

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Miscellaneous Appeal No. 413/1991

1. The State of Rajasthan through the Secretary, Urban Development and Housing Department, Government of Rajasthan, Jaipur.
2. The Land Acquisition Officer, Nagar Vikas Yojanayen, The Jaipur Development Authority, Jawaharlal Nehru Marg, Jaipur.
3. The Jaipur Development Authority, through its Secretary, Jawaharlal Nehru Marg, Jaipur.

----Appellants

Versus

1. Late Shri Triloki Nath Sahani, S/o Shri Charan Das Sahani, R/o 662, Adarsh Nagar, Jaipur.
 - 1.1 Smt. Rajkumari, widow of late Shri Triloki Nath Sahani, resident of 662, Adarsh Nagar, Jaipur (deleted).
 - 1.2 Mudit, son of late Shri Triloki Nath Sahani, resident of 662, Adarsh nagar, Jaipur.
 - 1.3 Sanjay, son of late Shri Triloki Nath Sahani, resident of 662, Adarsh Nagar, Jaipur.
 - 1.4 Kamlesh, (deceased) daughter of late Shri Triloki Nath Sahani, resident of 662, Adarsh Nagar, Jaipur through her legal representatives:
 - 1.4.1 Chetanya Sabharwal, S/o Late Smt. Kamlesh Sabharwal, Aged about 42 years, R/o the Legend, Flat No. 604, Tower D3, Sector- 57, Gurgaon-122011.
 - 1.4.2 Tanuj Sabharwal, S/o Late Smt. Kamlesh Sabharwal, Aged about 40 years, R/o the Legend, Flat No. 604, Tower D3, Sector- 57, Gurgaon-122011, Aged about 58 years, R/o 662, Adarsh Nagar, Jaipur.
 - 1.5 Neelam, daughter of late Shri Triloki Nath Sahani, resident of 662, Adarsh Nagar, Jaipur.

1.6 Anu daughter of late Shri Triloki Nath Sahani,
resident of 662, Adarsh Nagar, Jaipur.

-----Respondents

For Appellant(s)	:	Mr. M.M. Ranjan, Sr. Adv. with Mr. Udi Kumar Sharma Mr. Lokesh Tiwari Mr. Rajesh Maharshi, AAG Mr. Amit Kuri, Adv.
For Respondent(s)	:	Mr. Ranveer Singh Mehta, Adv. with Ms. Pallavi Mehta Mr. Arvind Kulhar Mr. Noor Ahmad Qureshi, Adv. Ms. Abhilasha Choudhary, Adv.

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Judgment Reserved on : **05/10/2023**

Judgment Pronounced on : **17/10/2023**

1. The parties were heard at length on inter locutory application No. 828/99 whereby National Housing Co-operative Society Limited, Jaipur has sought for impleadment as respondent in the above appeal.

2. The background of this appeal under Section 54 of the Land Acquisition Act, 1894 (in short 'the Act') is that the State of Rajasthan initiated land acquisition proceedings for development of residential colony in Jaipur. The proceedings were initiated in the year 1974. Under the proceedings, Khasra No. 21 and 22 area 75 bigha and 15 biswa in village Jhalana Dungri, Sanganer were acquired, however by order dated 11.3.1974, the Land Acquisition Officer did not award any compensation saying that the aforesaid khasra were government land. Original respondent No.1 late

Triloki Nath Sahani claimed title over the aforesaid two khasra and asked the Land Acquisition Officer to refer the matter to the court under Section 18 of the Act. By order dated 14.8.74, the Land Acquisition Officer referred the matter to the court and by judgment dated 6.4.1999, the Court awarded compensation in favour of respondent No.2 which is challenged in this appeal filed by the State of Rajasthan. Appellant No.2 is the Land Acquisition officer of Nagar Vikas Yojna, Jaipur.

3. The claim of the applicant is that applicant had entered into two agreements with respondent No.1- Triloki Nath Sahani on 10.8.81 to purchase the aforesaid khasra. According to the applicant, possession of the portion of land which was subject matter of agreement was handed over to the applicant and applicant had paid entire consideration money to respondent No.1, therefore, applicant has got interest in the property which is subject matter in this appeal as such the applicant has a right to be heard in this appeal.

4. Prayer of the applicant has been opposed by the appellants as well as the respondents herein.

5. Contention of the appellant is that the aforesaid Khasras were acquired for public purposes, therefore, no one can challenge the acquisition. The real owner has only right to receive just and fair compensation. The dispute between the appellant and respondent is whether the acquired land is government land or land of respondent No.1.

6. Contention of the respondents is that an agreement to sale does not create any title in favour of the prospective purchaser,

therefore, the prospective purchaser is not a necessary party. Moreover, the prospective purchaser (applicant) has already filed a suit for specific performance of contract which is still pending. After acquisition of the land, the only relief which can be granted to the applicant in the civil suit for specific performance of contract is refund of the consideration money on success of the suit.

7. Learned counsel for respondent No1. next contends that a party who has not claimed reference under Section 18 of the Land Acquisition Act cannot challenge the judgment of the court in this appeal. For this reason also, the prayer of the applicant is fit to be refused. Learned counsel for the respondent has relied on the following cases:

1. Ambey Devi vs. State of Bihar and Ors. reported in 1996 (9) SCC 84
2. Dattaram Deu Desai and Ors. vs. Nirakar Devasthan of Palolem, Goa and Ors. MANU/MH/1519/1999
3. Ukhra Forest Vs. State of West Bengal, 1964 Calcutta 223
4. Mahadeo Bajirao Pati Vs. State of Maharashtra, (2005) 7 SCC 440
5. Sunil Kumar Jain vs. Kishan and Ors., (1995)4 SCC 147
6. Gyan Chand Vs. Gopala & ors., 1995 (2) SCC 528

8. In Ambey Devi (supra), the Hon'ble Supreme Court stated the law in para 3 as follows:

"3. The learned Counsel for the appellant contended that under Section 53 of the Act, the procedure prescribed under CPC is applicable to the proceedings of the Civil Court unless they are inconsistent with any of the provisions contained in the Act. Since Order 1, Rule 10 CPC requires

impleadment of all necessary and proper parties, the appellant being a necessary party to the proceedings, she is entitled to the same compensation as was awarded to the other claimants. We find no force in the contention. The scheme of the Act is inconsistent with CPC regarding the entitlement to claim compensation under the Act. The CPC provides only the procedural format to adjudicate the dispute. After the award was made under Section 11, the Land Acquisition Officer was required to issue notice under Section 12 to the parties. As contemplated under Section 30 of the Act, the appellant is entitled to receive the compensation either under protest or without protest. When the compensation is received under protest under Sub-section (1) of Section 18, the application in writing has to be made within the limitation prescribed under Section 18(2) to the Land Acquisition Officer objecting to either extent of the land, classification, value of the land or apportionment of the compensation and upon receipt thereof reference to Court would be made. Thereunder the applicant shall be required to state the grounds on which he/she objects to the compensation etc. Valid reference is a precondition for the civil Court to adjudicate the objections raised in the reference application. In this case, it is found by the High Court that the appellant had not made any application under Section 18(1). The jurisdiction of the Civil Court to determine higher compensation, as laid down under Section 23 of the Act, would arise only when a valid reference has been made under Section 18 within the prescribed limitation. The jurisdiction of the Court is founded on a valid reference and then the Civil Court gets jurisdiction to determine the compensation on the basis of the objections raised by the claimant."

9. In Gyan Chand (supra), the Hon'ble Supreme Court considered the scope of relief to a prospective purchaser under an agreement with the real owner after start of the land acquisition proceeding which is being reproduced below:

"2. The only question for consideration is whether the appellant is entitled to obtained refund of earnest money. One of the terms of the contract, admittedly entered into between the parties, is that

in the event of acquisition of land by the Government for a public purpose, the respondent "shall return the earnest money without interest. " Admittedly, since the notification Under Section 4(1) of the Land Acquisition Act was already published, the question arises whether the appellant could get a sale deed executed and in its absence whether he is entitled to obtain refund of earnest money paid under the agreement. On publication of notification Under Section 4(1) of the Act, though it is not conclusive till declaration Under Section 6 was published, the owner of the land is interdicted to deal with the land as a free agent and to create encumbrances thereon or to deal with the land in any manner detrimental for public purpose. Therefore, though notification Under Section 4(1) is not conclusive, the owner of the land is prevented from encumbering the land in that such encumbrance does not bind the Government. If ultimately, declaration Under Section 6 is published and acquisition is proceeded with, it would be conclusive evidence of public purpose and the Government is entitled to have the land acquired and take possession free from all encumbrances. Any sale transaction or encumbrances created by the owner after the publication of notification Under Section 4(1) would therefore be void and does not bind the State. In this perspective, when the necessary conclusion is that the agreement of sale stands frustrated, the question of readiness and willingness on the part of the vendor or vendee does not arise. The appellate court wrongly held that the appellant was not ready and willing to perform his part of the contract. In the face of the notification how the appellant could get a valid title? Any attempt on his part would be futile exercise and avoidable expenditure. Both the Courts have concurrently found that time is not essence of the contract. Under those circumstances, the plaintiff is entitled to lay the suit for refund of earnest money within three years from the date of refusal of the performance of the contract. In this case, declaration Under Section 6 was published and so it was conclusive of public purpose and the land was acquired. The contract was, therefore, frustrated. Since one of the terms of the Contract is to return the earnest money, in the event of acquisition being made by the State, the vendee appellant is entitled Under Section 33 of the Contract Act, as rightly and legally held by the trial court, to seek refund of the earnest money."

10. In Dattaram Deu Desai (*supra*), the Hon'ble Bombay High Court relied on earlier judgment in **Govind Narayan Lotlikar vs. Smt. Savitribai Roghitvira Lotlikar and others, 1986 Mh.L.J. 844**

and held that a person who was not a party to the land acquisition proceedings before Land Acquisition Officer cannot be added as party to the proceedings before the reference court, even if such party has or had acquired any right over the land which was acquired and which was subject matter in the land acquisition proceedings in which reference has been made.

11. In Sunil Kumar Jain (*supra*), the Hon'ble Supreme Court stated in para 2 as follows:

"2. Learned counsel appearing for the petitioner contended that the under the agreement of sale dated 5th December, 1981 the respondents had received consideration and kept the petitioner in possession of the land and that, therefore, by operation of Section 53-A of the Transfer the Property Act, the petitioner is entitled to the compensation. We are unable to agree with the learned Counsel. In a reference, the dispute is to the title to receive the compensation. **It is settled law that the agreement of sale does not confer title and, therefore, the agreement holder, even assuming that the agreement is valid, does not acquire any title to the property.** It is seen that the agreement is subsequent to the notification under Section 4(1). The Government is not bound by such an agreement. The inter-se dispute is only with respect to the title as on the date of notification under Section 4(1). The Respondent is the undoubted owner of the property as per Section 4 notification and that, therefore, the compensation was directed to be paid to the respondent since he is one of the members. We cannot find any illegality in the order passed by the Courts. However, if the petitioner has got any claim under Section 30 of the Land Acquisition Act, it is open to him to take such action as open to him under law."

12. Learned counsel for the applicant has relied on the judgment of the Allahabad High Court in **Rewa Shankar Bhayal Vs. P.E. Boyce, 1965 A.L.J. 1185** for his submission that existence of award under Section 11 of the Act is essentially to confer jurisdiction in Collector to make reference. If any award is not in existence, Collector cannot make reference under Section 18 of the Act.

According to the learned counsel for the applicant in the case on hand, the Land Acquisition Officer had not made any award under Section 11 of the Act, therefore, reference was itself incompetent and as such the entire subsequent proceedings were bad in law. The judgment of the Allahabad High Court already stands diluted by the judgment of the Hon'ble Supreme Court in Mahadeo Bajirao Pati (supra), as in the said case, the Collector had made no award and the Hon'ble Supreme Court found that this was a case of NIL award for the reason that the Land Acquisition Officer was of the view that the claimant who was a lessee of the acquired land was not entitled for compensation, rather compensation was payable to the land owners only.

13. In the case on hand also, the Land Acquisition Officer was of the view that the land was government land hence no compensation was payable however on prayer of respondent No.1, reference was made to the Court and the Court has decided the compensation in favour of respondent No.1.

14. Para 14 of the Mahadeo Bajirao Pati (supra) is reproduced below:

"We are here not concerned with the correctness of the decision, but the fact remains that having considered the claim of the appellant for compensation, the Special Land Acquisition Officer rejected the claim. This does amount to the making of an award, commonly described as "nil award". If the appellant was aggrieved by such an award, it was open to him to seek reference under [Section 18](#) of the Act which the appellant actually did. We, therefore, cannot hold that no award as envisaged by [Section 11](#) of the Act was declared on August 29, 1994, since the claim of the appellant was considered and was totally rejected. There was, therefore, no question of giving any calculation of the manner in which the compensation was computed. Since, the application under [Section 18](#) was not filed within six weeks of the receipt of notice under [Section 12\(2\)](#) of the Act, the High Court did not commit any error in holding that the application was barred by limitation. It was not disputed before us that the Land Acquisition Officer making a reference, or the Court considering a reference under [Section 18](#) of the Act has no power of condonation of delay in making an application under the aforesaid Section."

15. Likewise, an agreement to sale does not create any title in favour of applicant over the land and the agreement of the applicant would at best make the applicant entitled for refund of consideration money because agreement was entered into subsequent to the acquisition proceedings. Further, applicant was not a party to the land acquisition proceeding at any stage, therefore, this Court is of the view that the applicant cannot be impleaded as a respondent in this appeal.

16. Accordingly, the prayer of the applicant stands refused and the application No. 828/99 stands dismissed.

17. List the appeal on 9.11.2023.

(BIRENDRA KUMAR),J