

Sukhbir Vs. Ajit Singh

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Court : Supreme Court of India

Decided On : Apr-30-2021

Judge : Hon'Ble the Chief Justice Hon'Ble Mr. Justice M.R. Shah

Appeal No. : C.A. No.-001653-001653 - 2021

Appellant : Sukhbir

Respondent : Ajit Singh

Advocate for Pet/Ap. : KAUSHAL YADAV __

Judgement :

REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL No.1653 OF2021 Sukhbir Appellant Versus Ajit Singh Respondent

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 23.09.2016 passed by the High Court of Punjab and Haryana at Chandigarh in R.S.A. No.4848/2016, by which the High Court has disposed of the said second appeal modifying the judgment and decree for specific performance qua agreement to sell which was in favour of the original plaintiff to the extent holding

that the respondent-original plaintiff shall be deemed to have stepped into the shoes of the vendor and shall be entitled to the entire amount of compensation along with solatium and interest etc. owing to the acquisition of the land, the original defendant has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

1. That an agreement to sell was executed by the appellant - original defendant (hereinafter referred to as the defendant) in favour of the respondent - original plaintiff (hereinafter referred to as the plaintiff) on 9.3.2010 with respect to the land in question for a total sale consideration of Rs. 32 lakhs. That out of the total sale consideration of Rs. 32 lakhs, the plaintiff paid Rs. 31, 50,000/- to the defendant. That as per the agreement the sale deed was to be executed on 8.7.2010. Upon failure of the defendant to execute the sale deed, the plaintiff served a legal notice dated 13.7.2020 requesting the defendant to remain present at Sub-Registrars office on 6.8.2010 to execute the sale deed. But instead of remaining present on the said date at the office of the Sub- Registrar, the defendant refused to do so on 4.8.2010. That thereafter the plaintiff instituted a suit on 5.8.2010 being Civil Suit No.RBT-34/2010 in the Court of learned Civil Judge, Senior Division, Jhajjar, Haryana for specific performance of the agreement to sell and to handover the possession of the land in question. By way of an alternative prayer, it was prayed for recovery of Rs. 31,50,000/- with interest @ 24% per annum from 9.3.2010 till the date of payment. That after the filing of the suit but before passing of the final decree, the land in question came to be acquired by the acquiring body for which a notification under Section 6 of the Land Acquisition Act was issued on 6.7.2012. That the learned trial Court decreed the suit by judgment and decree dated 19.12.2012 and passed a decree for specific performance. That the 2 learned trial Court specifically gave findings in favour of the plaintiff on the execution of the agreement to sell; readiness and willingness on the part of the plaintiff. That the learned trial Court directed the defendant to execute the sale deed in favour of the plaintiff by receiving the balance sale consideration of Rs. 50,000/- and handover the possession of the suit property to the plaintiff. The judgment and decree passed by the learned trial Court came to be affirmed by the learned first appellate court. At this stage, it is required to be noted that before the learned trial court, it

was not brought to the notice of the court that with respect to the land in question a notification under Section 6 of the Land Acquisition Act has been issued on 6.7.2012.

3. Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court, affirmed by the first appellate court, the defendant preferred second appeal before the High Court being R.S.A. No.4848/2016. Before the High Court, it was submitted on behalf of the defendant that in view of the fact that the land in question has been acquired under the provisions of the Land Acquisition Act, the defendant has no saleable right and interest in the suit property and therefore the agreement to sell cannot be executed. Submissions on merits were also made on behalf of the defendant on the findings recorded by the learned trial court on execution of the agreement to sell 3 by the defendant in favour of the plaintiff; accepting Rs. 31,50,000/- by way of part sale consideration; and readiness and willingness on the part of the plaintiff to pay the balance sale consideration of Rs. 50,000/-. 3.1 On behalf of the plaintiff, heavy reliance was placed on the decision of this Court in the case of Jagdish Singh v. Natthu Singh, (1992) 1 SCC647 It was submitted that an identical situation had arisen before this Court where during the pendency of the suit the land in question was acquired and after considering Section 21 of the Specific Relief Act it was held by this Court that the plaintiff is entitled to take all the benefits of compensation along with interest and solatium, less the cost of litigation incurred by the original land owner - vendor for recovery of the amount of compensation. 3.2 The High Court accepted the same and after following the decision of this Court in the case of Jagdish Singh (supra), has modified the judgment and decree for specific performance passed by the learned trial Court, affirmed by the first appellate court and has held that the plaintiff shall be deemed to have stepped into the shoes of the defendant - original land owner and shall be entitled to the entire amount of compensation along with solatium and interest etc., owing to the acquisition of the land in question. The High Court also affirmed the findings recorded by the courts below qua execution of the 4 agreement to sell; and readiness and willingness which were in favour of the plaintiff.

4. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original defendant has preferred the present appeal.

5. Shri Sushil Sardana, learned Advocate appearing on behalf of the defendant has vehemently submitted that in the facts and circumstances of the case and more particularly when during the pendency of the suit the land in question came to be acquired under the provisions of the Land Acquisition Act, the defendant had no saleable right and interest in the suit property and therefore no relief for specific performance of the agreement to sell could have been passed. It is submitted that in fact in the appeal preferred by the defendant - appellant herein the High Court has modified the decree passed by the learned trial court, affirmed by the first appellate court, and held that in lieu of decree for specific performance, the plaintiff shall be entitled to the entire amount of compensation with solatium and interest.

5.1 It is further submitted that in view of Section 21 of the Specific Relief Act r/w Section 73 of the Indian Contract Act, the plaintiff at the most shall be entitled to the refund of the amount of sale consideration paid with interest. 5

5.2 It is further submitted that in the present case the plaintiff never claimed for any compensation. It is submitted that as per Section 21(1) of the Specific Relief Act if the contract is broken by the defendant, in that event, compensation may be granted, but again Section 21(5) says that no compensation shall be awarded under Section 21 unless the plaintiff has claimed such compensation in his plaint. It is submitted that in the present case the plaintiff himself by an alternate prayer prayed that if the specific performance cannot be performed by any reason, in that event, decree for refund of Rs. 31,50,000/- along with interest @ 24% per annum may be passed. It is submitted that at the most in view of the judgment and decree passed by the courts below, the plaintiff shall be entitled to recover the amount of Rs. 31,50,000/- along with interest only. It is submitted that pursuant to the judgment and order passed by the High Court, the plaintiff shall be entitled to receive Rs. 80 lakhs (approximately), which is lying with the concerned acquiring body of the State of Haryana. It is submitted that therefore the High Court has fallen in error in holding and directing that the plaintiff shall be entitled to the entire amount of compensation awarded under the Land Acquisition Act along with solatium and interest.

6. While opposing the present appeal, Shri Rakesh Talukdar, learned Advocate appearing on behalf of the plaintiff has heavily relied upon the 6 decisions of this Court in the cases of Jagdish Singh (supra) and Urmila Devi v. Deity, Mandir Shree Chamunda Devi, (2018) 2 SCC284. It is submitted that in both the cases this Court had an occasion to consider the very submission made on Section 21 of the Specific Relief Act and it is held by this Court that the original plaintiff shall be entitled to the amount of compensation awarded under the Land Acquisition Act less the amount of expenses incurred by the defendant - original land owner for receiving the compensation. It is submitted that in the present case, as such, there is nothing on record that any amount was incurred by the defendant for receiving the amount of compensation under the Land Acquisition Act. 6.1 It is submitted by the learned Advocate appearing on behalf of the plaintiff that as held by this Court in the case of Jagdish Singh (supra), which has been subsequently considered by this Court in the case of Urmila Devi (supra), having regard to Section 21 of the Specific Relief Act when the contract becomes impossible with no fault of the plaintiff, Section 21 of the Specific Relief Act enables the Court to award compensation in lieu and substitution of the specific performance. 6.2 It is submitted that so far as the findings on execution of the agreement to sell; the payment of the sale consideration of Rs. 31,50,000/- and readiness and willingness to pay the balance amount of sale consideration, there are 7 concurrent findings recorded by all the three courts below which are on appreciation of evidence on record. 6.3 Making the above submissions, it is prayed to dismiss the present appeal.

7. We have heard the learned counsel for the respective parties at length. At the outset, it is required to be noted that as such there are concurrent findings of fact recorded by all the courts below on the execution of the agreement to sell by the defendant in favour of the plaintiff; payment of Rs. 31,50,000/- towards part sale consideration by the plaintiff to the defendant (out of the total sale consideration of Rs. 32 lakhs) and the readiness and willingness of the plaintiff to pay the balance sale consideration of Rs. 50,000/-. Therefore, as such, the plaintiff shall be entitled to the decree for specific performance. However, in view of the fact that before the final decree could be passed by the learned trial court, the land in question came to be acquired under the provisions of the Land Acquisition Act and therefore the

question arose before the High Court what relief the plaintiff shall be entitled to in the event the decree of specific performance is required to be modified by an alternative decree. 7.1 Relying upon the decisions of this Court in the cases of Jagdish Singh (supra) and Urmila Devi (supra) and considering Section 21 of the Specific Relief Act, the High Court, by the impugned judgment and order has modified the judgment and decree for specific performance and held that the plaintiff shall be entitled to the amount of compensation as there was no fault on the part of the plaintiff. It is held that the plaintiff shall be entitled to the amount of compensation as awarded under the Land Acquisition Act together with interest and solatium by way of compensation. Therefore, the short question which is posed for the consideration of this Court is, whether in the facts and circumstances of the case, the High Court is justified in modifying the judgment and decree passed by the learned trial court for specific performance?.

8. An identical question came to be considered by this Court in the case of Jagdish Singh (supra). In the case before this Court, the learned trial court as well as the first appellate court dismissed the suit for specific performance. However, the High Court in second appeal reversed the findings of the courts below and held that the plaintiff was ready and willing to perform the contract and was entitled for decree. However, during the pendency of the second appeal before the High Court, proceedings for compulsory acquisition of the land were initiated and the land was acquired. Therefore, the question arose as to whether the plaintiff was entitled for the amount of compensation received in the land acquisition proceedings or was entitled only to the refund of the earnest money. The High Court modified the decree of the specific performance of the contract with decree for a realisation of compensation payable in lieu of acquisition. The matter was carried before this Court. After referring to Section 9 21 of the Specific Relief Act, this Court has held that where the contract for no fault of the plaintiff becomes impossible, Section 21 enables award of compensation in lieu and substitution of the specific performance. So far as the determination of the amount of compensation, this Court observed and held that the compensation awarded under the Land Acquisition Act may safely be taken to be the measure of damages subject, of course, to the deduction therefrom of money value of the services, time and energy expended by the original land owner in pursuing the claims of

compensation and the expenditure incurred by him in the litigation culminating in the award. In paras 24, 29 and 30, it is observed and held as under: 24. When the plaintiff by his option has made specific performance impossible, Section 21 does not entitle him to seek damages. That position is common to both Section 2 of Lord Cairn's Act, 1858 and Section 21 of the Specific Relief Act, 1963. But in Indian law where the contract, for no fault of the plaintiff, becomes impossible of performance Section 21 enables award of compensation in lieu and substitution of specific performance. xxx xxx xxx 29. In the present case there is no difficulty in assessing the quantum of the compensation. That is ascertainable with reference to the determination of the market value in the land acquisition proceedings. The compensation awarded may safely be taken to be the measure of damages subject, of course, to the deduction therefrom of money value of the services, time and energy expended by the appellant in pursuing the claims of compensation and the expenditure incurred by him in the litigation culminating in the award.

30. We accordingly confirm the finding of the High Court that respondent was willing and ready to perform the contract and that 10 it was the appellant who was in breach. However, in substitution of the decree for specific performance, we make a decree for compensation, equivalent to the amount of the land acquisition compensation awarded for the suit lands together with solatium and accrued interest, less a sum of Rs 1,50,000 (one lakh fifty thousand only) which, by a rough and ready estimate, we quantify as the amount to be paid to the appellant in respect of his services, time and money expended in pursuing the legal claims for compensation. The aforesaid view has been followed by this Court in the case of *Urmila Devi (supra)*.

9. Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case in hand, it cannot be said that the High Court has committed any error in modifying the decree for specific performance. As rightly held by the High Court, as such, the plaintiff will be deemed to be in the shoes of the defendant and therefore shall be entitled to the amount of compensation, determined and awarded under the provisions of the Land Acquisition Act.

10. Now so far as the submission on behalf of the appellant that as compensation has not been specifically prayed by the plaintiff in the suit, the plaintiff shall not be entitled to any amount of compensation even considering Section 21 of the Specific Relief Act. The aforesaid has no substance. The decree for compensation is passed as an alternate decree and in lieu of the decree for specific performance. 11

11. Now so far as the amount of compensation is concerned, as observed by this Court in the case of Jagdish Singh (supra), the compensation determined and awarded under the Land Acquisition Act may safely be taken into consideration. Therefore, the High Court has rightly observed and held that the plaintiff shall be entitled to the entire amount of compensation awarded under the Land Acquisition Act together with interest and solatium. However, at the same time, the defendant - original land owner shall also be entitled to the deduction therefrom of money value of the services, time and energy expended in pursuing the claims of compensation and the expenditure incurred by him in the litigation culminating in the award. As such, nothing is on record to suggest that any expenses have been incurred by the appellant. However, in the facts and circumstances of the case and considering the decisions of this Court in the cases of Jagdish Singh (supra) and Urmila Devi (supra), ends of justice will be served if the plaintiff is awarded the entire amount of compensation determined under the Land Acquisition Act together with interest and solatium less Rs. 2,50,000/- + Rs.50,000/- (towards the balance sale consideration).

12. In view of the above and for the reasons stated above, the present appeal is disposed of by modifying the impugned judgment and order passed by the High Court to the extent directing and holding that the plaintiff - respondent herein shall be entitled to recover the entire amount of compensation along with 12 solatium and interest awarded under the provisions of the Land Acquisition Act, which is reported to be lying/deposited with the acquiring body with respect to the land in question minus Rs. 3,00,000/- (Rs. 2,50,000/- towards the expenses which might have been incurred in pursuing the claims of compensation and the expenditure incurred by him in the litigation culminating in the award + Rs. 50,000/- towards balance sale consideration). Therefore, the appellant - defendant shall be entitled

to Rs. 3,00,000/- from the amount of compensation deposited with the acquiring body and the balance amount of compensation together with interest and solatium to be paid to the original plaintiff.

13. The appeal is partly allowed to the aforesaid extent only. Rest of the judgment and order passed by the High Court is hereby confirmed. No costs. J.

[Dr. Dhananjaya Y. Chandrachud]. New Delhi; J.

April 30, 2021 [M.R. Shah]. 13

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