

ASGAR S. PATEL AND ORS.

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v.

UNION OF INDIA AND ORS.

APRIL 25, 2000

[S. RAJENDRA BABU AND R.C. LAHOTI, JJ.]

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*Income Tax Act, 1961 : ss. 269-UC, 269-UD, 269-UE, 269-UF, 269-UG and 269-UH—Transfer of Property Act, 1882—S. 55(6)(b) and 55(4)(b)—Vesting of property in Central Government—Pre-paid purchase money by transferees—Recovery of—Agreement between the parties clearly stipulating that if transferees were not refunded pre-paid purchase money by Appropriate Authority, they would be entitled to claim the same from transferor—Writ petition by transferees claiming refund from Appropriate Authority—Validity of—Held, vesting of property in Central Government cannot defeat the transferees' lien under S. 55(6)(b) of T.P. Act—Vesting not free from encumbrance unless annulled by Appropriate Authority—However, in the instant case since the parties have entered into clear and express contract creating mutual rights and obligations, they are bound by it—Thus, transferees not entitled to claim any relief under the writ jurisdiction—However they were at liberty to seek their remedy against the transferor under the agreement—Constitution of India, 1950 : Article 226.*

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**Under an agreement to sell immovable property, appellant-transferees paid part of purchase money to transferor and agreed to pay the balance consideration of completion of sale. It was specifically agreed between the parties that in the event of compulsory purchase of property by Central Government and if transferees were not refunded the pre-paid purchase money by Appropriate Authority, then they would be entitled to recover the same from transferor. Appropriate Authority passed an order for compulsory purchase of property in favour of Central Government and distributed the amount of consideration to transferor after paying dues to the bank to satisfy the encumbrance of mortgage. Appellant-transferees' representation claiming refund of pre-paid purchase money was not considered by the Appropriate Authority. Appellants' writ petition and writ petition and writ appeal were also dismissed by High Court. Hence the present appeal.**

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**Dismissing the appeal, the Court**

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A           **HELD : 1. Vesting of the property in the Central Government under**  
the order of compulsory purchase cannot defeat the transferees' lien under  
Section 55(6)(b) of the Transfer of Property Act. A charge under Section  
55(6)(b) of T.P. Act was created soon on payment of purchase money. Just  
B as the seller has a charge on the property for the unpaid price under S.  
55(4)(b) of the T.P. Act, the buyer has a charge for price pre-paid. Thus the  
amount of any purchase, money property paid by the buyer in anticipation  
of the delivery and also the earnest money where the buyer had justifica-  
C tion for declining to accept the delivery constitutes a charge on the property  
forming subject matter of sale to the extent of seller's interest in the  
property and thus would be an encumbrance on the property. Thus, vesting  
of property in Central Government cannot be free from encumbrance  
unless the Appropriate Authority has exercised the power conferred by the  
proviso to sub-section (1) of S. 269-UE of the Income Tax Act and annulled  
the encumbrance. [495-E; 493-G; 492-D; 493-A-B]

D           *C.B. Gautam v. Union of India & Ors.*, [1993] 1 SCC 78; *Delhi*  
*Development Authority v. Skipper Construction (P) Ltd.*, (2000) AIR SCW  
113, relied on.

*Saidum Nessa Hoque & Ors. v. Calcutta Vyapar Pratishtan Ltd.*, AIR  
(1978) Cal. 285, approved.

E           **2.1. If there is no dispute between the buyer and the seller or a third**  
person as to the amount of purchase money to be paid or as to the appor-  
tionment of the amount forming part of the purchase money then the  
amount must be tendered by the Central Government to the person or  
persons entitled thereto. However, if there be any dispute raised as to the  
F apportionment of the amount by more than one person staking claims  
seeking payment of the amount resulting into a dispute as to the appor-  
tionment of the amount of consideration, in that case the Central Government  
shall deposit so much part of the apparent consideration as is the subject  
matter of dispute with the Appropriate Authority as provided by Sub-  
section (2) of Section 269-UG. Failure to make such tender shall result in  
G the pre-emptory purchase being abrogated and the immovable property  
shall stand re-vested in the transferor as provided by sub-section (1) of  
Section 269-UH. [494-F-H; 495-A]

H           **2.2. However, in the instant case, the appellants were not seeking re-**  
vesting of the property in the transferor; and were only seeking enforce-  
ment of the statutory charge in their favour for the amount of purchase

money paid by them. Thus, the question of testing whether for failure of the Central Government to tender the amount consistently with the provisions of sub-section (1) of Section 69-UG the order of compulsory purchase in favour of the Central Government shall stand abrogated and the property shall stand reverted to the transferor does not arise. [496-A-B]

3.1. In the instant case, it is clearly stipulated in the agreement between the parties that in the event of the Appropriate Authority not paying the amount to the transferees, the transferees shall be entitled to recover the amount from the vendor. Thus, there is no reason why the rights and obligations of the parties should not be worked out by reference to the recitals of the agreement governing their relationship. In the event of the Appropriate Authority the Central Government failing in discharging its statutory obligation the only right reserved to the transferees under the agreement is to recover the amount from the transferor. When the parties enter into a clear, unambiguous and express contract creating natural rights and obligations, the parties are bound by it and the extraordinary jurisdiction of the High Court under Article 226 of the Constitution which is of a discretionary nature cannot be allowed to be utilised for enforcing an obligation in departure from the terms of the agreement. [497-E-H; 498-A]

3.2. Moreover, even if the High Court were to exercise its discretionary writ jurisdiction in favour of the transferee-appellants by directing payment of purchase money from the Central Government to the appellants, the direction should be one binding on the transferor as well so that the Central Government, in its turn, could have recovered the amount from the transferor. Strangely enough the transferee-appellants have not impleaded the transferor as party to the writ petition. As the amount left available with the Central Government was less than the amount of purchase money paid by the transferees to the transferor, if full amount was directed to be paid by the Central Government to the transferee-appellants than a corresponding reduction was required to be made from the amount paid to the persons who were not joined as parties to the petition. Thus, the transferee-appellants were not entitled to any relief in the present proceedings. However, they are still at liberty to have their remedy against the transferor and seek refund of the money paid by the transferor under the agreement. [498-B-E]

A From the Judgment and Order dated 26.9.95 of the Bombay High Court in A. No. 649/95 in W.P. No. 714 of 1995.

B K.N. Rawal, Additional Solicitor General, Dushyant Dave, Jay Savla, Ms. Reena Bagga, Haris Beeran, Siddhartha Dave, C.V.S. Rao, Ms. Sushma Suri, B. Krishna Prasad, K.N. Balgopal, A.P. Mukundan, Mahendra Singh, C.N. Shri Kumar, Tripurary Ray, Vineet Kumar, Ranbir Chandra, Sanjay G. Udesb and A.P. Mukundan for the appearing parties.

The Judgment of the Court was delivered by

C **R.C. LAHOTI, J.** Flat No.201, 2nd Floor, New Jaldarshan, Perry Cross Road, Bandra (West), Bombay was owned by one Hemant Chawla (hereinafter the 'Transferor', for short). On 1.5.1994 the transferor entered into an agreement to sell the said flat for a consideration of Rs. 45,50,000 in favour of the six appellants herein (hereinafter referred to as the 'Transferees', for short). An amount of Rs. 4,55,000 was paid by the transferees to the transferor on 1.5.1994, i.e. the date of the execution of the agreement. The balance consideration of Rs. 41 lakhs was to be paid on completion of sale within 30 days from the receipt of 'no objection certificate' from the Appropriate Authority. On 6.5.1994 the transferor and the transferees jointly filed a statement in Form 37-I under Section 269 UC of the Income-tax Act, 1961 (hereinafter the 'Act', for short). A copy of the agreement was annexed with Form 37-I as statutorily required and as per the proforma the names of the six transferees were mentioned in column No.4 of Form 37-I.

F On 12.8.1994 the Appropriate Authority issued notice under Section 269 UD (IA) of the Act to the transferor and the transferees in view of its having formed an opinion that there was significant under valuation of the property and calling upon the transferor and the transferees to show cause why an order of compulsory purchase by Central Government be not made. Vide para 6 of the notice the Appropriate Authority noted that out of the amount of consideration agreed upon between the parties to the agreement dated 1.5.1994, an amount of Rs. 4,55,000 was paid by way of earnest money on the execution of the agreement and the balance amount was payable within 30 days from the receipt of NOC from the Appropriate Authority. The transferor and the transferees filed responses to the show cause notice disputing the grounds for compulsory purchase by the Central Government.

H On 30.8.1994 the Appropriate Authority passed an order directing

compulsory purchase in favour of the Central Government for a discounted value of Rs. 44,25,680. Vide paras 8 & 9 of its order, the Appropriate Authority directed that out of the consideration payable by the Central Government, the encumbrance as mentioned in Clause 3 of the agreement, should be satisfied by the transferor and in the meantime the amount shall be deposited in the account of the appropriate authority. Vide Clause 9 of the agreement, the vendor was to bear 50% transfer fee payable to the Society which liability amounted to Rs. 22,000. The order directed this amount also to be retained by the Appropriate Authority towards the vendor's liability for payment of transfer fee. Clause (3) of the agreement referred to the flat forming subject matter of sale having been offered as security to Indian Overseas Bank in connection with a loan of Rs. 36,50,878 taken by the transferor. There was also an order of attachment before judgment-cum-garnishing order dated 13.9.1994 secured by one Chandrakant & Co., a partnership firm, creating an encumbrance to the tune of Rs. 6,00,800 on the flat.

On 26.9.1994 the transferees made a representation to the Appropriate Authority inviting the attention of the latter to the fact that they had paid a sum of Rs. 4,55,000 (as mentioned in the agreement) and another sum of Rs. 50,000 after signing of the said agreement to which they were entitled to be reimbursed under Clause 5(e) of the agreement. They prayed that their lien on the flat be honoured and the amount of Rs. 5,05,000 be released to them out of the consideration proposed to be paid by the Central Government to the transferor. Ultimately the amount of consideration payable by the Central Government was distributed as follows. An amount of Rs. 6,00,800 was deposited in the Court on 30.9.1994 to honour the order of attachment made in summary suit No.2012 of 1994 filed by M/s. A. Chandrakant & Co. against the transferor Hemant Chawla. An amount of Rs. 36,50,878 was paid to Indian Overseas Bank, Bandra Branch on 27.12.1994 to satisfy the encumbrance of mortgage existing in favour of the Bank. Retaining an amount of Rs. 22,000 towards transfer fee payable to the Society, the balance amount of Rs. 1,52,002 was paid to transferor on 23rd December, 1994. It is clear from these facts that insofar as the claim of the transferees, appellants before us, is concerned it was neither taken note of nor honoured by the Appropriate Authority. On 25.1.1995 the transferees/appellants served a notice demanding payment of Rs. 5,05,000 from the Appropriate Authority. On 16.3.1995 they filed a writ petition in the High Court of Bombay seeking the same relief. A learned Single Judge dismissed the writ petition summarily forming an opinion that the remedy of

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A the appellants was to sue the transferor for return of the earnest money and remedy of civil writ petition was misconceived. The appellants preferred a writ appeal which also has been dismissed by the Division Bench. The aggrieved appellants have come up to this Court seeking special leave to appeal which leave has been granted to them.

B The controversy arising for decision centers around the interpretation of Section 269 UG of the Act. According to the learned counsel for the appellants it was statutory obligation of the Central Government to have tendered to them the amount claimed by them. Their claim having been brought to the notice of the Central Government, the Appropriate Authority was not justified in releasing the amount to the transferor. The transferees were the persons entitled/claiming to be entitled to the amount of consideration to the extent of Rs. 5,05,000 and inasmuch as their entitlement was not disputed by the transferor or anyone else for that matter, there was no dispute as to the apportionment of the amount to the extent of the entitlement of the transferees. In any case the amount should have been kept in deposit by the Appropriate Authority and should not have been released to the transferor. The Central Government must bear the consequences flowing from its default by non-compliance with the obligation statutorily cast on it by the Act.

Sections 269 UF & 269 UG of the Act read as under:-

E Consideration for purchase of immovable property by Central Government. 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.

F (2) Notwithstanding anything contained in sub-section (1), where, after the agreement for the transfer of the immovable property referred to in that sub-section has been made but before the property vests in the Central Government under section 269UE, the property has been damaged (otherwise than as a result of normal wear and tear), the amount of the consideration payable under that sub-section shall be reduced by such sum as the appropriate authority, for reasons to be recorded in writing, may by order determine.

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H *Payment or deposit of consideration. 269UG.*

(1) 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: Provided that if any liability for any tax or any other sum remaining payable under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Gift-tax Act, 1958 (18 of 1958), the Estate Duty Act, 1953 (34 of 1953), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), by any person entitled to the consideration payable under section 269 UF, the appropriate authority may, in lieu of the payment of the amount of consideration, set off the amount of consideration or any part thereof against such liability or sum, after giving an intimation in this behalf to the person entitled to the consideration.

(2) Notwithstanding anything contained in sub-section (1), *if any dispute arises as to the apportionment of the amount of consideration amongst persons claiming to be entitled thereto*, the Central Government shall deposit with the appropriate authority the amount of consideration required to be tendered under sub-section (1) within the period specified therein.

(3) Notwithstanding anything contained in sub-section (1), if the person entitled to the amount of consideration does not consent to receive it, or if *there is any dispute as to the title to receive the amount of consideration*, the Central Government shall deposit with the appropriate authority the amount of consideration required to be tendered under sub-section (1) within the period specified therein: Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of the amount of consideration for any immovable property vested in the Central Government under this Chapter to pay the same to the person lawfully entitled thereto.

(4) Where any amount of consideration has been deposited with the appropriate authority under this section, the appropriate authority may, either of its own motion or on an application made by or on behalf of any person interested or claiming to be interested in such

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A amount, order the same to be invested in such Government or other securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefits therefrom as they might have had from the immovable property in respect whereof of such amount has been deposited or as near thereto as may be.

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(emphasis supplied)

C We will shortly revert back to the above-said provisions. Immediately let us examine what is the nature of the right of the transferees/appellants under the law and their status under Chapter XX-C insofar as the controversy arising for decision before us is concerned. The scheme as to purchase by Central Government of immovable properties in certain cases of transfer as is envisaged by Chapter XX-C of the Income-tax Act, 1971 came to be introduced by the Finance Act, 1986 in place of earlier Chapter XX-A and applies to transactions effected after 1st October, 1986. Once the Appropriate Authority has, after the receipt of the statement under sub-section (3) of Section 269 UC in respect of any immovable property, made up its mind to make an order for the purchase by the Central Government of such an immovable property at an amount equal to the amount of apparent consideration as defined in clause (b) of Section 269 UA, such property shall on the date of such order vest in the Central Government in terms of the agreement for transfer referred to in sub-section (1) of Section 269 UC. Section 269 UE, as it originally stood prior to its amendment by the Finance Act, 1993 with effect from 17.11.1992, provided for the vesting in the Central Government of such immovable property "free from all encumbrances". In *C.B. Gautam v. Union of India & Ors.*, [1993] 1 SCC 78, a Constitution Bench of this Court held the employment of expression "free from all encumbrances" in sub-section (1) to be violative of Article 14 of the Constitution and therefore directed the said expression to be quashed and struck down from the language of Section 269 UE (1). Vide para 36, this Court has held :-

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"36.....In the result 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 such encumbrances and lease-





A (b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him,\*\*\*, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

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 xxx                      xxx                      xxx  
 xxx                      xxx                      xxx

D Just as the seller has a charge on the property for unpaid price under Section 55 (4) (b) of T.P. Act, the buyer has a charge for price pre-paid. Thus the amount of any purchase money properly paid by the buyer in anticipation of the delivery and also the earnest where the buyer had justification for declining to accept the delivery constitutes a charge on the property forming subject-matter of sale to the extent of the seller's interest in the property and thus would be an encumbrance on the property. Section 269 UE(1) as amended by the Finance Act, 1993 (w.e.f. 17.11.1992) reads as under:-

E *Vesting of property in Central Government.*

F 269UE. (1) Where an order under sub-section (1) of 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 [in terms of the agreement for transfer referred to in sub-section (1) of section 269UC]:

G *Provided* that where the appropriate authority, after giving an opportunity of being heard to the transferor, the transferee or other persons interested in the said property, under sub-section (1A) of section 269UD, is of the opinion that any encumbrance on the property or leasehold interest specified in the aforesaid agreement for transfer is so specified with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or leasehold interest to be void and thereupon the aforesaid property shall vest in the Central

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Government free from such encumbrance or leasehold interest.]”

In view of *C.B. Gautam's* case (supra) the vesting of the property in the Central Government cannot be free from encumbrance unless the Appropriate Authority has exercised the power conferred by proviso to sub-section (1) of Section 269 UE and annulled the encumbrance after recording a finding and following the procedure as contemplated by the proviso whereupon only the property shall vest in the Central Government free from such encumbrance; else the encumbrance shall run with the property.

The language of Section 269 UE(1) gives an indication that on the passing of an order under Section 269 UD(1) the immovable property vests in the Central Government in terms of the agreement for transfer referred to in sub-section (1) of Section 269 UC. The scheme of the provisions suggests that on the passing of the order of compulsory purchase the Central Government stands substituted in place of the buyer and the apparent consideration stands substituted in place of the agreed consideration. Further in view of the property having vested in the Central Government, the agreement need not be performed by the transferor. Ordinarily, in the event of the private agreement between the parties falling to the ground (i.e. not because of intervention of Chapter XX-C proceedings) the transferor would have been liable to refund the amount of purchase money to the transferees and so long as the amount was not returned the transferees would have held a lien on the property to the extent of the seller's interest. Recently in *Delhi Development Authority v. Skipper Construction Co. (P) Ltd.*, (2000) AIR SCW 113 this Court has held that the buyer's charge under Section 55(6)(b) of the T.P. Act is a statutory charge and differs from a contractual charge which the buyer may be entitled to claim under a separate contract. The charge is enforceable not only against the seller but against all persons claiming under him.

A charge under Section 55 (6)(b) of T.P. Act is created soon on payment of purchase money. It can be lost on wrongful refusal to accept delivery of property. As held in *Saidun Nessa Hoque & Ors. v. Calcutta Vyapar Pratisthan Ltd.*, AIR (1978) Cal. 285, with which we find ourselves in agreement, a charge under Section 55(6)(b) may not be created if the parties expressly stipulate that the purchase money will not form the charge on the property or it will be released from the charge on certain circumstances or that earnest would be forfeited under certain circumstances. In the present case, the property having been compulsorily purchased by the Central Government

A there was no occasion for the buyer to have improperly declined to accept  
delivery of the property. The amount of purchase money was properly paid by  
the buyer and was in anticipation of the fulfilment of the contract which would  
include delivery of the property. In view of the order of compulsory purchase  
having intervened the transferees were excluded from accepting delivery of  
B the property. The applicability of Section 55 (6)(b) of T.P. Act was fully  
attracted.

During the course of the proceedings under Chapter XX-C the Approp-  
riate Authority may, subject to the principles of natural justice, record a  
finding that the purchase money which purports to have been paid by the  
C transferees to the transferor is being claimed to have been paid only with a  
view to defeat the provisions of this Chapter. Then the Appropriate Authority  
may make a declaration avoiding the charge claimed to have been created for  
the purchase money paid. Else, the charge shall continue to exist and follow  
the property in the hands of the Central Government.

D The only defence raised in the counter filed on behalf of the Appropriate  
Authority before the Court is that the appellants did not file a consent letter  
from the transferor agreeing to payment of Rs. 5,05,000 to the transferees/  
appellants and therefore the balance amount was released for payment in  
E favour of the transferor. According to the Appropriate Authority it is always  
the transferor/vendor alone who is entitled to receive the consideration payable  
under an order of compulsory purchase unless otherwise agreed mutually and  
expressly between the parties and consent terms filed with the Appropriate  
Authority. It is difficult to agree with the abovesaid plea raised on behalf of  
F the Appropriate Authority. If there be no dispute between the buyer and the  
seller or a third person as to the amount of purchase money having been paid  
or as to the apportionment of the amount forming part of the purchase money  
then the amount must be tendered by the Central Government to the person  
or persons entitled thereto. If there be any dispute raised as to the apportion-  
ment of the amount by more than one person staking claims seeking payment  
G of the amount resulting into a dispute as to the apportionment of the amount  
of consideration, in that case the Central Government shall deposit so much  
part of the apparent consideration as is the subject matter of dispute with the  
appropriate authority as provided by sub-section (2) of Section 269 UG. In  
either case the compliance must be made within a period of one month from  
H the end of the month in which the immovable property concerned becomes  
vested in the Central Government. Failure to make such tender shall result in

the pre-emptory purchase being abrogated and the immovable property shall stand re-vested in the transferor as provided by sub-section (1) of Section 269 UH.

An absence of consent or express willingness to apportionment of the amount does not necessarily amount to a dispute raised. The action of the Appropriate Authority as evidenced by the proceedings in the case at hand itself exposes the worth of the plea so raised. Neither A. Chandrakant & Co. nor Indian Overseas Bank had filed a consent letter from the transferor. Still their encumbrances were discharged. How the appellants could have been treated differently? Form 37-I filed jointly by the transferees and the transferor stated purchase money to the extent of Rs. 4,55,000 having been paid by the appellants and received by the transferor. Nobody had questioned the genuineness of this payment. The transferor never disputed having received the said amount. The factum of payment of Rs. 4,55,000 finding place in the agreement which was the basis of commencement of the proceedings and formed part of Form 37-I could not have been treated as a disputed payment. In any case, if the Appropriate Authority entertained any doubt about the genuineness or otherwise of such payment then the Appropriate Authority should have said so in its order and then left the amount in deposit with the Appropriate Authority. That having not been done the vesting of the property in the Central Government under the order of compulsory purchase cannot defeat the transferees' lien under Section 55(6)(b) of the T.P. Act.

Though a further amount of Rs. 50,000 is claimed to have been paid by the transferees to the transferor on 4th June, 1994 and this payment was also brought to the notice of the Appropriate Authority on 15th June, 1994 by the transferees, however, the factum of such payment does not find mention in any statement or document jointly signed before the Appropriate Authority or jointly submitted by the transferees and the transferor to the Appropriate Authority. An intimation as to such claim does not also appear to have been given to the transferor in the proceedings before the Appropriate Authority. There was no occasion for the transferor to have admitted or disputed the claim as to payment of Rs. 50,000 to him. No fault can therefore be found with the Appropriate Authority having not tendered this amount of Rs. 50,000 to the transferee-appellants.

During the course of hearing, on a specific query raised by the Court, the learned senior counsel for the appellants stated that for non-tendering the

A amount of Rs. 5,05,000 or Rs. 4,55,000 the appellants were not seeking re-vesting of the property in the transferor; they were only seeking enforcement of the statutory charge in their favour for the amount of purchase money paid by them. In view of that statement made at the Bar the question of testing whether for failure of the Central Government to tender the amount consistently with the provisions of sub-section (1) of Section 269 UG the order of compulsory purchase in favour of the Central Government shall stand abrogated and the property shall stand revested in the transferor does not arise. Besides, the property compulsorily purchased by the Central Government has been put to auction once again and sold away with the result that the interests of a third party have intervened.

C The question which now remains to be examined is whether in view of the law laid down hereinabove whether a writ of mandamus can issue in favour of transferees/appellants commanding the Central Government to pay the amount of purchase money to the appellants to the extent undisputedly paid by them.

D Here it will be relevant to extract and reproduce Clause 5 of the agreement dated 1st May, 1994 entered into between the parties. It reads as under:-

E “5. Since 1st October, 1986, the provisions of Chapter XX C of the Income-tax Act, 1961, have come into force and in view thereof the parties hereto agree as under:-

F (a) This agreement shall be treated as the Memorandum of Understanding between the parties hereto for the purpose of Section 269 UC of the Income-tax Act, 1961.

G (b) Within 15 days from the execution hereof, the Vendor and the Purchasers shall file the copy of this agreement along with a statement in form 37-I, with the Appropriate Authority as required by Section 269 UC Sub-Section (3) of the Income-tax Act, 1961.

H (c) In the event the Appropriate Authority makes an order for purchase by the Central Government of the said property under Section 269 UD of the Income-tax Act, 1961 then in such an event.

- (i) *The Vendor shall be entitled to receive from the Central Government entire consideration and the Purchasers hereby consents for the same.* A
- (ii) *The Purchasers shall be entitled to claim from the Appropriate Authority the refund of Rs. 4,55,000 (Rupees Four lakhs fifty five thousand only) being the earnest money paid by the Purchasers to the Vendor. In the event the Appropriate Authority does not pay the said sum of Rs. 4,55,000 (Rupees Four lakhs fifty five thousand only) to the Purchasers then the Purchasers shall be entitled to recover the said earnest money from the Vendor.* B  
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- (d) *In the event the Appropriate Authority does not make any (sic - order?) for purchase by Central Government of the said property for a period of three months from the date of submitting the statement in form 37-I or grants its 'No Objection' for the sale of the said property by the Vendor to the Purchaser herein, the Vendor shall be bound to complete the sale."* D

It is clear from the abovesaid Clause of the agreement that the parties were well aware of the provisions of Chapter XX-C of the Act having come into force on 1st October, 1986. In this background they had entered into a specific agreement between themselves whereby they had agreed in the event of the Appropriate Authority making an order for purchase by the Central Government of the property forming subject matter of the agreement, firstly, the vendor is the person who shall be entitled to receive the entire amount of consideration and the purchasers were consenting for it. The next sub-clause says that though the amount of Rs. 4,55,000 shall be available to be claimed by the transferees from the Appropriate Authority but the parties were also clear in their mind, and accordingly they had stipulated, that in the event of the Appropriate Authority not paying the amount of Rs. 4,55,000 to the transferees, the transferees shall be entitled to recover the amount from the vendor. There is no reason why the rights and obligations of the parties should not be worked out by reference to the recitals of the agreement governing their relationship. In the event of the Appropriate Authority/the Central Government failing in discharging its statutory obligation the only right reserved to the transferees under the agreement is to recover the amount from the transferor. When the parties enter into a clear, unambiguous and express E  
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A contract creating mutual rights and obligations, the parties are bound by it and the extraordinary jurisdiction of the High Court under Article 226 of the Constitution which is of a discretionary nature cannot be allowed to be utilized for enforcing an obligation in departure from the terms of the agreement.

There is yet another reason why the discretion cannot be exercised in favour of the transferee-appellants. Even if the High Court were to exercise its discretionary writ jurisdiction in favour of the transferee-petitioners by directing payment of purchase money from the Central Government to the petitioners, the direction should be one binding on the transferor as well so that the Central Government, in its turn, could have recovered the amount from the transferor. Strangely enough the transferee-petitioners have not impleaded the transferor as party to the writ petition. As the amount left available with the Central Government was less than the amount of purchase money paid by the transferees to the transferor, if full amount of Rs. 4,55,000 was directed to be paid by the Central Government to the transferee-petitioners then a corresponding reduction was required to be made from the amount paid to the Indian Overseas Bank and/or the amount deposited in the Court honouring the garnishing order/order of attachment in favour of M/s. A. Chandrakant & Co., Indian Overseas Bank and M/s. A.Chandrakant & Co. were also not joined as parties to the petition. The only persons impleaded as respondents before the High Court were the Union of India, the Appropriate Authority and the Commissioner of Income-tax. The special leave petition before this Court was also filed with the said three parties only impleaded as respondents. During the pendency of petition before this Court, on 25.1.1996 the transferor, the Bank and M/s A.Chandrakant & Co. were permitted to be impleaded as respondents. This was at too late a stage.

For the foregoing reasons, we hold the transferee-petitioners not entitled to any relief in these proceedings. Needless to say they are still at liberty to have their remedy against the transferor and seek return of the money paid by them to the transferor under the agreement. The appeal is dismissed though without any order as to the costs in the facts and circumstances of the case.

G S.V.K.

Appeal dismissed.