



R.C.A. No.196/2015

Mohd. Kannisodin @ Kannubhai

Vs Pawankumar

MHAM010037252015

Order below Exh.57

This is an application under Order 1 rule 10 (2) of the Code of Civil Procedure read with section 151 of Code of Civil Procedure. Originally this was a suit for Specific Performance of contract and the present appeal is preferred against the dismissal of the suit. The subject matter of the dispute is agricultural land gat no. 133, admeasuring 7 Acre 34 gunthas and Gut No.125, admeasuring 22 Acre of Mouje Rahatgaon. It appears that, during the pendency of the appeal the National Highway Authority acquired approximately 0 H.12.004 R land from the portion of gut no.133. The land Acquisition Officer, i.e. Deputy Collector, has not referred to the matter for deciding the apportionment of compensation amongst rightful parties by filing a reference to the District Court. Therefore, the original defendants have filed this application proposing to add the Land Acquisition Officer, the Ministry of Road Transport and Highways and the National Highway Authority of India as parties to this appeal. They state that the amount of compensation is lying with the National Highway Authority therefore, for giving appropriate directions as to the compensation towards acquisition, it would be necessary that the proposed defendants are parties before this Court in the present appeal.

2] The application is opposed by plaintiffs vide their reply Exh.60. They state that in a suit for Specific Performance of Contract, the proposed authorities are neither necessary nor proper parties. They

..2..

state that without issuing notice under section 80 of the Code of Civil Procedure, the application is not tenable. They state that if the appellants succeed in the appeal, they will be entitled to claim compensation. They state that, as per the order of Hon'ble High Court, the sale consideration of ₹30,13,899/- has been deposited on 25.11.2005 in First Appeal No.192/2015. The appellants have given almost 10 different reasons as to how in a suit of Specific Performance additional parties, which are foreign entities as regards the subject matter of lis, are not allowed to be inducted. The defendant relied on the judgment of the Hon'ble Supreme Court in the case of Kasturi Vs Iyyamaperumal & Ors., AIR 2005 SC 2813, wherein the Hon'ble Apex Court has mentioned about appellants are the *dominus litus* and as such cannot be forced to add respondents against their desire. The observation of the Hon'ble Supreme Court that in a suit of Specific Performance, the Court cannot allow adjudication of collateral matters so as to convert the suit for Specific Performance of contract for sale into complicated suit was further solicited by the appellants. Further, the appellants also rely on the Judgment of Hon'ble Supreme Court in Hari Mohan Sharma Vs Charanjeetsingh Rekhi, 2018 DGLS [SC] 1203 and Mumbai International Airport Vs Regency Convention Center, AIR 2010 SC 3109. Finally, the appellants rely on the order passed by Hon'ble Bombay High Court in suit no.216/2011, in the case of M/s. Nestor Construction Pvt. Ltd. & Anr. Internor IN Divyesh Construction Pvt. Ltd. Vs Virsen B. Solanki. Three more citations were canvassed in support of the same proposition.

3] As against this Shri. Pathak places reliance on the judgment in the case of Jagdish Singh Vs Natthu Singh, AIR 1992 SC 1604. The relevant observations made by the Hon'ble Supreme Court read thus;

..3..

The High Court issued these consequential directions.

“If the decree for specific performance of contract in question is found incapable of being executed due to acquisition of subject land, the decree shall stand suitably substituted by a decree for realisation of compensation payable in lieu thereof as may be or have been determined under the relevant Act and the plaintiffs shall have a right to recover such compensation together with solatium and interest due thereon. The plaintiff shall have a right to recover it from the defendant if the defendant has already realised these amounts and in that event the defendant shall be further liable to pay interest at the rate of twelve per cent from the date of realisation by him to the date of payment on the entire amount realised in respect of the disputed land”

We are afraid the approach of the High Court is perhaps somewhat of an oversimplification of an otherwise difficult area of law as to the nature of relief available to a plaintiff where the contract becomes impossible of specific performance and where there is no alternative prayer for compensation in lieu or substitution of specific performance. While the solution that has commanded itself to the High Court might appear essentially just or equitable, there are certain problems both of procedure and of substance in the administration of the law of specific relief particularly in the area of award of an alternative relief in lieu or substitute of specific performance that require and compel consideration, especially in view of some pronouncement of the High Courts which have not perceived with precision, the nice distinctions between this branch of the law as administered in England and in India.....

.....

.....

Learned counsel were not specific on the point whether the respondent had actually asked for compensation in lieu of specific performance. We may assume that it was not specifically sought. In order that formality in this behalf be completed, we permit the amendment here and now so that complete Justice is done. (underline supplied)

This order shall be sufficient authority for the land acquisition authorities or the Courts wherever the matter may be pending for the apportionment and payment of the compensation for the acquisition of the suit property between the appellant and the respondent in the matter indicated above". (emphasis supplied)

4] I have gone through the submissions made by both the counsel. It is not in dispute that land acquisition proceedings have been initiated. It is also not in dispute that the compensation has already been determined. Now, therefore, only question remains is – as to who is entitled to receive compensation. Learned counsel Shri Pathak, therefore, right in his submission that if the specific performance for some reason becomes impossible, the Court can give direction under Section 21 of the Specific Relief Act. The observation in Jagdish Singh Vs Natthu Singh cited supra which relates not only to the suit for specific performance but also to giving directions as to compensation concerning land acquisition if the land in dispute of specific performance has been acquired during the pendency of lease. Shri Pathak submits that when land has indeed been acquired which is subject matter of contract of which specific performance has been sought, mere presence of parties will act as notice to the concerned

..5..

parties to perform their statutory duty. Shri Pathak reminds that no relief has been sought against the desire of the appellant only their presence is ensured to make them aware of the result of the litigation. He submits that when acquisition of the land is a fact, there is no reason for the appellant to oppose a step which will ensure presence of the acquiring body and the land acquisition officer as nominal parties or formal parties. In the background of the acquisition, he submits, those parties are proper parties. Therefore, to make complete justice according to Shri Pathak the presence of the proposed respondents hardly affects any right title or interest of the appellant.

5] Ensuring the presence of proper parties in the backdrop of acquisition proceedings and lying amount of compensation has some rational and it seems logical as well. As already observed, the presence of these proposed defendants will act as a notice to them about this litigation which ultimately will help them in performing their duty in a fair and transparent manner. In view of the Judgment of Hon'ble Supreme Court in Jagdish Singh's case (Supra) to make complete justice the amendment seems necessary. The proposed amendment only seeks formal presence of parties who have already determined compensation but could not decide the rightful claimant due to this pending litigation. Therefore, in a way it is the most neutral kind of request to ensure presence of proper parties and does not infringe principle of *dominus litus*. This discussion makes it equally clear that on the test of prejudice as well the request for amendment comes clean. Hence, I am inclined to allow the application, and I pass the following order.

ORDER

- 1] The application is allowed.
- 2] The appellants are directed to add the proposed

..6..

respondents to the present appeal as well as to the plaint by making necessary amendment within a period of 14 days from the date of this order.

3] Costs in cause.

Dt.22.07.2025
Amravati.

(Yashwant A. Goswami)
District Judge – 2 Amravati.