
(2016) 04 RAJ CK 0052
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8887 of 2015

Bhagwan Sahay Meena

APPELLANT

Vs

Bhonri Devi Meena

RESPONDENT

Date of Decision : 11-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Specific Relief Act, 1963 — Section 21(5)

Citation : (2016) 3 CivCC 740 : (2016) 3 DNJ 1452 : (2016) 2 WLCRajUC 59

Hon'ble Judges : Mr. M.N. Bhandari, J.

Bench : Single Bench

Advocate : Mr. R.K. Daga, Advocate, for the Appellant; Mr. D.S. Poonia, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. M.N. Bhandari, J.—With the consent of learned counsel for the parties, the writ petition is heard finally.

2. By this writ petition, a challenge is made to the order dated 11th May, 2015 whereby the application under Order 6, Rule 17 CPC read with Section 21(5) of the Specific Relief Act, 1963 (for short "the Act") has been allowed.

3. Learned counsel for the petitioner/s submits that similar application was earlier dismissed by the Court below. A challenge to the said order was made before this Court. The writ petition was withdrawn with liberty to file a fresh application under Section 21(5) of the Act. The respondent/s-plaintiff then filed a fresh application under Order 6, Rule 17 CPC read with Section 21(5) of the Act and at this time, the application has been allowed in ignorance to dismissal of the application on the earlier occasion. It is in a case of specific performance that while making amendment in the plaint, a prayer was made to receive compensation arising out of the acquisition. It is looking to the fact that during pendency of the suit, land was acquired. The court should not have allowed the amendment as agreement of sell does not create right and title in the property

so as to get the relief prayed for. A reference of judgment of Karnataka High Court in the case of Smt. Pillamma & Ors. v. P. Rangaraju reported in AIR 1996 Karnataka 330 has been given. In the said case, similar relief was declined and the Court allowed to maintain the claim of damages under Section 21 of the Act. A further reference of the judgment of Apex Court in the case of Sunil Kumar Jain v. Kishan & Ors. reported in AIR 1995 SC 1891 has been given apart from the judgment of Apex Court in the case of Jagdish Singh v. Nathu Singh reported in 1992 Civil Court Cases 487 (SC).

4. Learned counsel for the respondent/s submits that an application under Order 6, Rule 17 CPC read with Section 21(5) of the Act was filed earlier to seek 25 percent developed land in lieu of the compensation on acquisition of land. The relief was found to be beyond competence of the court, thus the prayer was declined. On a writ petition thereupon, withdrawal was allowed with liberty to make an application again under Section 21(5) of the Act. It was looking to the fact that an application under Section 21(5) of the Act can be made only to seek compensation arising out of the acquisition and not 25 percent of the developed land. As per the liberty given by the court, the respondents again made an application and has rightly been allowed. The court, however, made an observation that compensation would be allowed only if the decree of specific performance is granted, thus it is subject to decree of specific performance.

5. I have considered the submissions made by learned counsel for the parties and perused the record.

6. In a suit for specific performance, an amendment was sought for award of compensation arising out of acquisition. It is for the reason that during pendency of the suit, the land in question was acquired by the government. The earlier application was dismissed by the Court below for the reason that prayer therein to award 25 percent of the developed land out of acquisition and was not within the competence of the court to allow such a relief. This Court, thus granted liberty to the respondents to file a fresh application under Section 21(5) of the Act and accordingly, the application was again filed by the respondents. The application was allowed and has been challenged herein.

7. I find that in a suit for specific performance, if the land is acquired during pendency of the suit or appeal, the application under Section 21(5) of the Act would be maintainable to seek compensation. It cannot be to claim 25 percent of the developed land and otherwise it can be allowed against the authority acquiring the land and not against the private person. Accordingly, the first application was rightly dismissed by the court below, however, present application was not to seek 25 percent of the developed land but the compensation arising out of the acquisition. The court below has made it clear that compensation can be awarded only when suit for specific performance is decreed. If the suit for specific performance is allowed in favour of the plaintiffs, the obvious consequence further would be to get the benefit attached to the property. If it has been acquired during pendency of the suit, amendment sought

needs to be allowed to do the justice. The similar application was allowed by the Apex Court, though it was at the stage of appeal because in the case of Jagdish Singh (supra), acquisition was made at later stage of litigation. Therein, the issue was similar thus the ratio propounded by the Apex Court applies to the present case.

8. A reference of judgment of Karnataka High Court in the case of Smt. Pillamma & Ors.(supra) has been given therein, referring to Section 21 of the Act, the plaintiff was held entitled to claim damages. With due respect, I am unable to accept the view propounded by the Karnataka High Court in view of the judgment of the Apex Court in the case of Jagdish Singh (supra). So far as the judgment in the case of Sunil Kumar Jain (supra) is concerned, it was altogether on different facts. Therein, the compensation was sought based on the agreement of sale, which does not confer the right. The right to seek compensation confers in such a case when suit for specific performance is decreed. The facts of that case do not apply to the present case.

9. In view of the discussion made above, I do not find any illegality in the impugned order, hence, this writ petition is dismissed so as the stay application without causing interference in the impugned order.