(2015) 01 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : RFA Nos. 5889 and 5712 of 2013 (O and M)

Raj Bahadur — APPELLANT

Vs

Land Acquisition Collector and Others — RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:
Contract Act, 1872 — Section 202
Land Acquisition Act, 1894 — Section 18, 30, 4, 6

Citation : (2015) 01 P&H CK 0046

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : Rakesh Dhiman, for the Appellant; Abhinash Jain, AAG, Advocates for the Respondent

Final Decision : Allowed

Judgement

Amit Rawal, J.—This order of mine shall dispose of RFA No. 5712 of 2013 titled as Raj Bahadur Vs. Land Acquisition Collector, Gurgaon and others and RFA No. 5889 of 2013 titled as Raj Bahadur Vs. Land Acquisition Collector, Gurgaon and others.

2. Since the facts in both cases are common, therefore, facts are noted from the RFA No. 5712 of 2013. The Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter to be referred as the ''Act'') was issued on 06.03.2002, whereby land measuring 175 acre 4 Kanal 15 marla situated in Village Bas Kusla, Tehsil and District Gurgaon alongwith land of other Villages was sought to be acquired for public purposes namely for setting up of Chaudhary Devi Lal Industrial Model Town Ship, Manesar, Phase-II. Notification under Section 6 of the Act was issued on 15.11.2002 and the Land Acquisition Collector announced the award on 22.07.2003. The appellant-Raj Bahadur and respondent No. 5-Raj Pal @ Rajinder are related to each other. The agreement to sell dated 27.03.2004 (Ex.P1) was entered into between the appellant and respondent No. 5 for a sale consideration of Rs. 9,00,000/-. The respondent No. 5 stated to have executed

the receipt (Ex.P2) of receiving the full consideration on 27.03.2004 and in view of the receipt of full consideration executed the following four documents:-

1. Ex.P3 - Affidavit.

2. Ex.P4 - Possession Letter.

3. Ex.P5 - Will.

4. Ex.P6 - Registered Power of Attorney, all are dated 27.03.2004.

3. That since the land had already been acquired and award had been passed, respondent No. 5 did not have a transferable right in the property in dispute. In the meantime, the compensation was awarded by the Land Acquisition Collector to be disbursed to the owner recorded in the revenue record. Since the appellant, had acquired the right on the basis of the execution of the agreement to sell by paying entire sale consideration of Rs. 9,00,000/-, so he had no option but to file petition under Sections 18 and 30 of the Act. The said petition was filed on 07.09.2007. In order to prove the aforementioned averments, the appellant examined PW4 Naresh Kataria, Hand Writing and Finger Print Expert (In RFA No. 5712 of 2013) to prove the signatures and as well as thumb impression of respondent No. 5 on Ex.P1 to Ex. P6. Respondent No. 5 did not rebut the evidence brought on record by the appellant in affirmative , by examining any expert, except vague denial of not having entered into agreement to sell much less to the execution of Ex.P2 to Ex.P6. In order to prove the execution of the agreement to sell, the plaintiff has also examined PW3 Ashok Kumar in RFA No. 5712 of 2013 and PW3 Manesh Yadav in RFA No. 5889 of 2013 i.e. attesting witnesses of the agreement to sell and Handwriting Expert whereas the respondent No. 2 miserably failed to rebut the aforementioned evidence by bringing on record any oral much less documentary evidence in support of his defence taken in the written statement.

4. The Reference Court by relying upon the case law dismissed the petition of the petitioner while holding that the agreement to sell did not confer any right or title in favour of the appellant. Against the aforementioned judgment and decree present first appeal has been filed.

5. Mr. Rakesh Dhiman, learned counsel for the appellant in support of his contention referred to the oral and documentary evidence and further submitted that the appellant has discharged the onus by proving the execution, much less payment of the sale consideration to the respondent No. 5 and respondent No. 5 in lieu thereof executed receipt of the sale consideration, affidavit, Will and Registered General Power of Attorney and thus, in essence, it was the sale transaction as envisaged under Section 202 of the Contract Act, 1872.

6. In support of his submission, he has relied upon judgments of Hon''ble Supreme Court of India as Thiriveedhi Channaiah Vs. Gudipudi Venkata Subba Rao (D) by Lrs. and Others, and U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, , to contend

that in an identical situation, the vendee has been directed to refund the earnest money paid by the vendor within a statutory period, failing which the vendor has been directed to pay interest.

7. Mr. Amit Jain, learned counsel for the respondent No. 5 contends that the award dated 23.05.2013 passed by the Reference Court is just and legal and there is no perversity much less illegality and Reference Court has rightly dismissed the petition. He further submitted that the petitioner did not acquire any right and title in the property much less the respondent No. 5 did not have any transferable title in the said property. He further contended that since the appellant was not ready and willing to perform his part, therefore, the amount of Rs. 9,00,000/- paid in respect of both the agreements in aforementioned two RFAs, had been forfeited and agreement stood frustrated.

8. I have heard learned counsel for the parties and perused the impugned award dated 23.05.2013 and is of the considered view that award is liable to be set aside for the following reasons:-

That the appellant in order to prove the execution and payment of the earnest money has led both oral and documentary evidence, referred above, and even proved the thumb impression and signatures of respondent No. 5 whereas on the other hand, respondent No. 5 failed to rebut the onus which has been discharged by the appellant. In the absence of the rebuttal, the evidence led by the appellant is deemed to be admitted. Had the respondent No. 5 not executed the agreement, there would have not been an occasion for respondent No. 5 to execute the Will, Registered General Power of Attorney, Affidavit and Possession Letter much less Ex.P2-receipt acknowledging the receipt of Rs. 9,00,000/-. All documents, where the signatures and thumb impression of respondent No. 5, are available have also not been rebutted. 9. In these circumstances, the respondent No. 5 cannot be permitted to usurp much less forfeit the earnest money received in lieu of agreement to sell. Rather, respondent No. 5 has mislead and misinformed the appellant by entering into the agreement to sell knowing well that Notification under Sections 4 and 6 of the Act much less award had been pronounced prior to the execution of the agreement to sell and in my view the respondent No. 5 ought to have been hauled up for breach of trust in some criminal proceedings. Be that as it may, ratio decidendi culled out in the aforementioned judgment (supra) squarely covers the case of the appellant, wherein the Hon''ble Supreme Court has held that since vendor loses the transferable right the vendee is liable to receive the earnest money or sale consideration.

10. In the instant cases, the respondent No. 5 did not have any transferable right therefore could not take plea of forfeiture of sale consideration and agreement stood frustrated for the first time before the Reference Court. The respondent No. 5 is thus enjoyed upon an obligation to return the earnest money sale consideration of Rs. 9,00,000/- to the appellant as he cannot be permitted to take the enhanced compensation awarded by the Land Acquisition Collector.

11. In view of what has been observed above, award dated 23.05.2013 is ordered to be set aside, the respondent No. 5 is directed to refund the amount of earnest money sale consideration of Rs. 9,00,000/- alongwith interest of 7.5% p.a. advance made by the appellant within a period of four weeks from the receipt of the certified copy of the order, failing which over and above the principle amount plus 7.5 % p.a. interest, the respondent would be liable to pay 12% interest p.a. till the disbursement. Since the amount of compensation has already been enhanced, the charge is created on the enhanced amount of compensation to the tune of Rs. 9,00,000/- alongwith interest at the rate of 7.5% p.a. from the date of payment i.e. 23.03.2004 till the passing of the order in case enhanced amount of compensation has not been disbursed to the respondent No. 5. In case, respondent No. 5 has received the enhanced amount of compensation on payment of Rs. 9,00,000/- alongwith interest within a period of four months, the charge created on the enhanced amount of compensation would be vacated.

12. It is also made clear that in case, enhanced amount of compensation has already been disbursed to respondent No. 5, the appellant would be entitled to seek execution of this order in case the respondent No. 5 does not deposit the amount within aforementioned period, in accordance of law.

13. The appeal is thus, allowed.

14. There shall be no order as to costs.

