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Court : Rajasthan

Decided On : Dec-15-2006

Reported in : 2007(2)WLN338

Judge : Bhagwati Prasad, J.

Appeal No. : S.B. Civil Writ Petition No. 2426/2005

Appellant : Suresh Dharu

Respondent : State and ors.

Judgement :

Bhagwati Prasad, J.

1. Heard.

2. The basis of the challenge of proceedings of acquisition in this writ petition by the petitioners is that he has purportedly purchased the land from the power of attorney holder of M/s. Gordan Ram and seven others on 15.03.2000. The agreement is attested on 08.09.2000. There is a condition in the agreement that if the sale deed is not executed within one year, then the agreement would be annulled for the reasons and conditions stated in para 5 of the agreement. Thus, the right of the petitioner flow from this agreement.

3. The agreement though executed on 15.03.2000 and attested on 08.09.2000 by Notary, could at best before specific purpose by the petitioner for getting the sale deed executed which has not been done as the same has not been made the basis of claiming a title over the land. An agreement only gives right to get it specifically enforced. The lands having not been sold by the registered sale-deed, no right can be claimed by the petitioners over the land merely because there is an agreement of sale which only confers a right of suing for specific performance. It does not transfer the right over the lands.

4. It is also important to note that the agreement has been executed on a stamp paper of Rs. 100/-, which is insufficient stamp, in view of the amendment in Section 17(1)(f) of the Registration (Rajasthan Amendment) Act, 1989. In terms of Article 23 of 2nd Schedule of the Rajasthan Stamp Laws (Adaptation Act), 1952 and explanation appended to it, an agreement to sale on immovable property in the case of transfer of possession of such property before, at the time of or after the execution of such instrument be deemed to be conveyance and the stamp duty thereon shall be chargeable accordingly. Rs. 100/- stamp is insufficient and therefore, this document is inadmissible in evidence. So not only the agreement confers no right on the petitioner, it is also not admissible in evidence for the reasons stated hereinabove. Within one year, the agreement has come to an end, because the sale deed is not valid and therefore also, the agreement cannot be considered to confer any right on the petitioner.

5. Apart from the aforesaid angle, another angle is also important, wherein, the purported sellers in the agreement have jointed the land acquisition proceedings and have submitted their claims before the Land Acquisition Officer, as has been claimed by the answering respondent. Once having joined the land acquisition proceedings by the owners of the land, they on their action have repudiated their stand of sale of land in the agreement, which is claimed as basis of the claim by the petitioner. Thus, the right of the petitioners have been denied by the land owners and by their conduct, they have repudiated the agreement which cannot be made the basis of claiming any right title over the land and one who has no right title over the land, has no right to challenge the acquisition. Petitioner has also not challenged the making of the award and in that view of the matter also,

the writ petition is not liable to succeed and the same is hereby dismissed.

6. Since the claim of the petitioner in challenging the acquisition is not of the nature which can give the petitioner a valid reason, the other grounds raised by the petitioner are not gone into. In any case, the same have been answered in the other judgment challenging the acquisition.

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