show cause notice calling upon the petitioner and other concerned parties to show cause why an order for compulsory purchase of the property in question should not be made under

E the provisions of sub-section (1) of Section 269UD and give a reasonable opportunity to the petitioner and such other concerned parties to show cause against such an order being made. In view of the limited time-frame this will have to be done with a sense of urgency. If after such an opportunity is given the appropriate authority so considers it fit, it may hold an

F inquiry, even though summary in nature, and may pass an order for compulsory purchase by the Central Government of the property in question under Section 269UD(1). The appropriate authority will have to decide whether an inquiry is called for in the facts and circumstances of the case after the show cause notice is issued. We are fortified in giving a

G somewhat limited retrospective operation of our judgment in view of the decision by a Constitution Bench comprising five learned Judges of this Court in *India Cement Ltd. v. State of Tamil Nadu*, [1990] 1 SCC 12. In that case in spite of Section 155 of the Madras Panchayats' Act being declared *ultra vires*, the State of Tamil Nadu was held not liable to refund to the petitioners the cess collected by it under the provisions of the said

H section.

We realise that if order for compulsory purchase of the property is made hereafter the intending vendor will suffer to some extent by reason of the fact that he will get the purchase amount several years after the time he would have got it had the impugned order been held to be valid. But on the other hand, however, he would have retained the possession of the property in question. Taking into account these factors and taking note of the fact that the immovable properties in urban areas have gone up steeply in value during the last few years, we direct that in case an order for compulsory purchase is made the Central Government shall pay to the intending seller the amount of the apparent consideration plus interest at 9 per cent per annum from the date the impugned order was made.

We may clarify that as far as completed transactions are concerned, namely, where after the order for compulsory purchase under Section 269UD of the Income Tax Act was made and possession has been taken over, compensation paid to the owner of the property and accepted without protest, we see no reason to upset those transactions and hence, nothing we have said in the judgment will invalidate such purchases. The same will be the position where public auctions have been held of the properties concerned and they are purchased by third parties. In those cases also nothing which we have stated in the judgment will invalidate the purchases.

In the result, the writ petition transferred is allowed to the extent aforesaid. Considering the facts and circumstances of the case there will be no order as to costs.

ORDER

Union of India has moved this application for certain clarifications and directions with a view to obviating certain difficulties that it envisages in applying the principles laid down in the main judgment dated 17.11.1992 by the Constitution Bench to cases other than the case of the particular petitioner in that case. We have heard learned Solicitor General in support of this application.

2. Our attention was drawn to two aspects: one in relation to the large number of similar petitions yet pending before this Court and the various High Courts where, in view of the subsisting orders of stay operating therein, it would not be possible immediately to take steps and implement the directions contained in the judgment within the time frame

A stipulated therein. The second aspect relates to pending matters before the authorities, which, though not pending before courts, do not also admit of application of the principles consistent with the statutory limit. After hearing the learned Solicitor General, we are satisfied that the problems and difficulties envisaged, in practical terms, are real and require to be provided for.

B
3. The first aspect arises out of the limited retrospectivity imported by the judgment. The judgment provides that:

C "In order to avoid that situation and, yet to ensure that no injustice is caused to the petitioner, we order, in the facts and circumstances of the case, that the statement in Form 37-I submitted by the petitioner as set out earlier shall be treated as if it were submitted on the date of signing of this judgment."

D Learned Solicitor General points out that in the cases where petitions are yet pending in this Court as well as in the various High Courts, the above direction becomes unworkable inasmuch as the interim orders subsisting in those petitions disable the authorities to carry out the directions contained in the judgment within the stipulated time-frame and that, therefore, the directions as given in the judgment become impossible of implementation. Learned Solicitor General suggests that, in order that the principles laid down in the judgment become workable in all other pending cases before the courts, a clarification be made to the effect that in respect of all such cases pending before this Court and the various High Courts, the time frame for affording of opportunity of being heard shall be reckoned from the date of the actual disposal of those matters by this Court or the High Court, as the case may be.

F We think that this clarification in the form of a further direction is necessary for a proper implementation of the principles laid down in the judgment.

G We, accordingly, clarify by this supplemental direction to be read as part of the judgment that in respect of cases other than that of petitioner - C.B. Gautam, the period of two months referred to in Section 269UD(1) shall be reckoned with reference to the date of disposal of each of such pending matters either before this Court or before the High Courts as the

case may be. Where, however, the stay orders inhibiting the authorities from taking further proceedings are vacated, the period referred to in the said Section 269UD(1) shall be reckoned with reference to the date of such vacating of the stay orders. This clarification and further direction shall be supplemental to and be treated as parts of the main judgment. A

4. The second clarification sought is in respect of matters pending before the authorities and which though not agitated in courts of law, are pending at various stages before the authorities in all such cases. We direct that Form 37-I shall be deemed to have been filed as on the date of the judgment of this Court dated 17th November, 1992 for purposes of completion of proceedings in terms of Section 269UD(1). This further direction shall also be a part of the main judgment. B C

Certified copy of the main order as well as this order of clarification shall be made available to all those who seek such certified copies against payment.

G.N.

Petition allowed.