

Sohan Lal (dead) by Lrs.

Vs

Union of India and Another

Civil Appeal No. 507 of 1975

(Dr. T.K. Thommen, J.S. Verma JJ)

13.12.1990

JUDGEMENT

THOMMEN J

1. This appeal arises from the judgment of the Delhi High Court dated 7-11--1974 in Regular First Appeals Nos. 156-D and 167-D of 1963. The appellant, Sohan Lal, is the second defendant in the civil suit instituted in the Court of the Senior Sub-Judge, Delhi by the second respondent herein, Jagan Nath Bhayana. The first respondent in this appeal, the Union of India, is the first defendant in the suit.

2. The main relief sought by the plaintiff in the suit was for possession of House No. 35, Block No. 21, Box-type tenement in West Patel Nagar, New Delhi, or in the alternative for specific performance of sale of the aforesaid house, or for damages in the sum of Rs. 13,000/- together with costs. The suit was dismissed by the learned Sub-Judge against the second defendant, Sohan Lal, the appellant herein. But it was decreed against the first defendant - the Union of India - the first respondent herein, to the extent of awarding damages in the sum of Rs. 13,069.31 with proportionate costs. That was the only relief which was granted by the learned Sub-Judge. Both the Union of India and Jagan Nath Bhayana filed Regular First Appeals Nos. 156-D and, 167-D of 1963 respectively in the High Court. The High Court by the impugned judgment dismissed the Regular First Appeal No. 156-D of 1963 preferred by the Union of India, but allowed the Regular First Appeal No. 167-D of 1963, filed by the plaintiff. The High Court observed:

"As a result the suit of the plaintiff for specific performance of the contract of sale succeeds against the first and the second defendant..... Accordingly we decree the suit of the plaintiff against the first defendant for specific performance of the contract of sale of the house in dispute to the plaintiff and we direct the second defendant to join in the sale and convey to the plaintiff his right, title and interest in the property in dispute including the superstructures erected thereon. The conveyance would be executed on the request and at the expense of the plaintiff. The defendants are further directed to do all further incidental and consequential acts that may be necessary to perfect the title of the plaintiff to the property in dispute....."

3. The case of the plaintiff is that he had entered into a contract with the Union of India in terms of which the Union of India had undertaken to allot to him the house in question and execute the necessary documents of title in his favour. Although the Union of India made an order allotting the

house and the plaintiff was put in possession of it, the allotment was subsequently cancelled and the plaintiff was dispossessed of the house. In his place, the appellant-Sohan Lal the second defendant, was put into possession of the house by allotting the same to him and executing the necessary documents of title in his favour.

4. No document has been produced by the plaintiff to show that the house was ever allotted to him by the Government. According to the Union of India, the plaintiff was not eligible for allotment. Since he was in unlawful occupation of the premises he was evicted. After making allotment of the house in favour of Sohan Lal - - the appellant-defendant No. 2 on 31-7-52, the possession of the house was handed over to him and subsequently the deed of conveyance was also executed in his favour on 11-7-1958. The appellant then became the full owner in possession of the property. The deed of conveyance of the building in favour of the appellant reads:

"..... This Indenture made the Eleventh day of July, 1958, between the President of India (hereinafter called the 'Vendor' of the one part and Shri Sohan Lal son of Lala Jai Daval, 21/35, West Patel Nagar, New Delhi, (hereinafter called 'Purchaser') of the other part.....

Signed by the Settlement Commissioner Government Built Properties, for and on behalf of the President of India, this 11-7-58."

5. As stated earlier, no document has been produced to show that any order of allotment had been issued to the plaintiff the second respondent herein. Admittedly, no contract whatsoever has been entered into between the plaintiff and the Union of India in respect of the house in question. No formal contract is proved to have been executed in accordance with Art. 299 of the Constitution between the Union of India and the plaintiff for sale of the house in question. In the absence of any such contract, we fail to see, how the plaintiff is entitled to a decree for specific performance against the Union of India. Furthermore, in the absence of any contract between the appellant and the second respondent - the plaintiff - in respect of the house, no decree could have been passed in favour of the plaintiff for specific performance against the appellant.

6. No contract is enforceable against the Union of India, unless the mandatory requirements of Art. 299 of the Constitution have been complied with. As stated by this Court in *Bihar Eastern Gangetic Fishermen Co-operative Society Limited v. Sipahi Singh* ((1978) 1 SCR 375, 380-81) : (AIR 1977 SC 2149 at page 2152 of AIR):

"It is now well settled that the provisions of Art. 299 of the Constitution which are mandatory, in character require that a contract made in the exercise of the executive power of the Union or of a State must satisfy three conditions viz. (i) it must be expressed to be made by the President or by the Governor of the State, as the case may be; (ii) it must be executed on behalf of the President or the Governor, as the case may be, and (iii) its execution must be by such person and in such manner as the President or Governor may direct or authorise. Failure to comply with these conditions nullifies the contract and renders it void and unenforceable."

See also *State of Haryana v. Lal Chand* (AIR 1984 SC 1326 : (1984) 3 SCR 715); *State of Punjab v. M/ s. Om Parkash Baldev Krishan* [(1988) Supp SCC 722: (AIR 1988 SC 2149) and *Mulamchand v. State of Madhya Pradesh* ((1968) 3 SCR 214 : AIR 1968 SC 1218):

7. In the absence of any enforceable contract, the High Court was clearly wrong in passing a decree for specific performance against the Union of India. Similarly, in the absence of any contract between the plaintiff - the 2nd respondent and the appellant the second defendant, the High Court was clearly wrong in directing "the second defendant to join in the sale and convey to the plaintiff his right, title and interest in the property in dispute including the superstructures erected thereon". The High Court, in our view, lost sight of the basic principle that no decree for specific performance can be made without proof of a valid and enforceable contract between the plaintiff and the defendant.

8. As stated earlier, the Union of India has not appealed against the decree of the High Court. Nevertheless, the decree against the Union of India cannot be executed against the second defendant, the appellant herein, for he cannot be adversely affected by a decree for specific performance when no valid and enforceable contract has been proved between the parties to the suit in respect of the house of which the appellant is the owner in possession.

9. In the circumstances, without prejudice to the plaintiff's right to execute the decree against the Union of India in respect of the damages and costs awarded, the decree in every other respect is set aside. The appeal is allowed as indicated above. The appellant is entitled to his costs throughout.

Order accordingly.

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