IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23405 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI
HONOURABLE MS.JUSTICE HARSHA DEVANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment?
2	To be referred to the Reporter or not?
3	Whether their Lordships wish to see the fair copy of the judgment?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?
5	Whether it is to be circulated to the civil judge?

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SAKHUBAI RAJU SHINDE THR' POWER OF ATTORNEY & 7 - Petitioner(s)
Versus
OFFICE OF THE APPROPRIATE AUTHORITY & 1 - Respondent(s)

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Appearance:
MR BD KARIA FOR MR RK PATEL for Petitioner(s) : 1 - 8.
MR MR BHATT, SR ADVOCATE WITH MRS MAUNA M BHATT for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MS.JUSTICE HARSHA DEVANI

Date: 26/06/2012

ORAL JUDGMENT

(Per: HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. In this petition under Article 226 of the Constitution, the petitioners who are the owners of land admeasuring 5999.96 square metres of survey No.9/5/B/1 at Kothrud in P.M.C. area in Pune (hereinafter referred to as “the subject land”), have challenged order dated 28th April, 1993 at Exhibit 'E' and order dated 14th October, 2005 at Exhibit 'L' respectively, for compulsory purchase and possession passed by the Appropriate Authority, Ahmedabad, under the Income Tax Act, 1961. Alternatively, it is prayed that the respondent be directed to pay consideration in terms of fair market value on the date of taking possession and not as per the purchase price of 1993.

2. The facts as stated briefly are that on 21st July, 1987, the petitioners No.1 to 7 executed a General Power of Attorney in favour of petitioner No.8, a registered partnership firm, to deal with the subject land. By an order dated 22nd March, 1988, the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as “the ULC Act”), declared the subject land to be excess vacant land. On 31.3.1987, the petitioners No.1 to 7 made an application to the State Government for exemption under section 20 of the ULC Act in respect of the subject land, which came to be sanctioned by an order dated 10th October, 1990. The petitioner No.8 entered into Agreement of Assignment on 13th May, 1992 with M/s. Ellora Constructions for development and sale of the subject land for a consideration of Rs.18 lakhs. In respect of the said Agreement of Assignment, the petitioners filed their statement in Form No.37-I

of the Act. The respondent No.1-Appropriate Authority passed order dated 31st July, 1992 under section 269UD(1) of the Act declaring its intention to purchase the subject land for a net consideration of Rs.17,08,169/-. Initially, M/s. Ellora Construction challenged the said order before the Bombay High Court in Writ Petition No.3487/1992 which came to be disposed of on 1st April, 1993 by directing the Appropriate Authority to initiate proceedings in terms of decision of the Supreme Court in case of ***C.B. Gautam v. Union of India,*** *1999 ITR 530(SC)*.

3. Pursuant to the order passed by the Bombay High Court, on 28th April, 1993, the Appropriate Authority passed a fresh order under section 269UD (1) of the Act holding that the property is under valued and is fit for pre-emptive purchase and determined the net consideration payable by the Central Government at Rs.17,08,169/- including Rs.2,75,000/- payable to the transferee as earnest money. By an order dated 4th May, 1993, the Appropriate Authority observed that on 28.4.1993 the subject land has vested in the Central Government under section 269UE (1) of the Act and ordered the transferor to deliver vacant possession on 17.5.1993 of the property free from all encumbrances to the person authorised by it. The aforesaid order dated 28th April, 1993 passed by the Appropriate Authority under section 269UD(1) of the Act, M/s. Ellora Construction filed a writ petition before the Bombay High Court being Writ Petition No.1822/1993, wherein a Division Bench of the said Court granted stay of further proceedings in connection with the order dated 28th April, 1993. The petitioners herein were respondents No.8 and 9(a) to (g) in the said petition. By an order dated 20th September, 2005 the said writ petition came to be dismissed on the ground that M/s. Ellora

Construction which claimed to have been put in possession of the property as developer has no locus standi to maintain the writ petition.

4. In the meanwhile, it appears that the petitioners had also instituted a suit being Special Civil Suit No.192 of 2004 in the Court of the learned Civil Judge, Civil Division, Pune for cancellation of the Deed of Assignment and for a declaration that the order dated 28th April 1993 for compulsory acquisition is null and void. Upon dismissal of the above-referred writ petition, the first respondent passed an order dated 14th October, 2005 for execution of order passed under section 269UE(2) of the Act on 4th May, 1993 calling upon the transferor to deliver vacant possession of the subject property, which came to be communicated to the petitioners by a letter dated 18th October, 2005. On 19th October, 2005, the petitioners filed objections to the said order praying that same be cancelled forthwith.

5. Being aggrieved by the aforesaid order dated 14th October, 2005 as well as earlier order dated 28th April, 1993, the petitioners preferred a writ petition before the Bombay High Court, being Writ Petition No.8333/2005, which came to be dismissed by an order dated 5th September, 2006 on the ground that the remedy for the petitioners is to file a petition before the Gujarat High Court as the order under challenge had been passed by the Competent Authority in Ahmedabad though the property was situated in Pune. Thereafter, the petitioners have presented the present petition before this Court.

6. Mr. Bhargav Karia, learned advocate for the petitioners submitted

that the initial order under section 269UD (1) of the Act had been made on 18th April, 1993. In view of provisions of section 269UF of the Act, where an order for the purchase of immovable property by the Central Government is made under sub-section(1) of section 269UD, the Central Government is required to pay by way of consideration for such purchase, an amount equal to the amount of apparent consideration. The Central Government had, accordingly, fixed the amount at Rs.17,08,169/-. By virtue of provisions of section 269UG of the Act, the amount of consideration payable in accordance with the provisions of section 269UF is required to be tendered to the person or persons entitled thereto, within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government under sub-section (1), or, as the case may be, sub-section (6), of section 269UE. It was submitted that upon an order being made under sub-section (1) of section 269UD of the Act, such property vests in the Central Government. Under the circumstances, the first respondent was required to tender the amount of consideration payable in accordance with the provisions of section 269UF to the petitioners within one month from the date of order under section 269UD, that is, within one month from 28th April, 1993. However, till date no such payment has been made. It was further submitted considering the fact that in the writ petition filed by M/s Ellora Constructions before the Bombay High Court, the proceedings pursuant to the said order had been stayed, at best, the period for making such payment would stand extended till the date when the said petition came to be disposed of. However, even after the petition came to be disposed of in September, 2005 and the stay came to be vacated, the first respondent has not deposited the amount in terms of section

269UG of the Act. Under the circumstances, in the light of the law laid down by the Supreme Court in case of ***Union of India and another v. Dr. A.K. Garg and others***, *(2002) 256 ITR 660*, the purchase order stood abrogated under section 269UH of the Act, as the Central Government had not tendered the amount of apparent consideration by the date fixed by section 269UG and as such, the petition deserves to be allowed on the ground that order under section 269UD stands abrogated.

7. Vehemently opposing the petition Mr. Manish R. Bhatt, Senior Advocate, learned counsel for the respondents submitted that the petitioners were never aggrieved by the order dated 28th April, 1993 made under section 269UD (1) of the Act and hence, they had not challenged the same at the relevant time. It was M/s. Ellora Construction with whom the petitioner had entered into an agreement of assignment who had challenged the said order before the Bombay High Court. According to the learned counsel the petitioner was never aggrieved by the order dated 28th April, 1993. It was only after the dismissal of the writ petition filed by M/s Ellora Constructions and passing of order dated 14th October, 2005 section 269UE(2) of the Act for the execution of order under section 269UD(1) of the Act, that the petitioner has thought it fit to challenge the stay order as well as the earlier order dated 28th April 1993, and as such after this length of time the petitioner cannot be permitted to challenge the same. The petition, therefore, deserves to be dismissed on the ground of delay and laches alone.

8. Next it was submitted that under the provisions of section 269UG of the Act, the amount of consideration as payable under section

269UF is required to be tendered to the person or persons entitled thereto, within a period of one month from the end of the month in which the immovable property stands vested in the Central Government. Before the aforesaid period of one month was over, M/s. Ellora Constructions had approached the Bombay High Court by way of a writ petition, wherein further proceeding had been stayed. Under the circumstances, the Appropriate Authority was precluded from tendering the amount of consideration in relation to the subject land. It was contended that once the period of one month from the date of vesting is over, section 269UG would cease to operate and as such the period of limitation prescribed thereunder would no longer be applicable. Hence, there would be no limitation for tendering the amount of consideration thereafter. Reliance was also placed on the averments made in the affidavit in reply filed on behalf of the respondents. It was submitted that in the aforesaid premises, the submission that order under section 269UD(1) stands abrogated under section 269UH of the Act does not merit acceptance and the petition deserves to be dismissed.

9. In the backdrop of the aforesaid facts and contentions, two questions arise for consideration, firstly as to whether the present petition is barred by delay and laches and secondly as to whether the order dated 28th April, 1993 passed under section 269UD(1) stands abrogated under section 269UH of the Act.

10. As regards the first question, viz. delay caused in filing the present petition insofar as the order dated 28th April, 1993 is concerned, it may be noted that at the relevant time when the petition came to heard at the admission stage, an objection had been raised as regards the delay caused in filing the petition, pursuant to which

the petitioners had filed a civil application being Civil Application No.13797 of 2006 for condoning the delay caused in filing the petitioner challenging the order dated 28.04.1993 as well as the order dated 14.10.2005. The respondent had filed an affidavit-in-reply in response to the averment made in the said application. By an order dated 16th April, 2007, the said application came to be allowed after hearing the learned counsel for the respective parties, after which the petition came to be listed for admission and notice came to be issued on the petition on 10.05.2007. Subsequently, by an order dated 11.07.2008 rule came to be issued. In the aforesaid premises, it is apparent that the question of delay had already been decided prior to issuance of notice in the matter, under the circumstances, it is not permissible for the respondents to reagitate the issue again.

11. As regards the second issue, from the facts noted hereinabove, it is apparent that the order under section 269UD of the Act came to be made on 28th April, 1993 whereupon, by virtue of provisions of section 269UE, the subject property stood vested in the Central Government from the date of such order. A perusal of the impugned order dated 28th April, 1993 indicates that the net consideration payable by the Central Government for purchase of the subject property as contemplated under section 269UF of the Act was determined at Rs.17,08,169/- including Rs.2,75,000/- payable to the transferee paid as earnest money. Section 269UG of the Act makes provision for "Payment or deposit of consideration" and postulates that the amount of consideration payable in accordance with the provisions of section 269UF shall be tendered to the person or persons entitled thereto, within a period of one month from the end of the month in which the immovable

property concerned becomes vested in the Central Government under sub-section (1), or as the case may be, sub-section (6) of section 269UE. In facts of the present case, it is an admitted position that the consideration for purchase of immovable property as determined under section 269UF of the Act has not been paid to the petitioner till date. Considering the fact that the order under section 269UD of the Act had been passed on 28th April, 1993 in view of the provisions of section 269UG, the consideration determined under section 269UF was required to be paid within a period of one month from the end of April 1993. However, it appears that immediately thereafter, on 4th May, 1993, M/s. Ellora Construction presented the above referred Writ Petition No.1822/1993 before the Bombay High Court. A perusal of the affidavit filed by the petitioners in the said petition indicates that by an order dated 11th August, 1993, the Bombay High Court had granted interim relief staying the execution and operation of the order dated 28th April, 1993 with the condition that the petitioner, that is, M/s. Ellora Constructions would not in any manner deal with the said property or develop the same. Thus, from 28th April, 1993 to 11th August, 1993, there was no order restraining the respondent from depositing the amount of consideration in terms of section 269UG of the Act. Apart from the fact, that the amount of consideration determined under section 269UF was not paid within the period prescribed under section 269UG at the relevant time, even after the dismissal of the said writ petition on 20.09.2005, the respondent No.1 Appropriate Authority has not thought it fit to deposit the amount of consideration till date. Now it is sought to be contended that once the initial period of one month from the date when the immoveable property becomes vested in the Central Government under sub-section (1) or sub-section (6) of section 269UE of the Act elapses and the respondent is restrained by an order of the court from proceeding further, the period of limitation would cease to operate and it is thereafter permissible for the respondents to tender the consideration at any time.

12. At this juncture it may be germane to refer to the decision of the Supreme Court in ***Dr. A.K. Garg and others*** (supra). In the facts of the said case, on a writ petition, a Division Bench of the Delhi High Court had quashed the order of the Appropriate Authority of preemptive purchase under section 269UD of the Act of the immovable property, the subject matter of an agreement for sale, inter alia, on the ground that the purchase order stood abrogated under section 269UH since the Central Government had not tendered the amount of apparent consideration by the date fixed by section 269UG. The Central Government preferred an appeal to the Supreme Court, and, put forth a case that the amount had been deposited with the appropriate authority. However, there was no material to show that the same was tendered or offered to the parties concerned. On behalf of the Central Government reliance was placed a letter in regard to the amount to be tendered or deposited in terms of section 269UG of the Act whereby the Chief Commissioner of Income-tax, New Delhi had been authorised to tender the amount, on the basis of which it was claimed that the apparent consideration had been tendered to the vendor in time. The Supreme Court observed that all that was sought to be done by the letter was that the Chief Commissioner is authorised by the Central Government to tender the amount to the party and that there was no material to show that such offer was made within the stipulated period under section 269UG of the Act and dismissed

the appeal.

13.In ***Hotel Mardias Private ltd. v. Union of India and others,*** *(1996) 220 ITR 94,* a Division Bench of this Court has held thus:

> *"Assuming that the order under section 269UD(1) has been made in accordance with law under section 269UG it is required that the amount of consideration payable to the person entitled to such consideration within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government under section 269UE. It further provides that from the consideration so paid, the amount of any liability for a tax or any other sum remaining payable under the Income-tax Act, Wealth-tax Act, Gift-tax Act, Estate Duty Act, Companies (Profits) Surtax Act, by such person then the appropriate authority may in lieu of the payment of consideration set off such outstanding liability. Such adjustment is equivalent to payment to the person entitled to consideration inasmuch as it results in the discharge of his liability. It also envisages what are the contingencies when the amount of consideration instead of being paid or tendered to the person entitled, may be deposited by the Central Government, with the appropriate authority. These contingencies are - (1) where any dispute arises as to the apportionment of the amount of consideration amongst the persons to be entitled thereto; (2) where the person entitled to the amount of consideration does not consent to receive it or if there is dispute as to the title to receive the amount of consideration. Such deposit is in fact postponement of payment to a future date. The two eventualities: (i) adjustment against existing liability, and (ii) deposit with the appropriate authority for payment at some future date are quite different.*
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> *The provisions of section 269UG as to payment within the time stipulated therein or deposit of money in contingencies stipulated in subsections (2) and (3) of section 269UG are mandatory in character. This is obvious from the consequence of failure to pay or tender the consideration in time or deposit the same in circumstances mentioned under section 269UG provided under section 269UH. The consequence of failure is abrogation of the order of purchase made under section 269UD and revesting of the property in the transferor on the expiry of the period stated under section 269UG without fulfilment of its requirement."*

14. Examining the facts of the present case in the light of the principles enunciated in the decisions cited hereinabove, the order under section 269UD of the Act came to be made on 28th April, 2003 pursuant to which the subject land stood vested in the Central Government under section 269UE(1) of the Act. Under the circumstances, in view of the provisions of section 269UG, the amount of consideration payable in accordance with the provisions of section 269UF was required to be tendered within a period of one month from the end of the month in which such vesting took place, that is, within one month from the end of April, 1993. In other words, the amount was required to be tendered by the end of May 1993. It is an undisputed position that the said amount has not been tendered till date. As noted earlier, no stay had been granted by the Bombay High Court till August 1993 and as such, the respondent Appropriate Authority was not in any manner restrained from complying with the provisions of section 269UG of the Act even at the relevant time when the order under section 269UD of the Act came to be passed. Assuming for the sake of argument that since proceedings had been filed by M/s Ellora Constructions before the Bombay High Court before the stipulated period of one month was over, which was entertained and as such pending the litigation the respondents could not proceed further and tender the amount, at best, the period during which the writ petition was pending could be excluded. The facts reveal that the said writ petition came to be dismissed on 20.09 2005 after which there was no reason for the respondents not to tender the amount. The present petition came to be filed on or about 1st November, 2006 and no interim relief has been granted therein. However, till date even in the year 2012, the consideration payable in accordance with the provisions of section 269UF has not been

tendered to the petitioners. Resultantly, on account of failure on part of the respondents to tender the amount of consideration payable under section 269UF of the Act, the order dated 28th April, 2003 passed by the appropriate authority for purchase of the subject land by the Central Government under section 269UD (1) of the Act stands abrogated in view of mandatory provision of section 269UG (1) of the Act and the Central Government stands divested of the title which was vested in it. The subject land would, accordingly, stand re-transferred to the transferor, namely the petitioner herein.

15.The contention that when in view of any order passed by a court of competent jurisdiction further proceedings pursuant to an order made under section 269UD (1) are stayed, after the statutory period of one month is over, the period of limitation prescribed under section 269UG for tendering the amount payable under section 269UF would no longer operate, requires to be stated only to be rejected. When the legislature has enacted a statutory provision imposing mandatory period of limitation of one month, it can by no means be contended that the said period would stand extended without any limitation merely because such proceedings had been stayed for a particular period. At best the appropriate authority would be entitled to exclude the period during which the stay was operating while computing the period of one month, however, the period of limitation would not be lifted for all times to come. Moreover, in the facts of the present case, wherein the period of one month as stipulated under section 269UG of the Act was over even before the proceedings came to be stayed by the Bombay High Court, even if for the sake of assumption, the said argument were to be accepted, the same would not be applicable.

16.In the light of the aforesaid discussion, the, petition succeeds and is, accordingly, allowed. The impugned order dated 28th April, 1993 passed by the appropriate authority under section 269UD(1) of the Act as well as the impugned order dated 14th October, 2005 for execution of the order dated 28th April, 1993 are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi,J.)

(Harsha Devani,J.)

(raghu)