4. In the light of the aforesaid legal position the briefest reference to the facts in Criminal Writ No. 33 of 1982—*Joginder Singh* v. *State of Haryana* suffices. Therein the petitioner, whose death sentence had been commuted to that of imprisonment for life had claimed a set off for one year and eight days spent by him as an under-trial prisoner for the purposes of his premature release. Plainly enough in the wake of *Kartar Singh's case* (supra) this stand is no longer sustainable. Indeed learned counsel for the writ petitioner was fair enough to concede that he had little or nothing to urge now in view of the aforesaid authoritative pronouncement. The writ petition has consequently to be dismissed.

5. It is common ground that the position in the other connected cases is identical. These also must accordingly fail and are hereby dismissed.

H. S. B.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain & M. R. Sharma, JJ.

COMMISSIONER OF INCOME-TAX, JULLUNDUR,—*Appellant.*

versus

M/S. AMRIT SPORTS INDUSTRIES, JULLUNDUR,—*Respondent.*

Income Tax Appeal No. 12 *of* 1980

May 30, 1983

Income-tax Act (XLIII of 1961)—*Section* 269-*A to R—Proceedings initiated for acquisition of immovable property—Personal service effected on transferee-assessee—Tenants on (persons interested) such property not served—Proceedings for initiation—Whether can be said to be complete with the publication of the notification in the official gazette as provided by section* 269-*D*(I)—*Procedural defect in publication of such notification—Whether vitiates all subsequent proceedings—Assessee served with notice personally under section* 269-*D*(2) (*a*)—*Such assessee—Whether can challenge the acquisition proceedings on the basis of non-service of notice on the other persons interested in the property.*

Held, that a reading of section 269-D of the Income-tax Act, 1961 spells out the condition precedent for the initiation of proceedings for acquisition. The plain language thereof lays down that the competent authority shall initiate the proceedings by notice to that effect published in the official gazette. Therefore, the conclusive step which in essence, amounts to the assumption of jurisdiction for acquisition, is in these terms spelt out by the law itself. When the language of the aforesaid section itself declares when and how initiation of the acquisition proceedings is to be done, it seems inapt to go on and hold that despite this mandate, the initiation would still be incomplete till the fortuitous circumstance of the issue of notices to the transferor and transferee, the occupants and persons interested. Sub-section (2) is in a way subsidiary and a supplementary provision to the earlier sub-section. The notices prescribed under sub-section (2) are merely reflections and copies of the notice originally published in the official gazette under sub-section (1). An overall analysis would therefore disclose that apart from publication in the gazette, the law also provides a publication in the locality where the property is situated as also affixing a copy thereof in the office of the competent authority. These public notices are supplemental to the publication in the official gazette which plants presumptive knowledge of the same to everyone concerned. It has, therefore, to be held, that the initiation of proceedings is complete with the publication in the official gazette and the proceeding under section 269-D(2) being procedural and supplementary, are in no way jurisdictional and any defect or irregularity therein consequently cannot effect the assumption of jurisdiction by the competent authority and, therefore, in no way vitiates the initiation of proceedings once validly done.

(Paras 9 and 10)

Held, that the general rule is that where the statute provides for service of notice, it is the aggrieved party alone who can complain of the non-service of such statutory notice and third persons cannot take up cudgels on its behalf *pro bono publico.* As such the transferee assessee who has been duly served cannot make a grievance that the notices had not been served on the tenants or other interested persons as provided by section 269-D(2) of the Act.

(Para 16)

Mohammed Mahboob Ali Saheb and others *vs.* Inspecting Assistant Commissioner of Income Tax (1978) 113 I.T.R. 167.

DISSENTED FROM

Case referred by a Division Bench consisting of the Hon'ble Mr. Justice M. R. Sharma and the Hon'ble Mr. Justice S. S. Kang on 3rd December, 1981 to the larger Bench for decision of important questions of law involved in this case. The Full Bench consisting

of the Hon'ble the Chief Justice Mr. S. S. Sandhawalia, The Hon'ble Mr. Justice Prem Chand Jain and the Hon'ble Mr. Justice M. R. Sharma decided the relevant questions of law and again referred this case on 30th May, 1983 for a decision thereon in accordance with the answers rendered to the legal questions to a Division Bench.

Appeal under section 269-H of the Income-tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, dated the 14th August, 1980 praying that the appeal be accepted and the order of the learned Tribunal be set aside and that of the Competent Authority restored with costs throughout.

Ashok Bhan, Sr. Advocate with Ajay Mittal, Advocate, *for the Appellant.*

B. S. Gupta, Advocate with Mani Ram, Advocate and Satish Mittal, Advocate, *for the Respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. In this reference to the Full Bench, the two significant general questions that have come to therefore, are :—

(i) Whether the initiation of proceedings for the acquisition of immoveable property in certain cases of transfers to counteract evasion of tax under Chapter XX-A of the Indian Income-Tax Act, 1961, is complete by the publication of the notice in the official gazette under section 269-D(I) of the said Act? and

(ii) Whether the transferee though himself personally served with an individual notice under section 269-D(2)(a) of the Income Tax Act, 1961, can assail the said acquisition proceedings on the alleged non-service of any other person or persons interested in the said property ?

2. The undisputed facts fall within a narrow compass. A plot of land measuring approximately 16 *marlas* situate near Milap Chowk, Basti Nau, Jalandhar City was sold by its owner—M/s. Guru Nanak Public Welfare Society for a sum of Rs. 40,000 only to M/s. Amrit Sports Industries, Jalandhar,—*vide* registered sale-deed dated September 8, 1977. Shri Nirmal Singh, Inspector, made his report dated April 20, 1978 to the effect that the plot aforesaid was

of the market value of Rs. 1,32,000 on the date of the sale. The competent authority being satisfied under Section 269-C of the Indian Income-Tax Act, 1961 (hereinafter called 'the Act') initiated the acquisition proceedings under Section 269-D of the Act, by the publication of the relevant notice in the official gazette on June 3, 1978, within the prescribed period of limitation. It would appear that in the meantime the assessee-transferee had built some shops on this plot of land and had inducted some tenants thereon. It is not in dispute that under Section 269-D(2) (a) of the Act, the transferor as well as the assessee-transferee had been duly served but apparently some of the tenants in occupation of the shops were not individually served under the said provisions.

3. Objections against the acquisition proceedings were filed on behalf of the assessee-transferee. During the proceedings that followed, a copy of the valuation report was duly furnished to the assessee-transferee, who by way of reply, placed on record a copy of the valuation report from M/s. Avinash Khosla and Associates. The competent authority noticed that since no objection to the legality or basis of the initiation of proceedings was taken and the sole objection of the assessee-transferee was with regard to the justification of the apparent consideration of Rs. 40,000, he would deal with the said objection only in detail. In an order, remarkable both by lucidity and exhaustiveness, the competent authority, on consideration of the materials before it estimated the fair market value of the plot at Rs. 1,12,320. Because the assessed fair market value exceeded the apparent consideration by more than 25 *per cent*, the competent authority found that the presumption in Section 269C(2) of the Act were directly attracted to the case. He, therefore, held in terms that the consideration for the transfer of the immoveable property had not been truly stated in the instrument of transfer with the object of facilitating the reduction or evasion of the tax liability and for the concealment of an income or money or other assets which have not been and which ought to be disclosed by the assessee-transferee for the purposes of tax status. As a necessary consequence, in pursuance of Section 269F(6) of the Act, the orders for acquisition of the property were passed with the prior approval of the Commissioner of Income Tax, Jullundur.

4. The assessee-transferee alone appealed against the order aforesaid. The Tribunal first took the view that even though the assessee-transferee had been duly served under Section 269D(2), yet

the mere failure to serve the tenants in the shops of the disputed property was a material defect which vitiated both the proceedings and the consequential order and for that reason alone, the same should be struck down. However, as an additional reason, the Tribunal held that there was not any adequate material for the finding with regard to the objects specified in clauses (a) or (b) of Section 269C(1) of the Act, and, therefore, these findings could not also be sustained. As a result, the order of the competent authority was set aside and the property was directed to be released forthwith.

5. The Commissioner of Income Tax appeals. The matter originally came up for consideration before the Division Bench and by its lucid reference order dated December 3, 1981, has been referred for decision by the Full Bench in view of the significant questions involved and some apparent conflict of authority on the point.

6. One may now inevitably turn first to question No. (i) posed at the very out-set and obviously the answer thereto must turn on the particular language and import of Section 269-D of the Act. However, before specifically addressing myself to the said provision, it seems apt to seek a clue to the question in the larger scheme of the newly inserted Chapter XX-A of the Act. This was added to the statute book by the Taxation Laws (Amendment) Act, 1972, with effect from November 15, 1972. The avowed objects and reasons therefor were couched in the following terms in the Bill introduced in Parliament:—

STATEMENT OF OBJECTS AND REASONS.

* * *

(1) to counter evasion of tax through understatement of the value of immovable property in sale deeds and also to check the circulation of black money, by empowering the Central Government to acquire immovable properties, including agricultural lands, at prices which correspond to those recorded in sale deeds ;

(2) to curb the wide-spread practice of *benami* holding of property with a view to tax evasion, by debarring the real owner from enforcing his claim to such property in a court of law unless he has declared the income from that

property or the property itself for purposes of income-tax and wealth-tax or has given notice of his claim to the property to the income-tax authorities; and,

(3) to improve the present arrangements for valuation, for purposes of income-tax, wealth tax and gift tax laws, of buildings, lands and other assets, by augmenting the set up of the official valuation machinery and enhancing its powers on the one hand, and by bringing about better regulation and discipline over non-official valuers, on the other.

For achieving the first Object, the Bill (*vide clause* 4) seeks to insert a new Chapter XXA in the Income-Tax Act, 1961. A new section 281-A (*vide* clause 5) is proposed to be inserted in the same Act for achieving the second object. The remaining provisions of the Bill are for giving effect to the third object.

* * * "

From the above as also from the particular provisions of Section 269-A to Section 269-R, contained in Chapter XX-A, there seems to be little doubt that these provisions were directed to achieve the laudable object of curbing the evasion of tax and the generation of black money by under-stating and under-valuing the transfer of immovoble properties. That this evil had attained enormous proportions (and indeed continues to grow despite these provisions) was not denied at the bar, as also the fact that Parliament was ultimately compelled to legislate in order to counter the same, is again not in dispute. Therefore, on larger canons of construction, the interpretation of the provisions in Chapter XX-A must be one conducive to the avowed purposes of its enactment by Parliament and not one which in the ultimate analysis may tend to frustrate the same in actual practice.

7. It is apt now to read the relevant part of Section 269-D of the Act:—

(1) The competent authority shall initiate proceedings for the acquisition, under this Chapter, of any immovable property referred ti in section 269-C by notice to that effect published in the Official Gazette;

Provided that no such proceedings shall be initiated in respect of any immovable property after the expiration of a period of nine months from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act, 1908 (XVI of 1908).

Provided further that —

* * *

* * *

(2) The competent authority shall—

(a) cause a notice under sub-section (1) in respect of any immovable property to be served on the transferor, the transferee, the person in occupation of the property, if the transferee is not in occupation thereof, and on every person whom the competent authority knows to be interested in the property :

(b) cause such notice to be published—

(i) in his office by affixing a copy thereof to a conspicuous place ;

(ii) in the locality in which the immovable property to which it relates is situate, by affixing a copy thereof to a conspicuous part of the property and also by making known in such manner as may be prescribed the substance of such notice at convenient places in the said locality.

** *° "

8. Now the very core of the stand taken by Mr. B. S. Gupta, the learned counsel for the respondents (in support of the primary finding of the Tribunal), is that the very assumption of jurisdiction commences and is complete only by both the publication of the notice in the official gazette as also the valid service of notices on the transferor, the transferee, the occupants and other interested persons as specified in sub-section (2) clause (a) of Section 269-D of the Act. The whole emphasis is that until all the class of interested persons is individually served, there is no valid assumption of

jurisdiction and consequently any failure of service upon them would go to the very jurisdiction and thus vitiate the proceedings. On this ground, it was contended that such non-service or failure of valid service on any one of the interested persons goes to the very root of the matter and irrespective of the person raising the issue (e.g. though such a person may himself have been duly and validly served), such a default would denude the proceedings of their lawful base and render them *non est*.

9. One may now proceed to test the aforesaid contention on the anvil of Section 269-D of the Act. It is unnecessary to quote the preceding Section 269-C because it is common ground that this broadly spells out the conditions precedent for the acquisition proceedings. Once these subjective preliminary requisites are satisfied, the competent authority is empowered to initiate the proceedings for the acquisition. This initiation is in terms provided for by sub-section (1) of Secion 269-D of the Act. The plain language thereof lays down that the competent authority shall initiate the proceedings by notice to that effect published in the official gazette. Therefore, the conclusive step which in essence, amounts to the assumption of jurisdiction for acquisition, is in these terms spelt out by the law itself. When the language of Section 269-D(1) of the Act itself declares when and how initiation of the acquisition proceedings is to be done, it seems inapt to go on and hold that despite this mandate, the initiation would still be incomplete till the fortuitous circumstance of the issue of notices to the transferor, the transferee, the occupants and persons interested, and not only that but much later by their effective service as well.

10. Viewed in the correct perspective sub-section (1) of Section 269-D of the Act is the primary and the main provision for the initiation of acquisition proceedings. Sub-section (2) which obviously follows is in a way a subsidiary and a supplementary provision to the aforesaid basic one. It seems elementary that where public notice by publication in the official gazette is provided and added thereto individual notices or other modes of publication are also provided, then the latter are secondary in nature. Again, the notices prescribed under sub-section (2) are merely reflections and copies of the notice originally published in the official gazette under sub-section (1). The law provides primarily and first, the publication of the notice in the official gazette and then a replica thereof is to be served on individuals or published as laid down

in sub-section (2)(b). An overall analysis thereof would disclose that apart from publication in the gazette, the law also provides a publication in the locality where the property is situated as also affixing a copy thereof in the office of the competent authority. These are in the nature of public notices supplemental to the publication in the official gazette which plants presumptive knowledge of the same to everyone concerned. Apart from these, a further modus of service of notice is provided on the transferor, the transferee, the occupant and other persons interested in the property if known to the competent authority. I am clearly of the view that these are subservient and supplemental provisions and the initiation of proceedings is complete with the publication in the official gazette. To put it in other words, the assumption of jurisdiction by the competent authority arises from such publication. The proceedings under Section 269-D (2) of the Act being procedural and supplementary, are in no way jurisdictional. Any defect or irregularity therein consequently cannot affect the assumption of jurisdiction by the competent auhority and therefore, in no way vitiates the initiation of proceedings once validly done. Therefore, a default in service of the person interested or even of publication under sub-Section 2(b) does not affect the jurisdiction of the comptent authority but at the very highest pertains to the exercise of the power thereunder. It is well-settled that an erroneous exercise of power does not vitiate the proceedings, but merely calls for correction, be it, in the appellate, revisional or any other jurisdiction.

11. The view I am inclined to take is buttressed by the exhaustive Division Bench judgment in *Commissioner of Income-Tax, Gujarat* v. *Smt. Vimlaben Bhagwandas Patel and anr.* (1) in the following terms :—

> "In the case before us we are unable to read such a mandate in Section 269-D so as to agree with the learned advocate for the respondents that individual as well as locality notices are conditions precedent for initiating acquisition proceedings. If that had been the legislative intent as contended on behalf of the respondents, it would have been appropriately expressed as has been done in Section 4 of the Land Acquisition Act. The legislature would have said in no uncertain terms by prescribing that the competent authority shall initiate proceedings for acquisition of immovable property by a notice to that effect

(1) (1979) 118 I.T.R. 134.

published in the official Gazette as well as by individual and locality notices. There was no necessity, if the legislative intent had been to treat individual and locality notices as jurisdictional facts or conditions precedent for exercise of the jurisdiction, to provide for such notices in sub-C. (2) instead of in sub-s. (1).———"

The aforesaid view has been expressly reiterated in the later Division Bench judgment in *Commissioner of Income-tax, Gujarat-III* v. *Shilaben Kanchanlal Rana* (2).

12. On this specific point the view in Allahabad High Court is also in consonance with the one which I am inclined to take. In *U. S. Awasthi and another* v *Inspecting Assistont Commissioner of Income Tax (Acquisition Range),Lucknow, and another,* (3), Gulati, J., speaking for the Division Bench observed in no uncertain terms as under :—

"..... Sub-section (1) of section 269-D provides for a preliminary notice. It is the preliminary notice which initiates the proceedings and the preliminary notice has to be given by publication in the Official Gazette. Unless this preliminary notice is published in the Official Gazette within 9 months from the end of the month in which the instrument of transfer is registered, proceedings cannot be said to have been initiated. Thus, the condition precedent for the initiation of proceedings is the publication of the preliminary notice in the Official Gazette within a period of nine months from the end of the month in which the sale deed is registered. In other words, it is the publication of the notice in the prescribed manner which confers jurisdiction upon the competent auhority to take further proceedings under Chapter XX-A. Sub-section (2) of section 269-D no doubt requires the competent authority to cause a notice under sub-section (1) to be served upon the transferor, the transferee and other interested persons. It also requires a notice to be published by affixing a copy thereof in a conspicuous place in the office of the competent authority and on a conspicuous part of the

(2) (1980) 124 I.T.R. 420.
(3) (1977) 107 I.T.R. 796.

property itself but these notices are not jurisdictional notices. They have to be issued after the preliminary notice has been published in the Official Gazette within the statutory time. If a notice is not published in the Official Gazette within the prescribed time, the issuance of notice to the vendors and vendees and other interested persons and affixing notices in the office of the competent authority and on a conspicuous part of the property will not vest the competent authority with the jurisdiction to commence proceedings under Chapter XX-A of the Act. These notices are ancillary notices meant only to bring to the notice of the persons concerned the initiation of proceedings under Chapter XX-A. The notices contemplated by sub-section (2) do not provide an alternative mode of publication of the preliminary notice....."

13. In fairness to Mr. B. S. Gupta, we must notice his reliance on *Mohammed Mahboob Ali Saheb and others* v. *Inspecting Assistant Commissioner of Income Tax,* (4). Undoubtedly, the observations in the said case do strike a discordant note. However, an analysis of the judgment would disclose that the matter was not adequately canvassed before the Division Bench. The earlier consistent view in the Gujarat and the Allahabad High Courts was not brought to the notice of the Bench. The issue seems to have been treated as one of first impression and the sharp distinction betwixt sub-Sections (1) and (2) of Secion 269-D seems to have gone wholly un-noticed. Reliance was primarily placed on authorities under the Land Acquisition Act, 1894, the provisions whereof are not even remotely in *pari materia* with Section 269-D of the Act. The legislative background and the particular language of Section 269-D and the sequence thereof was equally not adverted to. With the greatest respect to the learned Judges of the Andhra Pradesh High Court, I would wish to record my dissent from *Mohammed Mahboob Ali Saheb and others' case* (supra).

14. Before parting with this aspect of the case, a passing notice is also called for to the tenuous reliance of Mr. Gupta on Sections 147 and 148 of the Act and precedents thereunder. This appeared to me as an argument of desparation. Plainly enough, the language of Sections 147 and 148 of the Act does not have even a remote similarity to that in Section 269-D of the Act. Undoubtedly,

(4) (1978) 113 I.T.R. 167.

the very content, import and purpose of those Sections is far removed from what we are called upon to construe. Pointedly, there is not a hint of any provision of publication of notice in the official Gazette in Sections 147, 148 and 149 of the Act. That being so, the very foundation of the question that the initiation of proceedings and assumption of jurisdiction would arise by the publication in the official gazette, has not the least relevance to Sections 147 and 148 of the Act. It is thus unnecessary and indeed wasteful to advert to authorities under the said provisions which inevitably would turn on altogether different considerations.

15. To conclude on the first question, I would hold that the initiation of the proceedings for acquisition and the consequent assumption of jurisdiction by the competent auhority is complete by the publication of the notice in the official gazette under Section 269-D(1) of the Act. Consequently, a procedural defect in compliance with sub-section (2) would not affect the jurisdiction of the competent authority and does not vitiate the whole proceedings under the said Section.

16. Once the answer to the first question is rendered in the terms aforesaid, question No. (ii) posed at the out-set would not detain us for long. Mr. B. S. Gupta had to fairly concede that the settled general rule is that where the statute provides for service of notice, it is the aggrieved party alone who can complain of the non-service of such statutory notice and the third person cannot take up cudgles on its behalf *pro bono publico*. Nevertheless, it was sought to be contended before us on behalf of the respondents that the provisions of Section 269-D(2) of the Act are so exceptional that as in the present case, even though the transferee had been duly served, he could still make a grievance of the notices being not served on his tenants and not only that but could assail the validity of the whole proceedings on that ground.

17. It is not easy to accede to the patently tall stand taken on behalf of the respondents. The larger view, that only the person aggrieved can make a grievance of his non-service, is not only sound in principle but has equally the support of binding precedent. In *Begum Noorbanu & Ors.* v. *Deputy Custodian General of Evacuee Property*, (5), the non-service of notice under Section 7 of the

(5) A.I.R. 1965 S.C. 1937.

Administration of Evacuee Property Act was sought to be made a ground of attack. Their Lordships while repelling the same, observed in no uncertain terms as follows :—

> "——Apart from that there is a good deal of force in the argument that the objection of non-service of notice could properly be taken only by the person on whom the notice is not served and not by third parties."

Following the above in the particular context of Section 269-D of the Act, the Division Bench in *Commissioner of Income-Tax, Gujarat-II* v. *Premanand Industrial Co-operative Society Ltd.*, (6) has held that a third party cannot make a grievance of non-service in the following terms:—

> "It may also be pointed out that no individual member of the society of any of the three co-operative societies has made any grievance about any non-service of notice upon him. In the context of notice required to be served under the provisions of the Administration of Evacuee Property Act, it was held by the Supreme Court in *Begum Noorbanu* v. *Deputy Custodian-General of Evacuee Property* (supra), that an objection as to non-service of notice can properly be taken not by third parties, but only by the person on whom the notice is not served. In the instant case, no objection whatsoever were raised by the members. The objections were raised by the co-operative societies themselves, the transferees. In the instant case, however, the contention urged on behalf of the Commissioner is correct, namely, that the Tribunal should not have entertained these objections about non-service of the notice on the individual members and should have rejected these contentions....."

Nearer home, the view finds support from two Full Bench judgments of this Court in *Ashok Kumar* v. *The State of Haryana & Ors.*, (7), and, *Harnek Singh and another* v. *The State of Punjab and others*, (8), to the effect that the person entitled to a statutory notice alone can make a grievance about its non-service.

(6) (1980) 124 I.T.R. 772.
(7) 1974 P.L.J. 456.
(8) AIR 1972 Pb. & Hy. 232.

18. Apart from precedent, it seems to be well-settled that in cases where a statutory notice is provided, person aggrieved by non-service would have a right to seek a review and be heard in case of an adverse order against him. In a variety of jurisdictions, it has been held that an authority would be having inherent jurisdiction to review an order at the instance of a person who is entitled, in law, to be heard and who in fact has not been heard either in violation of the specific provision or infraction of the principle of natural justice. However, non-service of one person out of many would not necessarily render, without jurisdiction, the whole of the proceedings or vitiate what has already been validly done. It was not denied before us that under section 269-D(2)(a) of the Act there may be a host of persons interested who may be entitled to individual notices and to hold that non-service of any one of them or any defect in the validity of service may vitiate the proceedings, would in practical effect virtually hamstring the finalisation of the acquisition proceedings and might well tend to frustrate the purposes of the enactment of Chapter XX-A.

19. To finally conclude the answer to question No. (i) formulated at the outset is rendered in the affirmative and it is held that under section 269-D of the Act, the initiation of proceedings for acquisition and the consequent assumption of jurisdiction by the competent authority is completed by the publication of the notice in the official gazette.

20. The answer to question No. (ii) is rendered in the negative and it is held that it is only the person aggrieved by the non-service of the individual notice under section 269-D(2)(a) of the Act upon him, who can make a grievance thereof. Consequently the transferee who has been validly served cannot assail the acquisition proceedings on the alleged ground of the non-service of the tenant of the property.

21. Learned counsel for the parties are agreed that apart from the above, other issues on merits also arise. We accordingly direct that this case be now placed before a Divisional Bench for a decision thereon in accordance with the answers rendered to the legal questions above.

Prem Chand Jain, J.—I agree.

M. R. Sharma, J.—So do I.

H.S.B.