

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE PURUSHAINDR KUMAR KAURAV**

WRIT PETITION No. 2390 OF 2017

Between:-

- 1. ISHWARDAS LIMJE, SON OF GURUDAYAL LIMJE, AGED ABOUT 50 YEARS, R/O MOHGAON HAVELI, TAHSIL SAUSAR, DISTRICT CHHINDWARA (MADHYA PRADESH)**
- 2. UPENDRA SINGH, AGED 50 YEARS, S/O TRIDEV SINGH, R/O VILLAGE BAILWA SURSARI SINGH TANAY SIRMOR, DISTRICT REWA (MADHYA PRADESH)**
- 3. RAJESH SINGH, AGED 52 YEARS, S/O TRIDEV SINGH, R/O VILLAGE BAILWA SURSARI SINGH TANAY SIRMOR, DISTRICT REWA (MADHYA PRADESH)**

**.....PETITIONERS/
DEFENDANT**

(BY SHRI JAIDEEP SIRPURKAR, ADVOCATE)

AND

- 1. DATTU DIGARSE (DEAD).
L.RS.

(1) JAI BAI W/O DATTU, AGED ABOUT 70 YEARS,

(2) BHAURAO, S/O DATTU, AGED ABOUT 49 YEARS,**

(3) AJAB S/O DATTU, AGED ABOUT 45 YEARS,

(4) MARUTI S/O DATTU, AGED ABOUT 44 YEARS,

(5) BHOJRAH S/O DATTU, AGED ABOUT 43 YEARS,

**ALL R/O MUNGNAPAR, TEHSIL SAUSAR,
DISTRICT CHHINDWARA (MADHYA
PRADESH).**

- 2. STATE OF MADHYA PRADESH, THROUGH
THE COLLECTOR, TAHSIL AND DISTRICT
CHHINDWARA (MADHYA PRADESH)**

....RESPONDENT

***(SHRI GYANENDRA SINGH BAGHEL, ADVOCATE FOR
RESPONDENT NO.1 AND SHRI GIRISH KEKRE FOR THE
RESPONDENT NO.2-STATE)***

(SHRI R.K.SANGHI – AMICUS CURIAE)

Reserved on	:	10.03.2022
Delivered on	:	21.04.2022

ORDER

The petitioner has filed the instant petition under Article 227 of the Constitution, challenging order dated 25.04.2016 and 22.12.2016, passed by the Executing Court in Execution Case No.200118/1991.

- 2.** The case of the petitioner-judgment debtor is that the respondent-decree holder had filed a suit for specific performance for the land in

dispute. On 30.9.1996, the Civil Suit was decreed in favour of the respondent-decree holder. On 5.12.1998, the First Appeal preferred by the petitioner-judgment debtor against the judgment and decree passed by the trial Court, was dismissed. On 24.04.2013, Second appeal No.316/1999, was also dismissed by this Court and, therefore, the judgment and decree passed by the trial Court attained finality. The decree was put to execution by the respondent-decree holder for getting the sale deed executed. The respondent-decree holder filed an application under Section 146 read with Section 153 of the Code of Civil Procedure, wherein, it was stated that the land in question has been acquired by the State Government and, therefore, the Land Acquisition Officer is a necessary party so that appropriate direction can be given to him to pay the compensation to the respondent-decree holder. The said application was opposed by the petitioner-judgment debtor. It was submitted by the petitioner-judgment debtor that the petitioner-judgment debtor was the owner and from his ownership, on account of the acquisition of the land, the title has vested with the State Government and, therefore, the decree in question has become non-executable as the petitioner-judgment debtor cannot execute the sale deed when the land does not vest with him as on date.

3. Vide impugned order dated 25.04.2016, the executing Court has noted that the award dated 25.11.2014 was pronounced and the respondent-decree holder is entitled for execution of decree dated 07.12.1998 and, therefore, the petitioner judgment-debtor was directed to execute the sale deed in favour of the respondent-decree holder. By the said order dated 25.04.2016, the Land Acquisition Officer was also directed not to disburse the amount of

compensation in favour of the petitioner-judgment debtor. By subsequent order dated 22.12.2016, further steps were taken to send the proforma of the proposed sale deed to the Collector of Stamp for proof reading and for calculation of the stamp duty.

4. The learned counsel appearing for the petitioner-judgment debtor submits that when the petitioner is not the valid title holder of the land, therefore, he cannot execute the sale deed and such a sale deed would be null and void. He places reliance on a decision of the Supreme Court in the case of *Gian Chand Vs. Gopala and others*¹ and *Sneh Prabha (Smt.) and others Vs. State of U.P. and another*².

5. Learned counsel appearing for the respondent-decree holder submits that the impugned orders are strictly in accordance with law. This Court should not interfere under Article 227 of the Constitution of India. The respondent-decree holder is pursuing his remedy for more than two decades. He is entitled for the fruits of the decree. He should not be deprived of his rights only on the ground that the land in question has been acquired by the State Government. Even if the land is acquired, the appropriate direction for payment of compensation to the respondent-decree holder can always be given by the executing Court. The executing Court is empowered to suitably modify the decree and, therefore, no error has been caused.

1 (1995) 2 SCC 528

2 (1996) 7 SCC 426

6. I have heard the learned counsel for the parties and perused the record.

7. Section 22 of the Specific Relief Act, 1963 (hereinafter referred to as “The Act of 1963”) deals with power to grant relief for possession, partition, refund of earnest money, etc. It is provided in Section 22 of the Act of 1963 that notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for:-

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or [made by] him, in case his claim for specific performance is refused.

8. Sub-section (2) of Section 22 of the Act of 1963 provides that no relief under clause (a) or clause (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed. The proviso to Sub-section (2) of Section 22 of the Act of 1963 provides that where the plaintiff has not claimed any such relief in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

9. It would be appropriate to make a reference to Section 27 of the Specific Relief Act, 1963 (hereinafter referred to as “The Act of 1963”), which reads as under:-

“27. When rescission may be adjudged or refused. - (1) Any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely:

(a) where the contract is voidable or terminable by the plaintiff;

(b) where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

(2) Notwithstanding anything contained in sub-section (1), the Court may refuse to rescind the contract

(a) where the plaintiff has expressly or impliedly ratified the contract; or

(b) where, owing to the change of circumstances which has taken place since the making of the contract (not being due to any act of the defendant himself), the parties cannot be substantially restored to the position in which they stood when the contract was made; or

(c) where third parties have, during the subsistence of the contract, acquired rights in good faith without notice and for value; or

(d) where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract.”

10. It is thus seen that Section 27 of the Specific Relief Act empowers the Court to grant various reliefs adjudging various situations as stipulated therein.

11. The Hon’ble Supreme Court in the matter of ***Babu Lal Vs. M/s Hazari Lal Kishori Lal and others***³, had an occasion to consider the provisions of Specific Relief Act in the context of the suit for Specific Performance Act, when vendor sold property to another person in defiance of previous agreement. The Hon’ble Supreme Court has held that Section 22 of the Specific Relief Act stipulates a rule of pleading that a person in a

3 AIR 1982 SC 818

suit for specific performance of a contract for the transfer of immovable property, may ask for appropriate reliefs, namely, he may ask for possession, or for partition, or for separate possession including the relief for specific performance. These reliefs he can claim, notwithstanding anything contained in the Code of Civil Procedure, 1908, to the contrary. Sub Section (2) of Section 22 specifically provides that these reliefs cannot be granted by the Court unless they have been expressly claimed by the plaintiff in the suit. However, the proviso to Sub Section 2 of Section 22 says that where the plaintiff has not specifically claimed these reliefs in his plaint, in the initial stage of the suit, the Court shall permit the plaintiff, at any stage of the proceedings, to include one or more of the reliefs, by means of amendment of the plaint on such terms as it may deem proper. The only purpose of this provision is to avoid multiplicity of the suits and the plaintiff may get appropriate relief without being hampered by the procedural complications. In para-17 of the said judgment, the Hon'ble Supreme Court has held that the word "proceedings" in Section 22 includes "executing proceedings" also. Para-17 of the said judgment is reproduced as under :-

"17. The word 'proceeding' is not defined in the Act. Shorter Oxford Dictionary defines it as "carrying on of an action at law, a legal action or process, any act done by authority of a court of law; any step taken in a cause by either party". The term 'proceeding' is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted. The word 'proceeding' in section 22 includes execution proceedings also. In Rameshwar Nath v. Uttar Pradesh Union Bank such a view was taken. It is a

term giving the widest freedom to a court of law so that it may do justice to the parties in the case. Execution is a stage in the legal proceedings. It is a step in the judicial process. It makes a stage in litigation. It is a step in the ladder. In the journey of litigation there are various stages. One of them is execution.”

12. The Hon’ble Supreme Court in the matter of ***Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and another***⁴ has considered well recognized exceptions to the principle of pleadings. It has been held that non compliance with any procedural requirement relating to pleadings, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection unless the relevant statutes or rule so mandates. Para-17 of the decision is reproduced as under :-

“17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well recognized exceptions to this principle are :-

(i) where the Statute prescribing the procedure, also prescribes specifically the consequence of non-compliance.

(ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;

(iii) where the non-compliance or violation is proved to be deliberate or mischievous;

4 (2006) 1 SCC 75.

(iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.

(v) in case of Memorandum of Appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant;”

13. The learned Single Judge of this Court in the matter of ***Sushila Devi and others Vs. Kachrabai and others***⁵ has held that the Court can direct refund of the amount paid by the plaintiff though not specifically asked for in the plaint.

14. Taking into consideration the aforesaid legal position, this court is of the view that the executing court is empowered to grant any other relief adjudging subsequent development if the same is prayed for by the decree holder in accordance with law. In the instant case, admittedly no relief has been claimed on the basis of subsequent development.

15. Section 16 of the Land Acquisition Act, 1894 prescribes that when the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. Section 54 of the Transfer of Property Act, 1882, defines the same, which would mean “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

16. The Hon’ble Supreme Court in the matter of **Gian Chand**¹ had an occasion to consider the controversy related to agreement to sale and its execution after notifications under the Land Acquisition Act, 1894 were

⁵ 1994 MPLJ 362.

issued. In that case, before sale-deed could be executed between the parties, vendee had come to know about the notification under Section 4(1) of the Land Acquisition Act, 1894, therefore, he filed the suit for refund of earnest money. The trial Court decreed the suit for refund of earnest money with exchange. In appeal, the District Judge reversed the decree and dismissed the suit. In second appeal, the High Court dismissed the appeal *in limine*, therefore, the vendee was before the Hon'ble Supreme Court in Special leave to appeal. It has been held that on publication of notification under Section 4(1) of the Land Acquisition Act, though the same was 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. It has been held that any sale transaction or encumbrances created by the owner after publication of the notification under Section 4(1) would therefore, be void and does not bind the State. The Hon'ble Supreme Court restored the decree granted by the trial Court and set aside the decree of reversal passed by the District Judge and affirmed by the High Court.

17. In the case of **Sneh Prabha(Smt.)**², the Hon'ble Supreme Court was considering the case related to notification under the Land Acquisition Act, 1894. It has been held that any person, who purchased the land after publication of notification under Section 4(1), does so at his/her own peril. The denial of compensation to a person, who purchased the land after publication of notification under Section 4(1) was held to be proper in view of the provisions of the Land Acquisition Act, 1894.

18. In view of the provisions of the Land Acquisition Act, no valid sale can take place between the parties when the vendor does not have the ownership. Since the land in question has already vested with the State Government, therefore, the judgment debtor cannot legally execute any sale-deed in favour of the decree holder. Hence, directions to the petitioner/judgment debtor to execute the sale-deed in favour of the decree holder is found against the law and accordingly, the same is set aside.

19. In view of the aforesaid, the impugned orders dated 25.04.2016 and 22.12.2016 passed by the Executing Court in Execution Case No.200118-1991 are set aside. Respondent- decree holder would be at liberty to make appropriate application before the executing court in accordance with law for the prayer of appropriate relief as may be permissible, which may be considered in accordance with law expeditiously.

(PURUSHAINDR KUMAR KAURAV)
JUDGE

A.Praj.