

(2018) 02 CHH CK 0002
In the Chhattisgarh High Court
Case No : 7 of 2001

Durga Education Society & Anr

APPELLANT

Vs

M/s Shakti Pictures Circuit Ltd

RESPONDENT

Date of Decision : 09-02-2018

Acts Referred:

Code of Civil Procedure, 1908, Section 96 - Appeal from original decree
Land Acquisition Act, 1894, Section 17(1) - Special powers In cases of urgency

Citation : (2018) 02 CHH CK 0002

Hon'ble Judges : Prashant Kumar Mishra, Arvind Singh Chandel

Bench : Division Bench

Advocate : Kishore Bhaduri, Pawan Kesarwani, Anmol Sharma, Sunny Agrawal, Swati Upadhai, Shreya Mishra, Ashish Shrivastava, Anurag Verma, Animesh Verma, Ankur Kashyap

Final Decision : Allowed

Judgement

1. This is the defendant's First Appeal under Section 96 of the CPC assailing the legality and validity of the judgment and decree rendered by the trial Court/ District Judge, Raipur decreeing the plaintiff's suit for specific performance holding that the plaintiff is entitled to get executed the sale deed upon payment of balance sale consideration of Rs.11 lakhs to the defendants. PLEADINGS

2. The plaintiff's case, as projected in the plaint filed on 5.2.1991 is that the suit plot bearing Khasra No.280/2, Mouja Baijnath Para, Mahal No.2, Raipur, ad measuring 30,560 square feet has a building named as Amardeep Talkies, which is run by the plaintiff. The plot is owned by the defendant No.1, a Society registered under the CG Society Registrikaran Adhiniyam, 1973 (for short "the Adhiniyam, 1973"). By an agreement of sale dated 1.11.1982, the defendant agreed to sell the suit plot to M/s Saroj Screens Private Limited for total consideration of Rs.13 lakhs and the defendant received the earnest money of Rs.2 lakhs from M/s Saroj Screens Private Limited by a demand draft dated

29.10.1982. By a letter dated 1.12.1983 M/s Saroj Screens Private Limited requested the defendant to substitute the plaintiff as purchaser of the suit plot on the same terms and conditions which were accepted by the defendant by entering into agreement dated 12.12.1983 by substituting the present plaintiff as purchaser.

3. As per the terms of agreement dated 12.12.1983, the balance sale consideration of Rs.11 lakhs shall be paid by the plaintiff. Before execution of the sale deed the defendant was required to obtain necessary permission from the competent authorities for transfer of the suit plot and after completion of the other formalities, the defendant was to inform the plaintiff regarding execution of the sale deed and thereafter within 2 months of the receipt of the registered notice, the plaintiff was to tender the draft sale deed to the defendant for its execution. On defendant's failure to comply, the plaintiff was conferred right to institute a civil suit. According to the plaintiff, it was always ready and willing to perform its part of the contract for execution of the sale deed. However, even after obtaining income tax clearance and permission from the Registrar of Societies, the defendant did not execute the sale deed. The plaintiff served many letters and met Secretary of the defendant society personally requesting to take necessary steps in the matter, however, the sale deed was not executed. After grant of permission from the Registrar of Societies on 1.6.1989, the plaintiff served a notice on 14.6.89 and copy of the draft sale deed on 14.7.89, however, the defendant kept quiet. The plaintiff thereafter served a legal notice on 7.8.89 requesting execution of the sale deed within 15 days but yet again the notice was not replied. The plaintiff thereafter filed the present suit on 5.2.1991.

4. The defendants filed separate written statement denying the plaint averments. According to defendant No.1 (for short "the Society"), the entire plot is owned by it and only over a portion of the plot Amardeep Talkies is situated. The cinema hall belongs to Dudhahari Shri Vaishnawa Trust. The plaintiff has acquired lease of the building from the said trust. The society disowned and repudiated the agreement terming it invalid and not enforceable against it. It is specifically averred that the Secretary of the Society who had signed the agreement had no authority to execute such agreement touching transfer of the property of the defendant society. Hence the agreement is not binding on the society and as such, it has no contractual obligation to execute the sale deed as sought to be enforced. Referring to the Articles of Association of the society, it is averred that it empowers the Board of Management, who shall, in turn empower the President to exercise power of sale, purchase etc. Therefore, the power to enter into a sale agreement cannot be vested or transferred to the Secretary under the Constitution or by-laws nor the same can be exercised by the Secretary. The Board of Management consists of 8 members, who will meet and decide touching matters of contract of sale and purchase. However, there has been no meeting of the Board of Management to consider the agenda for sale of suit land and there exists no resolution whatsoever of the Board of Management for sale of suit land empowering the President. It is further averred that the agreement itself being

not binding on the society, the terms of contract are also immaterial viz a viz the Society. The Society further averred, without prejudice, that valuation report of the plot referred in the plaint is outcome of collusion and manoeuvring at the instance of the plaintiff and the Patwari. It is specifically averred that valuation at the rate of Rs.20/- per square feet is unimaginable and preposterous because the land being in the heart of Raipur City, the valuation per square feet would be ranging between Rs.5,000/- to Rs.6,000/-. Even if the entire plot and contiguous land is sold, it shall not fetch less than Rs.2 crores. The Society would thus aver that it is not in the interest of the educational institution run by the Society to dispose of the property, therefore, discretionary relief of specific performance is not to be allowed in the plaintiff's favour. In para-8 of the written statement, the Society has averred that the State Government has acquired the suit land in February, 1989 by issuing notification under Section 17(1) of the Land Acquisition Act, 1894. Therefore, the said event has rendered performance of the contract indefinitely impossible ensuing frustration. The Court has thus no jurisdiction to enforce discharge of obligation of society because by reason of statutory acquisition the Society is incompetent to perform the contract and the same stands frustrated under the law. It needs mention that no issue was framed by the trial Court on this objection in the written statement.

5. Defendant No.2 is the Secretary of the Society. The Secretary has filed separate written statement agreeing with the stand taken by the Society that the Secretary had/has no authority to execute the sale deed touching transfer of the property of the society. Therefore, the agreements are not binding on the Secretary also. The Secretary reiterated the stand of the Society about the competence of the Board alone to enter into the sale or purchase on behalf of the Society and further that no other entity/office bearer of the Society is vested with such power. The other averment in the written statement of the Secretary is on the same line as is averred by the Society, including the averment regarding acquisition of the property by the State Government in February, 1989 thereby frustrating the contract. ISSUES

6. Based on the above extracted pleadings of the parties, the trial Court framed four material issues for determination. Issue No.1 was about the plaintiff company's incorporation and its registered office which has been answered in plaintiff's favour. The pivotal issue was Issue No.2 regarding competency of defendant No.2, Secretary of the Society, to enter into subject contract with the plaintiff, on behalf of the society and if he was not competent or authorized, the effect thereof? This issue has also been decided in favour of the plaintiff. The third issue was about payment of earnest money of Rs.2 Lakhs to the defendants, which has been answered in favour of the plaintiff. The fourth issue was about the defendants' failure to execute the sale deed in favour of the plaintiff which has again been answered against the defendants. SUBMISSION AND DISCUSSION ON EVIDENCE

7. The plaintiff has examined Shri Kamal Kishore Rathi, Chairman of the

Company, as PW-1, who has proved the agreement, payment of earnest money and the notice served by the plaintiff on the defendants, and one Arjun Sharma (PW-2), who was posted in the local office of the Registrar, who has proved the permission granted to the defendants for sale of the suit land. On the other hand, the defendants have examined Shri C. K. Bhaduri as DW-1, who has proved Article of Association of the Society and the original register Article A and B containing minutes of the meeting of the General Body and the Board of Society. The defendants have also examined Shri Shyamji Tiwari as DW-2, who is the Record Keeper in the office of Sub Registrar, Raipur.

8. Assailing the findings recorded by the trial Court against the defendants, Shri Kishore Bhaduri, learned counsel for the appellant would vehemently put-forth that while construing the clauses contained in the Article of Association of the Society viz-a-viz competence and authority of the Secretary to enter into contract of sale with the plaintiff, the trial Court has ignored the material clauses and has recorded patently perverse finding. He would submit that under the bylaws of the Society, the Secretary was not at all competent and authorized to execute the subject agreement, therefore, the same is not binding on the Society. He would further submit that the present market value of the land in the subject area is at-least Rs.10,000/- per square feet, therefore, the property would fetch at-least Rs.30 Crores, hence at this stage, after about 35 years of the agreement, allowing the impugned decree to remain intact would cause immense hardship to the Society, which is engaged in advancement of education to the needy students of the whole of Chhattisgarh, particularly Raipur.

9. Per contra, Shri Ashish Shrivastava, learned counsel for the respondents would submit that execution of agreement, payment of earnest money, permission from Income Tax Authorities and the Society under the Adhiniyam, 1973 as well as service of legal notice having been proved, the trial Court has rightly decreed the suit. He would further submit that the society never objected to signing of agreement by the Secretary and the earnest money has been paid and deposited in the bank account of the society, therefore, the trial Court has rightly held that the Secretary was competent to execute the subject agreement on behalf of the society.

10. Learned counsel for both the parties would read the pleadings and evidence, both oral and documentary in support of their respective submissions. No arguments have been advanced in respect of the finding recorded by the trial Court on Issue No.1 about incorporation and the registered office of the company, and on Issue No.3 regarding payment of earnest money. As a matter of fact, (DW-1) Shri C. K. Bhaduri would admit in para 16 of his cross-examination that the defendants have received earnest money of Rs.2 Lakhs, which is still secured with the defendant No.1. We would therefore not dwell on the findings on Issue Nos.1 and 3.

11. The most crucial and pivotal issue, which is the bone of contention between the parties, is Issue No.2 about the competency and authority of the Secretary,

the defendant No.2, to execute agreement on behalf of the society.

12. It is not in dispute that the subject agreements dated 01.11.1982 and 12.12.1983 (Ex-P-5 & P-7 respectively), as also the receipt of the earnest money of Rs.2 Lakhs vide Ex-P-6 have been signed by defendant No.2 as Secretary of Durga Education Society. After these agreements between the parties, no further steps were taken till 19.09.1986 when for the first time the plaintiff served registered notice calling upon the society to pursue the matter before Tehsildar, Collector and the Registrar, Firms and Societies for obtaining permission to execute the sale deed. An application for permission was moved in November, 1983, vide Ex-P-30/C on the basis of which permission was granted by the Registrar, Firms and Societies, M.P. on 01.06.1989 vide Ex-P-34/C. The Secretary or other representative of the Society moved before the competent authority under the Adhiniyam, 1973 to obtain permission under the orders of the Society, however, submission of application and signing of agreement by the society would by itself not conclude the issue, as the same is to be tested by adverting to the relevant clauses of the Article of the Association of the Society.

13. The Articles of Association of the Society has been filed and proved as Ex-D/1. The relevant clauses of Articles of Association are hereby reproduced for ready reference:- "(4) The Society shall be governed by a Board of Management which shall consist of the following:-

(a) The President of the Society, the Secretary of the Society and the Principals of all the institutions run by the Society. 2 members of the staff of each institution run by the Society elected by the staff of each institution.

(b) One of the members of the Society elected by the Society will be a member of the Board.

(c) The present donor or her nominee.

The Board of management shall have power and control to run all institutions opened for the purpose of imparting education under the Society and shall have a general power of supervision over the said institutions. In case of controversy amongst the members of the Board of Management, the opinion of the majority will prevail and the President will have a right to put his casting vote.

(12) Without prejudice to the general powers conferred by these present, it is hereby expressly declared that the Board of management shall empower the President to exercise the following powers :-

i. To supervise the working of all the institutions that are run or may be run by the Society as stated before.

ii. To sell, purchase, take on lease or accept as gift any land or buildings, or to accept any grant which may be necessary or convenient for the purpose of the Society and on such terms and conditions as the Board may think fit and proper.

iii. To construct, add to, or alter any building necessary or convenient for the

purpose of the Society."

14. The above extracted clauses would manifest that the Board of Management of the Society consists of 8 members, who are authorized to meet and decide the matters touching the contract of sale and purchase.

15. We are now required to peruse the register, Articles 17-A and B containing resolution of the Board of members of the society, wherein decisions were taken to enter into contract.

16. The register Article A contains the minutes of the meeting of the general body of the Society. In the meeting dated 19.7.1982, agenda No.1 is referred as "Amardeep Talkies" case, however, the meeting could not take place for want of quorum as the members present felt that agenda No.1 being important should be adjourned for consideration in the next meeting. The next meeting took place on 9th August, 1982 wherein it was resolved that if the subject purchaser wants to purchase the property, he should come to Raipur by 31st August, 1982 to perform necessary acts, failing which the proposal shall be treated as cancelled. The President and the Secretary were directed to inspect the papers. They shall present format of proposal and place it before the Society for approval in the meeting proposed to be held on 29th August, 1982. In the next meeting of the general body held on 29th August, 1982, the draft sale deed submitted by the plaintiff was considered. A meeting of the Board of Management was convened on 30th August, 1982, however, the same was adjourned to 4th September, 1982, which was again postponed to 19th September, 1982. Thereafter meeting of the general body was convened on 16th October, 1982 wherein the President and the Secretary were authorized to execute the agreement upon payment of earnest money of Rs.2 lakhs. Another meeting of the general body was convened on 30th October, 1982 wherein it is resolved that the Secretary shall accept the earnest money and the agreement to sell should contain the terms mentioned in the resolution. Another meeting was convened on 3.9.1983, however, resolution of the said date does not specify whether it is the meeting of the general body or of the Board of Management because the notice as well as the resolution refers to meeting of the "Durga Education Society". In this meeting, the issue concerning permission from the Registrar, Firms & Societies was considered. Another meeting of the general body was convened on 4th December, 1983 (Ex.-P/17 & P/17A) in which a resolution was passed to approve the agreement with the present plaintiff. Once again, the President and the Secretary of the Society were empowered to execute the agreement. The subsequent agreement dated 12.12.1983 (Ex.-P/7) refers to this resolution. The resolutions contained in the register Article A do not consist of any resolution passed by the Board of Management of the Society.

17. Another register Article B contains the resolution of the Board of Management of the Society. The first resolution in this register is of 22.12.1985. Thus it appears that there was no resolution of the Board of Management of the Society before the agreement dated 1.11.1982 or 12.12.1983. The plaintiff has

also not called upon the defendants to produce any such resolution of the Board of Management, if any such resolution was passed prior to 12.12.1983. It appears highly probable that no meeting of the Board of Management has taken place because the agreement dated 12.12.1983 refers to the meeting of the general body dated 4.12.1983 and not that of the Board of Management. The register Article B consists of the resolution of the meeting of the Board of Management held on 9.9.1989 wherein it was discussed and resolved that under Clause 12 of the Memorandum of Association the power to sell or to acquire the property has been vested in the Board of Management of the Society. As clearly appears, the earlier resolutions dated 22.3.1982 and 8.8.1982 were passed by the general body of the Society, which seems not to be in accordance with the Article of Association of the Society and also not in the interest of the Society. Further the offer was spontaneously accepted by the general body without making enquiry about the market price which the land could fetch. The general body should have cautious enough to advertise publicly so as to know the market price and value of the land before passing such resolution but the general body has abruptly passed the resolution without making enquiry which is prejudicial to the interest of the Society and as such, the Board of Management disapproved and cancelled the terms of agreement made with M/s Shakti Pictures Circuit Limited in respect of the sale of Amardeep Talkies" land and revoked the agreement which is not beneficial to the Society. It was also resolved that the earnest money may be refunded. Thus, the resolution of the Board makes it abundantly clear that the power to sell or acquire the property for the Society vests with the Board of Management and not with the general body. Even otherwise, in its meeting dated 4.12.1983, the general body had authorized both the President and the Secretary to execute the agreement but the agreements (Ex.-P/5 & P/7) have been signed by the Secretary alone and not by both i.e. the President and the Secretary. Thus, the agreements are otherwise also not in accordance with the decision taken by the general body.

18. In view of the above discussion and the evidence available on record, we are of the firm view that the agreements (Ex.-P/5 & P/7) dated 1.11.1982 & 12.12.1983 were not based on any decision of the Board of Management of the Society which alone was competent to take decision for sale and acquisition of the property for the Society. Therefore, the Secretary who has signed the agreement on behalf of the Society on the basis of resolution of the general body was not competent or authorized or entitled to execute such agreement on behalf of the Society. Hence the agreement is not binding on the Society and the trial Court has committed serious error of law by not referring to the evidence on record in the form of resolutions of the Board of Management or general body as contained in the registers Article A & B. The trial Court has thus wrongly decreed the suit in favour of the plaintiff and against the defendants. Even otherwise, as discussed above, the finding recorded by the trial Court about the validity of the agreement is contrary to the evidence because the resolution dated 4.12.1983 authorizes both the President and the Secretary, however, the agreement has

been signed by the Secretary alone.

19. We may notice another glaring defect in the suit, which has been preferred for a direction to the defendants to execute and get registered the sale deed without there being any prayer for a declaration that the termination of agreement of sale is bad in law. This prayer was necessary, omission thereof being fatal, because in para-3B of the amended written statement, it is specifically pleaded by defendant No.1 that in the meeting dated 9.9.89 of the Board of Management the subject agreement has been revoked, yet neither the plaint was amended nor any relief for declaring the said resolution of the Board of Management as illegal or void has been sought.

20. In I.S. Sikandar (Dead) by LRs Vs. K. Subramani and Others, (2013) 15 SCC 27 the Supreme Court held thus in paragraphs-37 & 38:- "37. As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of agreement of sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of agreement of sale and consequential relief of decree for permanent injunction is not maintainable in law.

38. Therefore, we have to hold that the relief sought for by the plaintiff for grant of decree for specific performance of execution of sale deed in respect of the suit schedule property in his favour on the basis of non-existing agreement of sale is wholly unsustainable in law. Accordingly, Point (i) (see para 32.1) is answered in favour of Defendant 5."

21. The law is fairly well settled that power of Court to grant decree for specific performance is discretionary in nature and that the power should be exercised reasonably, not arbitrarily, in accordance with the sound judicial principles, on meticulous consideration of all facts and circumstances so that grant of decree may not be used as an instrument of oppression to have an unfair advantage to the parties. {See : K.Nanjappa (Dead) by Legal Representatives Vs. R.A. Hameed Alias Ameersab (Dead) by Legal Representatives and Another, (2016) 1 SCC 762; A.C. Arulappan Vs. Ahalya Naik (Smt), (2001) 6 SCC 600}.

22. In addition to the grounds on which the decree is held unsustainable in the just preceding paragraphs, we are also of the view that the agreement have been entered in the year 1982-83 for a paltry sum of Rs.13 lakhs for an area ad measuring 30,560 square feet, whereas the land is situated in the heart of Raipur city, which is presently capital of the State of Chhattisgarh. Raipur city is now connected with the world class Airports and is considered to be commercial capital for the whole of Chhattisgarh and part of western Odisha. It is throbbing vibrantly with activities galore making it heart and soul of Chhattisgarh, therefore, the prices of the lands having skyrocketed and the present market value of the property would not be less than Rs.10,000/- per square feet, the property would thus fetch more than Rs.30 crores. Therefore on valuation of the

comparative hardship, it is the Society engaged in charitable educational activity which would suffer grave financial hardship than the plaintiff, a business entity.

23. For all the above-stated reasons, the Appeal deserves to be and is hereby allowed. The impugned judgment and decree is set aside. However, at the same time, the plaintiff having parted with Rs.2 lakhs in the year 1983, he is entitled to refund of the said amount along with interest @ 6% per annum. Therefore, while setting aside the impugned judgment and decree, the same is substituted by the following decree:- "The plaintiff's suit is dismissed. However, he shall be entitled to refund of Rs.2 lakhs paid to the defendant Society along with interest @ 6% per annum from the date of filing of the suit till the date of realization."