

SUPREME COURT OF INDIA

Ramesh Chand

Vs.

Tanmay Developers Pvt.Ltd.

C.A.No.5598 of 2017

(Arun Mishra and Mohan M.Shantanagoudar,JJ.,)

26.04.2017

JUDGMENT

Arun Mishra,J.,

SLP(Civil)No.15383 of 2015

1. Leave granted.

2. The appellants-herein are aggrieved by the common judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in F.A. No.1941 of 2013, dated 4th February, 2015. The High Court by the impugned judgment and order has directed refund of the earnest money by M/s. Tanmay Developers Private Ltd. Five agreements to sell were entered into between the M/s. Tanmay Developers Pvt. Ltd. and the land owners on 22.07.2006, 22.07.2006, 22.07.2006, 24.07.2006 and 21.06.2006. Out of the five agreements, earnest money of Rs.54,25,000/- was paid out of the total sale consideration of Rs.4,52,81,250/- as per agreement on 22.07.2006, As per agreement dated 22.07.2006, Rs.1,56,000,00/- was paid as earnest money out of total sale consideration of Rs.12,54,37,500/-. As per yet another agreement on 22.07.2006, earnest money of Rs.21,00,000/- was paid out of a sum of Rs.1,50,93,750/-. As per agreement dated 24.07.2006, earnest money of Rs.90,00,000/- was paid out of total sale consideration of Rs.7,71,31,250/-. As per agreement dated 21.06.2006, earnest money of Rs.2,60,000/- was paid out of a total sale consideration or Rs.14,29,687/-. Period for performance of agreement had expired in the month of September/October, 2006. The land-owners on failure of purchaser to get the sale deed executed forfeited earnest money.

3. A notification under Section 4 of the Land Acquisition Act, 1894 (for short, “the Act”) was issued on 18.3.2008 for acquiring the land which was the subject matter of the agreements. Three suits were filed for recovery of earnest money in September, 2009 and one suit was filed for specific performance of agreement to sell by the respondent- M/s. Tanmay Developer in the month of March, 2008 which was decreed on 18.04.2014 and the

appeal filed by the land owners was pending at the time when the impugned judgment and order was passed by the High Court. Similarly, three other suits which were filed for recovery of the earnest money were pending. The Land Acquisition Officer has passed the award on 19.09.2008. No reference under Section 18 of the Act was sought by M/s. Tanmay Developers; however, during the pendency of the suits/appeal the respondent had filed application under Section 30 of the Act for referring the dispute to the Civil Court for refund of earnest money along with interest. The Land Acquisition Officer accordingly referred the matter.

4. The Reference Court on 7.12.2012 has passed an award rejecting the prayer made by respondent No.1 on the ground that the dispute with respect to the forfeiture of earnest money and whether M/s. Tanmay Developers Pvt. Ltd. was entitled for specific performance could not be adjudicated under Section 30 of the Act and it would not be appropriate for the Reference Court to decide these disputed issues between the parties in view of civil suits/appeal. The Reference Court held that the dispute under Section 30 of the Act arising out of the apportionment of the compensation or any part thereof involved the vexed question of title or the civil rights of the parties arising out of such transaction could not be adjudicated by substituting the judicial forum into the civil court. The Reference Court could not decide question of refund of earnest money by applying the provisions of Chapter 2 of Part II of the Specific Relief Act, 1963. Such powers can be exercised by the Civil Courts. Aggrieved thereby the respondent No.1 filed appeals before the High Court which have been allowed by the impugned judgment and order.

5. The respondent No.1 had sought apportionment of the compensation only on the ground that agreement for sale had been entered into by the land owners and prayed for refund of the earnest money along with the interest at the rate of 12 per cent per annum, since the agreement had become incapable of being specifically performed due to the acquisition of land. It was contended on behalf of the land owners that Respondent No. 1 was not ready and willing to perform its part of the contract. Time was essence of the contract. There had been forfeiture of the earnest money on failure of respondent No.1 to get the sale deed executed within stipulated period. Respondent No.1 was not having requisite amount of money hence could not be said to be ready and willing to purchase the property. In the facts and circumstances, the right of forfeiture of earnest money had been rightly exercised. Thus, respondent No.1 was not entitled for refund of the earnest money or apportionment of compensation particularly due to pendency of the civil suits/appeal.

6. The learned counsel appearing on behalf of the appellants urged that High Court erred in directing refund of the earnest money along with interest at 6% per annum out of the compensation amount determined by the Land Acquisition Officer. The High Court has not decided various vital questions. The Reference Court had rightly declined to entertain the reference application under Section 30 of the Act seeking refund of earnest money under guise of apportionment of compensation. As per the agreement, earnest money had been forfeited much before the acquisition of the land which was initiated by virtue of notification issued under Section 4 in the year 2008. Civil Suits had been filed and one of the matter first appeal had been filed against one of the judgment and decree of the Civil Court, thus, those

questions could not have been taken over for decision by the Reference Court. Subsequent to filing of civil suits remedy of reference had been sought under Section 30.

7. On the other hand, it was contended by the learned counsel appearing on behalf of the respondent-developer that buyer would be a “person interested” within the purview of Section 3 (b) and 9 of the Act. Any person interested could have sought the reference which had rightly made as the payment of earnest money under agreements was not in dispute. The High Court has rightly exercised the power to apportion compensation by directing refund of the earnest money along with interest.

8. It was not rightly disputed that several civil suits with respect to refund of the earnest money and for specific performance of the agreement to sale were filed by the respondent No.1 before reference was sought under Section 30 of the Act. Once remedy in the form of civil suits had been resorted to, in our considered opinion, it was not at all proper exercise of power to invoke provisions under Section 30 of the Act with regard to apportionment of the compensation by directing refund of earnest money. It is not mandatory to make a reference to the civil court under Section 30 and adjudication of dispute in an appropriate case can be ordered by way of the civil suit. In the instant case civil suits had already been preferred by respondent No.1. It was not appropriate to decide same dispute under Section 30.

9. In the instant case, there were serious disputed questions as to whether earnest money had been rightly forfeited by the land owners due to the failure of the respondent No. 1 to obtain the sale deeds executed within stipulated time fixed under the agreements, whether respondents were ready and willing to purchase the property and had arrangement of balance consideration for payment to land owner. Whether the power of forfeiture was rightly exercised by the land owners as claimed by them. The Civil Court was already in seisin of the matter as such reference court had rightly rejected the reference made under Section 30 of the Act and rightly asked parties to await outcome of the regular civil suits.

10. The High Court in the impugned judgment has not decided aforesaid objections raised by the appellants/land owners without examining facts and circumstances of the case and due to pendency of civil suits, it was not open to the High Court to order refund of the earnest money.

11. A perusal of Section 18 of the Act makes it clear that reference can be sought to a civil court with respect (i) the measurement of the land, (ii) adequacy and quantum of compensation, (iii) persons to whom it is payable and (iv) the apportionment thereof amongst the persons interested. The application under Section 18 is required to be filed within stipulated time whereas no limitation is prescribed under Section 30 of the Act. It is discretionary upon the court to refer a dispute under Section 30 of the Act. The same is confined to the apportionment of the compensation or as to a person to whom the same is payable. The scope of Section 30 of the Act is narrow as compared to Section 18 as laid down in *G.H. Grant v. State of Bihar*¹ and in *Sharda Devi v. State of Bihar*².

12. We need not go into the question whether holder of agreement is “person interested” as defined in Section 3(b) of the Act. As we are satisfied that respondent No. 1 could not have resorted to the remedy of reference for refund of the earnest money as for this very purpose he had filed civil suit earlier in point of time. In the reference petition refund of earnest money had been prayed with interest at the rate of 12 per cent per annum. In civil suit refund had been sought with 18 per cent interest per annum and in one suit specific performance was prayed.

13. The High Court has relied upon the decision of this Court in *Thiriveedhi Channiah v. Gudipudi Venkata Subba Rao (Dead) by Lrs. & Ors*³, in which the appellant demanded refund of the advance amount on the premise that due to notification under Section 4(1), property could not be sold whereas the plea of forfeiture was advanced by the respondents. This High Court had ignored and overlooked that case arose out of the civil suit in which specific performance of agreement to sale was sought. This Court has found that parties were aware of the notification under Section 4(1) as such right of forfeiture could have been exercised. The facts in the said case were different and the said decision could not have been utilized by the High Court for setting aside the well reasoned award passed by the reference court declining to entertain the prayer made by the respondents, in view of the availing remedy of the civil suits. The High Court should have in fairness reflected that the said decision was rendered by this Court in the context of civil suit. The High Court has referred it in the manner as if it was a case which has been decided under Section 30 of the Act with respect to the apportionment of the compensation.

14. The learned counsel on behalf of the respondent has relied upon the decision of Bombay High Court in *Mohammad Akil Khan v. Premraj Jawanmal Surana and Anr*⁴. The decision is distinguishable as the civil suit had not been filed in the said case. Thus, we need not go into the correctness of the aforesaid decision. Reliance has also been placed on *Delhi Development Authority v. Bhola Nath Sharma (Dead) by Lrs. & Ors*⁵. and *Sunderlal v. Para.msukhdas & Ors*⁶. to contend that definition under Section 3(b) of the “person interested” is “inclusive” definition. Reliance for this purpose has also been placed on *U.P. Jal Nigam, Lucknow Through Its Chairman & Anr. v. Kalra Properties (P) Ltd., Lucknow & Ors*⁷. laying down that a purchaser is entitled to step into the shoes of the owner to claim compensation though could not question the notification for acquisition. In our opinion even if it is held that respondent No. 1 was the “person interested” within the meaning of Section 3(b) of the Act its case is not advanced so as to seek adjudication of the questions in the facts of this case in the reference under Section 30 of the Act which remedy was discretionary. The land owners also relied upon *Coromandel Indag Products Private Limited v. Garuda Chit and Trading Company Private Limited and Another* (2011) 8 SCC 601 wherein this Court dealt with question when time is essence of the contract and in what circumstances earnest money could be forfeited. This question has to be gone into in civil suits.

15. Resultantly, the appeals are allowed. The impugned judgment and order passed by the High Court is hereby set aside. The land owners are entitled for disbursement of the

compensation. Obviously, it will be subject to the outcome of the civil suits in which refund of the earnest money along with interest had been sought by the respondent No.1. In case the appellants fail and refund is directed in civil suits, the landowners shall have to pay it as per the judgment and decree which may be passed. No costs.

Judgment Referred.

¹*AIR 1966 SC 0237*

²*(2003) 3 SCC 0128*

³*(2009) 17 SCC 0341*

⁴*AIR 1972 Bom. 0217*

⁵*(2011) 2 SCC 0054*

⁶*AIR 1968 SC 0366*

⁷*(1996) 3 SCC 0124*