

(2015) 12 DEL CK 0183

In the Delhi High Court

Case No : FAO 416/2015

Rishi Raj

APPELLANT

Vs

Harish Gulati and Others

RESPONDENT

Date of Decision : 07-12-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, 151

Land Acquisition Act, 1894 — Section 12(2), 18

Transfer of Property Act, 1882 — Section 5, 6, 6(e)

Citation : (2015) 12 DEL CK 0183

Hon'ble Judges : Rajiv Shakdher, J.

Bench : Single Bench

Advocate : Raj Bahadur Singh, Advocate, for the Appellant; Rajesh Yadav and Inder Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Shakdher, J.

CAV 1252/2015

1. Since the learned counsel for the caveators / respondent no.1 and 2 has entered appearance, the caveat stands discharged.

CM No. 29648/2015 (Exemption)

2. Allowed subject to just exceptions.

FAO 416/2015 and CM No. 29647/2015 (stay)

3. By virtue of the instant appeal, challenge is laid to the judgment dated 17.09.2015 passed by the learned Additional District Judge (in short, ADJ).

3.1 The ADJ, vide the impugned judgment has allowed the application of respondent no.1 and 2 under Order 22 Rule 10 read with Section 151 of the CPC. Respondent no.1 and 2 had approached the ADJ for being substituted as parties

to the proceedings in place of the appellant herein in view of two separate registered assignment deeds of even date (i.e. 19.06.2014) having been executed in their favour.

3.2 The learned ADJ allowed the said application and consequently permitted the substitution of respondent no.1 and 2 in place of the appellant.

4. Briefly, the background in which this application was filed is as follows :-

4.1 The subject land was owned by the appellant's mother, one Smt. Chandri.

4.2 The subject land was acquired by the Government pursuant to an award dated 18.06.1992.

4.3 Consequently, the possession of the land was taken over by the Government on 19.01.2006.

4.4 Smt. Chandri passed away on 01.05.2007, albeit, without executing any testament. Late Smt. Chandri had, however, left behind two legal heirs; a son and her husband.

4.5 Resultantly, both, the husband, one, Mr. Sumera, and the son (i.e. the appellant), received compensation in lieu of the acquired subject land. Each was paid a sum of Rs. 2,25,686.25. This compensation was, however, received by the appellant and his father, under protest. The father of the appellant (i.e. Mr. Sumera), expired on 28.09.2010.

4.6 The appellant being aggrieved with quantum of compensation received, filed a reference petition under Section 18 of the Land Acquisition Act, 1894 (in short L.A. Act). This application was filed on 05.01.2011. By virtue of this application, enhancement in compensation was sought by the appellant.

4.7 The application for enhancement of compensation was instituted though before the Collector as is the usual procedure. In the interregnum, while the application under Section 18 of the L.A. Act stood lodged, the appellant executed, as noticed above, two separate assignment deeds, for a valuable consideration, in favour of respondent no.1 and 2.

4.8 The proceedings were thereafter, according to the appellant, sent to the concerned court on 25.09.2014 for passing appropriate orders on the application.

4.9 In the background of the aforesaid facts and having regard, inter alia, to the judgment of the Division Bench of this court dated 07.11.1997, passed in RFA 237/1992, titled Sh. Chandan and Ors. Vs. Union of India, the learned ADJ, as indicated above, allowed the application.

5. The appellant is in appeal against the said judgment.

6. Mr. Raj Bahadur Singh, who appears for the appellant, submitted that the impugned judgment is erroneous in law. It is the contention of the learned counsel for the appellant that the principle which is set out in Order 22 Rule 10 of

the CPC could apply only if the assignment deeds had been executed during the pendency of the proceedings before the concerned court. It is stated that the proceedings commenced in the concerned court only on 25.09.2014, and therefore, the event which happened prior to that date, that is, execution of the assignment deeds ought not to have been taken note of.

6.1 It is further submitted by the learned counsel that the judgment of the Division Bench in Sh. Chandan and Ors. Vs. UOI relied upon the judgment of another Division Bench of this court (i.e. the judgment passed in RFA 140/1972, dated 24.11.1977, titled : Laxmi Narain etc. Vs. Union of India and Ors.), which judgment had been subsequently reviewed and would thus in effect dilute efficacy of the judgment in the case of Sh. Chandan and Ors. Vs. UOI.

6.2 It is also the submission of the learned counsel for the appellant that there were several other judgments which were not noticed by the learned ADJ.

7. I have heard the learned counsel for the parties as also counsel for the caveator / respondent no.1 and 2.

8. What is required to be noted, firstly, is the fact that there was no dispute whatsoever raised even before the learned ADJ or for that matter before me, that the two assignment deeds dated 19.06.2014, had not been executed by the appellant.

8.1 It is also not disputed before me by the learned counsel for the appellant that two assignment deeds are identical in nature save and except for the particulars concerning the amount and those which involve the assignee.

8.2 Having regard to the aforesaid, it becomes necessary to notice the contents of the assignment of deed. For the sake of convenience, extracts are set out hereinbelow from one of the assignment deeds :-

"..AND WHEREAS the ASSIGNOR for his personal needs has willingly, without any force, coercion or influence agree to assign, transfer and sell his right to receive compensation in land measuring 7 bigha 19 biswa out of total land measuring 9 bigha 19 biswas comprised in Khasra No. 423(9-19), situated in the Revenue Estate of Village Jasola, Tehsil Sarita vihar, District South East, New Delhi (hereinafter called the "said Land"), qua his share defined as above for a consideration of Rs. 40,00,000/- (Rupees Forty Lacs Only) and assignee has agreed to purchase the same.

AND WHEREAAS the ASSIGNOR has transferred / alienated assigned all his rights of compensation in the aforesaid land (except alternative Plot), whatsoever to be settled by the Land Acquisition Collector in said Award or enhanced by the court, in reference petition under Section 18 of the Land Acquisition Act or in appeals of the same in High Court and Supreme court will all rights to recover and receive the same from the courts, authorities, departments or from the office of Land Acquisition Collector.."

"..1. That the full and final agreed entire sale consideration amounting to Rs. 40,00,000/- (Rupees Forty Lacs only) has been paid to the ASSIGNOR by the assignee which the ASSIGNOR hereby give and acknowledge the receipt of the same details are given below :-

"..4...That the ASSIGNOR admits that the ASSIGNEE is fully entitled to substitute him in reference mentioned above and conduct the same.."

(emphasis is mine)

8.3 I may only emphasise that the aforesaid clauses obtain in the assignment deed executed by the appellant with respondent no.1. In so far as respondent no.2 is concerned, as noticed above, the particulars of the land and the consideration paid are different. Respondent no.2 paid a consideration of Rs. 10 Lakhs in lieu of execution of assignment deed in his favour.

8.4 As is clear from the above, that at the time of the execution of the assignment deeds, parties were cognizant of the fact that Section 18 proceedings had been initiated qua the subject land.

8.5 It is because of this that the appellant (i.e. the assignor) agreed with the assignees (i.e. respondent no.1 and 2) that they would be entitled to seek substitution in the reference, and prosecute the same.

8.6 Therefore, for the appellant to now turn around and say that the execution of assignment deeds would not affect Section 18 proceedings, according to me, is completely unsustainable.

8.7 The submission made that since at the relevant point in time only the application was lodged and therefore, in law no proceedings were pending before the concerned court, according to me, is a submission which is totally misconceived. The proceedings, in my view, will pend as soon as they are lodged and shall continue in that state till they are disposed of. The submission of the learned counsel that since the execution of assignment deeds took place on 19.06.2014 and the reference was made to the concerned court only on 25.09.2014 (i.e. a date prior to the date of reference) and therefore, no proceedings were pending in law when the reference was taken up, is, in my view, an unsustainable contention. The reason for this is that the limitation for preferring such an application before the Collector is either 6 weeks from the date of the award if the person making it was present or represented before the Collector at the time when he made his award or in other cases, within 6 weeks of the receipt of notice under Section 12(2) or within 6 months from the date of the award, whichever period expires prior in point of time. The institution of the application is thus clearly a trigger for reference proceedings.

8.8 Which brings me to the last submission, which is : as to whether the judgment of the Division Bench, covers the issue.

8.9 In this context, the argument before me, is that, the assignment deeds only

transferred the right to sue to receive enhanced compensation, which was not permissible under Section 6(e) of the Transfer of Property Act.

9. I have been taken through the judgment of the Division Bench. According to me, it covers the issue raised in the appeal on all fours. It may also be noted that the Division Bench, which passed the judgment in Sh. Chandan and Ors. vs. UOI was different from the one from that which had passed the judgment in the case of Laxmi Narain. In fact, they were far apart in point of time. For the sake of convenience, the relevant observations made in Sh. Chandan and Ors. Vs. UOI are extracted hereinbelow :-

"..Order 22 Rule 10 CPC under which the application or substitution has been made reads :-

10(1). In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.

(2). The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule 1).

The above rule is an enabling one and is based upon the principle that trial of proceedings cannot be arrested merely by reason of transfer, assignment or devolution of interest of a party in the subject matter of the suit; that the person acquiring interest may continue the suit with the leave of the Court; but if he does not chose to do so the suit may be continued with the original party and the person acquiring the interest will be bound by or can have the benefit of the decree as the case may be. Thus in case of an assignment, creation or devolution of any interest during the pendency of litigation the person upon whom such an interest has come or devolved can seek leave of the court for substitution. Right to receive compensation accrued to the appellants when their lands were acquired under the provisions of the Land Acquisition Act. On award being made, the compensation was received by them under protest and they sought reference for enhancement. Enhancement was allowed. For further enhancement the instant appeal has been preferred. During the pendency of appeal, the appellants admittedly have, for valuable consideration transferred their rights in favour of the applicants to receive and recover the enhanced amount of compensation. Such a right, which is claimed is not at all covered by clauses (a) and (e) of Section 6 of Transfer of Property Act.

Clause (a) of Section 6 of the Transfer of Property Act prohibits transfer of the chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on death of kinsman, or any other mere possibility of a like nature. The possibilities referred to in this clause are bare or naked possibilities and not possibilities coupled with an interest. Section 5 of the Act defines transfer of property. A transfer of property may take place not only in the present but also in the future. Some interest in the property are future. Right to

receive compensation is statutory, which crystallized on acquisition of property. Right to claim enhancement in compensation is also statutorily conferred. It is this right, which has been assigned. No doubt that enhancement in compensation is a mere possibility but that possibility is coupled with an interest to receive and realise the compensation. Clause (e) of Section 6 of the Act refers to a mere right to sue, transfer of which is also prohibited. But what has been transferred is not a bare right to sue but right to receive and realise the enhanced compensation.."

(emphasis is mine)

9. A perusal of the aforesaid extract would show that the issue raised in Sh. Chandan and Ors. Vs. UOI is identical to the issue raised before me in the present appeal.

9.1 The Division Bench after giving its own reason, thereafter, proceeded to advert to the view taken in Laxmi Narain case. While doing so, the Division Bench observed that they were in respectful agreement with the view taken in Laxmi Narain's case.

9.2 The argument before me, which is that the judgment in Laxmi Narain's case was reviewed is, according to me, untenable for two reasons. First the Division Bench in Shri Chandan and Ors. Vs. UOI had come to a conclusion in the matter independent of the judgment in Laxmi Narain's case. Second, the order which was shown to me which was apparently passed in review proceeding is not in conflict with the principle laid down in Sh. Chandan and Ors. Vs. UOI.

9.3 Admittedly, the view taken in Sh. Chandan and Ors. has been followed by two Single Judges of this court in the following cases : (i). Judgment dated 03.08.2015, passed in CM No. 98/2005, titled : Mahavir Goel and Anr. Vs. Union of India and Ors.; and (ii). Judgment dated 15.10.2014, passed in FAO 294/2014, titled : K.D. Sawhney and Ors. Vs. UOI and Ors.

9.4 The aforementioned judgments are clearly binding on this court as well.

10. Having regard to the above, this court is constrained to dismiss the captioned appeal and the accompanying application.