



2025:AHC:163129

A.F.R.

Reserved On: 27.08.2025

Delivered On: 15.09.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT – C No. - 26340 of 2025

Hamid and 9 others

.....Petitioners(s)

Versus

Kailash and 13 others

Respondents(s)

Counsel for Petitioners(s) : Anas Mahboob, Ashish Kumar Singh

Counsel for Respondent(s) : Vivek Saran

Court No. – 9

HON'BLE MANISH KUMAR NIGAM,J.

1. Heard Shri Ashish Kumar Singh and Shri Anas Mahboob, learned counsel for the petitioner, Shri Vivek Saran, learned counsel for the respondent and perused the record.
2. This petition has been filed challenging the order dated 05.07.2025 passed by Land Acquisition Rehabilitation and Resettlement Authority, Meerut in reference Case No. 381 of 2023 (Kailash and others v. Hamid and others).
3. Brief facts of the case are that disputed land is Khasra No. 346 & 426, situated at village Bijwali, Tehsil & District Meerut. Agreement to sell were executed by the recorded tenure holders in favour of the petitioners regarding part of land of Khasra No. 346

& 426 referred above. When the sale deed was not executed in pursuance of agreements, various suits were filed for specific performance of an agreement, details of which are as under:

(1) Original Suit No. 21 of 2017 was instituted by the petitioner nos. 2, 3 & 4 against respondent nos. 1, 2, 3, 4, 5, 6 and predecessor in interest of respondent no. 9 for specific performance of an agreement to sell dated 29.01.2013 regarding the 14/8 portion of Khasra No. 426, area 0.487375 hec. The consideration agreed between the parties was Rs. 43,86,000/- and a sum of Rs. 4,00,000/- was paid towards earnest money and the remaining amount of Rs. 39,86,000/- was to be paid at the time of execution of sale deed. The time for execution of sale deed was one year from the date of execution of the agreement. The said suit was filed on 09.01.2017, which is pending before Civil Judge (S.D.), Meerut and the trial court by order dated 31.05.2018, directed the defendants/respondents not to alienate the property in dispute to any other person.

(2) Original Suit No. 85 of 2017 was instituted by petitioner no. 9 against respondent nos. 1 to 6 and predecessor in interest of respondent no. 9.1, 9.10 & 9.11 for specific performance of an agreement dated 25.08.2013 regarding their share 1/6 share in Khasra No. 426 area 1.1140 hec., situated at village Bijauli, Tehsil & District Meerut. The total sale consideration agreed between the parties was Rs. 8,36,000/- out of which Rs. 25,000/- was paid as earnest money. The date of execution was fixed as 26.02.2014.

(3) Original Suit No. 117 of 2017 was instituted by petitioner no. 1, against one Satyawati predecessor in

interest of respondent no. 1 to 4, regarding their 1/4 share in Khasra No. 346 for specific performance of an agreement to sell dated 29.01.2013. The total sale consideration agreed between the parties was Rs. 13,59,000/- out of which Rs. 1,00,000/- was paid as earnest money. In the said suit, an alternative prayer was made for refund of earnest money. By an interim injunction order dated 14.12.2017, the trial court restrained the defendants from alienating their 1/6 share in Khasra No. 346 and also directed the parties to maintain status quo.

(4) Original Suit No. 126 of 2017 was instituted by petitioner no. 10 against respondent nos. 1 to 6 and predecessor in interest of respondent no. 9.1, 9.10 & 9.11 for specific performance of an agreement to sell dated 23.08.2013 regarding Khasra No. 426. The total sale consideration agreed between the parties was Rs. 12,12,000/- out of which Rs. 50,000/- was paid as earnest money.

(5) Original Suit No. 135 of 2017 was instituted by petitioner nos. 5 & 6 against respondent nos. 1 to 6 and predecessor in interest of respondent nos. 9.1, 9.10 & 9.11 for specific performance of an agreement to sell dated 26.09.2013 regarding Khasra No. 426. The total sale consideration agreed between the parties was Rs. 38,02,000/- out of which Rs. 1,00,000/- was paid as earnest money. In the suit, an alternative prayer for refund of earnest money was also made. The trial court by order dated 13.04.2018, granted an interim injunction restraining the defendants from alienating the property in dispute.

(6) Original Suit No. 86 of 2017 was instituted by petitioner no. 9 against respondent no. 7 regarding Khasra No. 426 on 18.04.2013. The total sale consideration agreed between the parties was Rs. 16,72,000/- out of which Rs. 25,000/- was paid as earnest money. In the suit, an alternative prayer for refund of earnest money was also made.

(7) Original Suit No. 119 of 2017 was instituted by petitioner no. 7 & 8 against one Satyawati, predecessor in interest of respondent no. 1 to 4 for specific performance of an agreement to sell dated 23.08.2013 for 1/4 share in Khasra No. 346 on 20.08.2023. The total sale consideration agreed between the parties was Rs. 18,84,000/- out of which Rs. 1,00,000/- was paid as earnest money. In the suit, an alternative prayer for refund of earnest money was also made.

4. During the pendency of the aforementioned suits, Uttar Pradesh Expressways Industrial Development Authority (herein after referred to as “UP EIDA”) issued a notification under Section 11 of the U.P. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “the Act of 2013”) for acquiring the land in dispute for construction of Ganga Express Way. Notification under Section 19 was issued on 06.07.2022. On 24.08.2022, award was passed. On 27.09.2022, the respondents filed an application before the Additional District Magistrate, Meerut for payment of awarded amount being the recorded tenure holders of the land in dispute. Objections were filed by the petitioners for disbursement of compensation amount. By order dated 10.01.2023, A.D.M., Land Acquisition Meerut, considering the objections of the petitioners that their suits for

specific performance of agreements executed by the respondents are pending regarding the Khasra No. 346 & 426, passed an order that dispute be referred under Section 76 of the Act of 2013. The order dated 10.01.2023 was challenged by the respondents by filing Writ C No. 11901 of 2023. The said writ petition was dismissed and 4th respondent in the said writ petition was directed to refer the matter to the authority for decision under Section 76 of the Act of 2013. Thereafter, A.D.M. Meerut (Finance & Revenue) referred the matter under Section 76 of the Act of 2013 to the Land Acquisition Rehabilitation and Resettlement Authority. Both the parties after receiving notice from the authority filed their objections and evidence. The respondent authority i.e. Land Acquisition and Resettlement Authority Meerut by its judgment and order dated 05.07.2025 allowed the claim of the respondents holding them to be entitled for compensation and rejected the objections filed by the petitioners on the ground that the petitioners had no interest as the petitioners are not the owner of the land in dispute and has further directed for refund of earnest money paid along with interest by the respondents. After payment of earnest money, the respondents will be entitled for remaining compensation amount, hence the present petition

5. Contention of the learned counsel for the petitioners is that the court below has erroneously rejected the claim of the petitioner. The petitioners are holder of agreement to sell in their favour by the respondents, executed much prior to acquisition of land by U.P. EIDA and the suits for specific performance of agreements to sell executed by the respondents are pending before the civil court and in certain suits interim injunction has also been granted in favour of the petitioners/plaintiffs by the civil court restraining the defendants/respondents from alienating the property in dispute as well as directing the parties to maintain status quo. It has been further contended by learned counsel for

the petitioner that the petitioners are the persons interested and their claim has wrongly been rejected by the authority. It has been further contended by learned counsel for the petitioner that agreement to sell created an interest in the land itself in favour of the intending purchaser therefore, the petitioners are the persons interested in the compensation.

6. Per contra, learned counsel for the respondents submitted that mere execution of agreement to sell does not confer any title on the parties. At the best, the petitioners are entitled for specific performance of agreements which were executed by the respondents. It has been further contended by learned counsel for the respondents that since the land now been acquired, no relief of specific performance can be granted in favour of the petitioners. Mere pendency of suits for specific performance of agreements to sell will not confer any right or the same cannot be interpreted that the plaintiff in the aforesaid suit will be a person interested in the compensation amount and claim apportionment of the compensation. It has also been contended by learned counsel for the respondents that till now, the suits are pending and it has not been decided as to whether the plaintiffs in the suit are entitled for decree of specific performance. It is possible that their suit may be dismissed and therefore, the authority has committed nothing wrong in rejecting their claim and directed for refund of earnest money as now their suits cannot be decreed for specific performance because of operation of law as the land has been acquired. It has been further contended that grant of interim injunction, in favour of the plaintiffs, restraining the defendants from alienating the property in dispute or to maintain status quo, is of no avail as the same is not binding on the State in case of compulsory acquisition under the Act of 2013.

7. Before considering the rival submissions it would be appropriate to consider Section 54 of the Transfer of Property Act, 1882 which is quoted as under:

54. "Sale" defined.—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property."

8. An agreement to sell of property and promise to transfer the property convey the same meaning and effect in law. A promise to transfer property is an agreement for sale of property. According to Section 54 of Transfer of Property Act, an agreement to sell does not create any interest in the proposed vendee in the suit property but only creates an enforceable right to the parties. An agreement for sale is not the same as sale and the title to the property agreed to be sold still vests in the vendor in case of an agreement to sell but in the case of sale, title of property vests with the purchaser. An agreement for sale is a executory contract wherein a sale is a executed contract. The question as to whether an agreement to sell creates any right is no more *res-integra* and has been settled by authoritative pronouncement made by this Court as well as Apex Court and various other High Courts.

9. The Supreme Court in case of **Namdeo v. Collector, East Neemar, Khandwa and others** reported in **AIR 1996 SC 975** held in paragraph no. 7 as under:

“7. An agreement of sale does not convey any right, title or interest. It would create only an enforceable right in a court of law and parties could act thereon. The right, title and interest in the land of Devi Prasad stood extinguished only on execution and registration of the sale deed and admittedly it was done in 1974. Therefore, the sale deeds are within the prohibited period.”

10. The Supreme Court in case of **State of U.P. v. District Judge and others** reported in **(1997) 1 SCC 496** held in paragraph no. 7 as under:

“7. Having given our anxious consideration to the rival contentions we find that the High Court with respect had patently erred in taking the view that because of Section 53-A of the Transfer of Property Act the proposed transferees of the land had acquired an interest in the lands which would result in exclusion of these lands from the computation of the holding of the tenure-holder transferor on the appointed day. It is obvious that an Agreement to Sell creates no interest in land. As per Section 54 of the Transfer of Property Act, the property in the land gets conveyed only by registered Sale Deed. It is not in dispute that the lands sought to be covered were having value of more than Rs.100/-. Therefore, unless there was a registered document of sale in favour of the proposed transferee agreement holders, the title of the lands would not get divested from the vendor and would remain in his ownership. There is no dispute on this aspect.”

11. In case of **Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra (dead) through LRS.** reported in **(2004) 8 SCC 614**, the Supreme Court held in paragraph no. 13 as under:

“13. The agreement to sell does not create an interest of the proposed vendee in the suit property. As per Section 54 of the Act, the title in immovable property valued at more than Rs. 100/- can be conveyed only by executing a registered sale deed. Section 54 specifically provides that a contract for sale of immovable property is a contract evidencing the fact that the sale of such property shall take place on the terms settled between the parties, but does not, of itself, create any interest in or charge on such property. It is not disputed before us that the suit land sought to be conveyed is

of the value of more than Rs. 100. Therefore, unless there was a registered document of sale in favour of the Pishorrilal (proposed transferee) the title of the suit land continued to vest in Narayan Bapuji Dhotra (original plaintiff) and remain in his ownership.....”

12. Again in case of **Balwant Vithal Kadam v. Sunil Baburaoi Kadam** reported in **MANU/SC/1525/2017 & AIR 2018 SC 49**, the Supreme Court held in paragraph no. 17 as under:

“17. So far as the plea relating to validity and enforceability of the agreement in question is concerned, it was rightly held by the High Court to which we concur that the agreement in question is not hit by Section 48 of the Maharashtra Co-operative Society Act inasmuch as the agreement to sell in itself does not create any interest in the land nor does it amount to sale under Section 54 of the T.P. Act. It only enables the intending buyer to claim specific performance of such agreement on proving its terms. In other words, there lies a distinction between an agreement to sell, and sale. The latter creates an interest in the land once accomplished as defined under Section 54 of the T.P. Act.”

13. This Court in case of **Babu Lal and others v. Nathi Lal** reported in **2013 (6) ADJ 111 (MANU/UP/0838/2013)**, has held in paragraph no. 16 & 17 as under:

16. However, in my view there is no scope for bringing in way Section 8 of HMG Act in the case in hand inasmuch as "agreement for sale" does not tantamount to transfer of immovable property, subject matter of agreement for sale, to anyone. It does not confer any proprietary rights to the prospective vendee. Thus, apparently, Section 8 would not be attracted for entering into an agreement for sale. The nature of contract for sale has been discussed by the Courts time and again.

17. The agreement for sale or contract for sale, by itself is not an instrument giving effect to sale of immoveable property. The title to property agreed to be sold continued to vests in the vendor, in case of agreement for sale, but in case of sale, title or property vests with purchaser. In other words an agreement for sale is an executory contract whereas sale deed is an executed contract. An agreement for sale does not create an interest in the proposed vendee in the suit property but only creates an enforceable right in parties. An agreement for sale of property, and promise to transfer the property convey the same meaning and effect in law. A

promise to transfer property is an agreement for sale of property."

14. In **Maung Shwe Goh v. Maung Inn, 1917(1) Bom LR 179** the Court considered Section 54 of Transfer of Property Act, 1882 and said that a contract for sale by virtue of Section 54 creates no interest in or charge upon the land.

15. In **Jiwan Das v. Narain Das, AIR 1981 Delhi 291** a Single Judge in para 10 and 11 of the judgment, following Rambaran Prosad (*supra*), said:

"10. the law in India does not recognise any such estate. Section 54 of the Transfer of Property Act in specific terms provides that a contract for sale does not, of itself, create any interest in or charge on such property. Such contract is merely a document creating a right to obtain another document in the form of sale deed to be registered in accordance with law. In other words, a contract for sale is a right created in personam and not in estate, No privity in estate can be deduced there from which can bind estate, as is the position in cases of mortgage, charge or lease. Of course, such personal right created against the vendor to obtain specific performance can ultimately bind any subsequent transferee who obtains transfer of the property with notice of the agreement of sale.

11. Till, therefore, a decree for specific performance is obtained, the vendor or a purchaser from him is entitled to full enjoyment of the property. In fact, even if a decree for specific performance of contract is obtained, and no sale-deed is actually executed, it cannot be said that any interest in the property has passed."

16. In **Sujan Charan Lenka and others v. Smt. Pramila Mumari Mohanty and others, AIR 1986 Ori 74**, the Court in para 7 of judgment, said, that a bare contract for sale of immoveable property does not create any interest in immoveable property.

17. Thus, in my view from the judicial opinion as discussed above and in view of Section 54 of the Transfer of Property Act, an agreement to sell does not create any interest in or charge upon such property which is subject matter of the agreement to sell. The prospective vendee in an agreement to sell only gets a right

to get the agreement specifically enforced for execution of sale deed. In other words, a person having an agreement for sale does not get any right over the property except the right of litigation on that basis. Sometimes, it is also describes that a contract for a sale is merely a document, creating a right to obtain another document. A contract for sale does not, by itself, create any interest in or charge on such property. Such contract is merely a document creating a right to obtain another document in the form of sale deed to be registered in accordance with law. In other words, a contract for sale is a right created in personam and not in estate. No privity in estate can be deduced therefrom which can bind the estate, as is the position in cases of mortgage, charge or lease. Of course, such personal right created against the vendor to obtain specific performance can ultimately bind any subsequent transferee who obtains transfer of the property with notice of the agreement of sale. Till, therefore, a decree for specific performance is obtained, the vendor or a purchaser from him is entitled to full enjoyment of the property. In fact, even if a decree for specific performance of contract is obtained, and no sale-deed is actually executed, it cannot be said that any interest in the property has passed.

18. So far as the contention of the learned counsel for the petitioner that agreement to sell created an equitable interest in the land in favour of the purchaser, is misconceived. The law in India does not recognise equitable estates and the English Rule that the contract makes a purchaser owner in equity of the estate, does not apply in India.

19. In case of **Rambaran Prosad v. Ram Mohit Hazra and others** reported in **AIR 1967 SC 744 & MANU/SC/0212/1966**, the Supreme Court has held in paragraph no. 14 & 15 as under:

“14. In the case of an agreement for sale entered into prior to the passing of the Transfer of Property Act, it was the accepted doctrine in India that the agreement created an

interest in the land itself in favour of the purchaser. For instance, in Fati Chand Sahu v. Lilambar Sing Das (1871) 9 B.L.R. 433 a suit for specific performance of a contract for sale was dismissed on the ground that the agreement, which was held to create an interest in the land, was not registered under s. 17, cl. (2) of the Indian Registration Act of 1866. Following this principle, Markby J. in Tripoota Soonduree v. Juggur Nath Dutt (1875) 24 W.R. 321 expressed the opinion that a covenant for pre-emption contained in a deed of partition, which was unlimited in point of time, was not enforceable in law. The same view was taken by Baker J. in Allibhai Mahomed Akuji v. Dada Allis Isap A.L.R. 1931 Bom. 578 where the option of purchase was contained in a contract entered into before the passing of the Transfer of Property Act. The decision of the Judicial Committee in Maharaj Bahadur Singh v. Bal Chanad 48 I.A. 376 was also a decision relating to a contract of the year 1872. In that case, the proprietor of a hill entered into an agreement with a society of Jains that, if the latter would require a site thereon for the erection of a temple, he and his heirs would grant the site free of cost. The proprietor afterwards alienated the hill. The society, through their representatives, sued the alienees for possession of a site defined by boundaries, alleging notice to the proprietor requiring that site and that they had taken possession, but been dispossessed. It was held by the Judicial Committee that the suit must fail. The Judicial Committee was of the opinion that the agreement conferred on the society no present estate or interest in the site, and was unenforceable as a covenant, since it did not run with the land, and infringed the rule against perpetuity. Lord Buckmaster who pronounced the opinion of the Judicial Committee observed as follows:

"Further, if the case be regarded in another light-namely, an agreement to grant 'in the future whatever land might be selected as a site for a temple-as the only interest created would be one to take effect by entry at a later date, and as this date is uncertain, the provision is obviously bad as offending the rule against perpetuities, for the interest would not then vest in present, but would vest at the expiration of an indefinite time which might extend beyond the expiration of the proper period."

15. But there has been a change in the legal position in India since the passing of the Transfer of Property Act. Section 54 of the Act states that a contract for sale of immovable property "does not, of itself, create any interest in or charge on such property"

20. It is thus, evident that law as it stand, is very clear that contract for sale would not make the intending purchaser/vendee to be owner even in equity of estate so long as a sale deed is not executed and registered. Mere execution of a contract for sale by itself would not create any right or interest in the property.

21. Learned counsel for the petitioner submitted that in view of Section 21 of the Specific Relief Act in a suit for specific performance of contract, the plaintiff can also claim compensation for the breach of contract. It has been further contended by learned counsel for the petitioner that in case, any suit filed for specific performance of an agreement for sale, the court comes to a conclusion that specific performance of an agreement cannot be granted but there is a contract between the parties which has been broken by the parties in such case, the petitioner entitled for the compensation for breach and can always be awarded compensation/damages for the breach, if any.

22. Section 21 of the Specific Relief Act is quoted as under:

“21. Power to award compensation in certain cases.—(1)In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance

(2)If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3)If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation 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 compensation."

23. Learned counsel for the petitioner relied upon the judgment of the Apex Court in case of **Jagdish Singh v. Natthu Singh** reported in **(1992) 1 SCC 647**, wherein the Apex Court after considering the provisions of Section 21 of the Specific Relief Act upheld the directions given by the High Court in a second appeal, arising from a suit for specific performance, granting damages to the plaintiff after holding that the plaintiff was ready and willing to perform the contract and the defendant was liable for breach of contract. The Supreme Court held that any suit for specific performance compensation can be awarded where contract became incapable of specific performance without any fault of the plaintiff. Paragraph no. 12, 14, 15, 16, 17, 24, 27, 29 & 30 of the judgment in case of **Jagdish Singh v. Natthu Singh (Supra)** are quoted as under:

"12. As to the relief available to a plaintiff where the subject matter was acquired during the pendency of a suit for specific-performance the High Court said:

"...The learned counsel for the respondent has vehemently urged that after the land has been acquired its corpus has ceased to exist and no decree for specific performance can now be granted. In my opinion with the acquisition of the land plaintiffs rights do not get extinguished in totality. The appellate court always suitably mould the relief which the circumstances of the case may require or permit. The power in this regard is ample and wide enough..."

However, in the present case the property has not been totally lost. What happens in the case of the acquisition is that for the property compensation payable in lieu thereof is substituted...”

14. We are afraid the approach of the High Court is perhaps somewhat an over-simplification of an otherwise difficult area of law as to the nature of relief available to a plaintiff where the contract becomes impossible of specific performance and where there is no alternative prayer for compensation in lieu or substitution of specific performance. While the solution that has commended itself to the High Court might appear essentially just or equitable, there are certain problems both of procedure and of substance in the administration of the law of specific relief particularly in the area of award of an alternative relief in lieu or substitute of specific performance that require and compel consideration, especially in view of some pronouncements of the High Courts which have not perceived with precision, the nice distinctions between this branch of the law as administered in England and in India.

15. Section 21 of the Specific Relief Act, 1963 corresponding to Section 19 of 1877 Act enables the plaintiff in a suit for specific performance also to claim compensation for its breach either in addition to or in substitution of, such performance. Sub-sections (2), (4) and (5) of Section 21 are material and they provide:

"21. (2) If, in any such suit, the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the Court shall be guided by the principles specified in Section 73 of the Indian Contract Act, 1872, of 1872.

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation 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 compensation. Explanation-The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section."

(emphasis added)

16. So far as the proviso to sub-section (5) is concerned, two positions must be kept clearly distinguished. If the amendment relates to the relief of compensation in lieu of or in addition to specific performance where the plaintiff has not abandoned his relief of specific-performance the court will allow the amendment at any stage of the proceeding. That is a claim for compensation failing under Section 21 of the Specific Relief Act, 1963 and the amendment is one under the proviso to sub-section (5). But different and less liberal standards apply if what is sought by the amendment is the Conversion of a suit for specific performance into one for damages for breach of contract in which case Section 73 of the Contract Act is invoked. This amendment is under the discipline of Rule 17 Order 6, C.P.C. The fact that sub-section (4), in turn, invokes Section 73 of the Indian Contract Act for the principles of quantification and assessment of compensation does not obliterate this distinction.

17. The provisions of Section 21 seem to resolve certain divergencies of judicial opinion in the High Courts on some aspects of the jurisdiction to award of compensation. Sub-section (5) seeks to set at rest the divergence of judicial opinion between High Courts whether a specific claim in the plaint is necessary to grant the compensation. In England Lord Cairn's (Chancery Amendment) Act, 1858 sought to confer jurisdiction upon the Equity Courts to award damages in substitution or in addition to specific performance. This became necessary in view of the earlier dichotomy in the jurisdiction between common law and Equity Courts in the matter of choice of the nature of remedies for breach. In common law the remedy for breach of a contract was damages. The Equity Court innovated the remedy of specific performance because the remedy of damages was found to be an inadequate remedy. Lord Cairn's Act, 1858 conferred jurisdiction upon the Equity Courts to award damages also so that both the reliefs could be administered by one court. Section 2 of the Act provided:

"2. ... In all cases in which the Court of Chancery has jurisdiction to entertain an

application for specific performance of any covenant, contract or agreement it shall be lawful for the same Court if it shall think fit to award damages to the party injured either in addition to or in substitution for such specific performance and such damages may be assessed as the Court shall direct."

24. *When the plaintiff by his option has made specific performance impossible, Section 21 does not entitle him to seek damages. That position is common to both Section 2 of Lord Cairn's Act, 1858 and Section 21 of the Specific Relief Act, 1963. But in Indian Law where the contract, for no fault of the plaintiff, becomes impossible of performance section 21 enables award of compensation in lieu and substitution of specific performance.*

27. *The measure of the compensation is by the standards of Section 73 of the Indian Contract. Here again the English Rule in Bain v. Fothergill, (1874) L.R. 7 House of Lords 158 that the purchaser, on breach of the contract, cannot recover, for the loss of his bargain is not applicable. In Pollock & Mulla on Contract (10th Edn.) the law on the matter is set out thus :*

"Where, therefore, a purchaser of land claims damages for the loss of his bargain, the question to be decided is whether the damages alleged to have been caused to him 'naturally arose in the Usual course of things from such breach'; and in an ordinary case it would be difficult to hold otherwise."

29. *In the present case there is no difficulty in assessing the quantum of the compensation. That is ascertainable with reference to the determination of the market value in the land acquisition proceedings. The compensation awarded may safely be taken to be the measure of damages subject, of course, to the deduction therefrom of money value of the services, time and energy expended by the appellant in pursuing the claims of compensation and the expenditure incurred by him in the litigation culminating in the award.*

30. *We accordingly confirm the finding of the High Court that Respondent was willing and ready to perform the contract and that it was the Appellant who was in breach. However, in substitution of the decree for specific performance, we make a decree for compensation, equivalent to the amount of the land acquisition compensation awarded for the suit lands together with solatium and accrued interest, less a sum of Rs.1,50,000 (one lakh fifty thousand only) which, by a rough and ready*

estimate, we quantify as the amount to be paid to the appellant in respect of his services, time and money expended in pursuing the legal-claims for compensation.”

24. Learned counsel for the petitioner relied upon the judgment in case of **Urmila Devi and others v. Deity, Mandir Shree Chamunda Devi and others** reported in **(2018) 2 SCC 284**, wherein the Apex Court relying upon the judgment of the Apex Court in case of Jagdish Singh (Supra) considered the question as to what relief plaintiff/petitioner was entitled in the event of decree for specific performance was required to be modified by an alternate decree. Paragraph no. 9, 12, 15 & 16 of the judgment in case of Urmila Devi (Supra) are quoted as under:

“9. From the facts and material on record, it is undisputed that agreement to sell was executed by defendant Nos.1 to 5 in favour of the plaintiff and entire sale consideration of Rs.90,000/- was received and possession was delivered in the year 1989 itself. Plaintiff constructed three shops on the suit land. Plaintiff's case that to defeat the rights of the plaintiff a gift deed dated 08.07.1991 was executed by defendant Nos.1 to 5 in favour of defendant No.6 has been accepted by courts below which have declared the gift deed as null and void. The decree for specific performance was granted by the trial court, it was confirmed by the First Appellate Court. The suit land was acquired and compensation was determined in favour of defendant No.6 whose name was recorded in the Revenue records. No objection can be taken to the view of the High Court that consequent of the acquisition of suit land under the land acquisition proceedings decree of specific performance granted in favour of plaintiff could not have been maintained.

12. This Court had occasion to consider Section 21 of the Specific Relief Act in context of a case which arose almost on similar facts in Jagdish Singh vs. Nathu Singh, 1992 (1) SCC 647. In the above case also suit was filed for specific performance on the basis of a contract to sell dated July 3, 1973, the suit was dismissed by the trial court as well as First Appellate Court. However, the High Court in second appeal reversed the finding of the courts below and held that plaintiff was ready and willing to perform the contract and was entitled for decree. In the above case also during the pendency of the second appeal before the High Court, proceedings for compulsory acquisition of the land was initiated and the land was acquired. Question arose as to

whether plaintiff was entitled for the amount of compensation received in the land acquisition proceedings or was entitled only to the refund of the earnest money. The High Court in the above case has modified the decree of the specific performance of the contract with decree for a realisation of compensation payable in lieu of acquisition. In paragraph 13 of the judgment the directions of the High Court were extracted which is to the following effect:

“13. The High Court issued these consequential directions:

“If the decree for specific performance of contract in question is found incapable of being executed due to acquisition of subject land, the decree shall stand suitably substituted by a decree for realisation of compensation payable in lieu thereof as may be or have been determined under the relevant Act and the plaintiff shall have a right to recover such compensation together with solatium and interest due thereon. The plaintiff shall have a right to recover it from the defendant if the defendant has already realised these amounts and in that event the defendant shall be further liable to pay interest at the rate of 12 per cent from the date of realisation by him to the date of payment on the entire amount realised in respect of the disputed land.”

15. From materials brought on record, it does appear compensation was determined in favour of defendant No.6 to the extent of amount of Rs.10,03,743/-. It also appears that compensation towards shops was also determined. The name of defendant No.6 being recorded in the Revenue records, compensation was determined in its favour. In view of the judgment and decree of courts below whereby the gift deed dated 08.07.1991 has been declared void, defendant No.6 is left with no right in the suit land and is clearly not entitled to receive any amount consequent to the acquisition of the suit land. It has not come on the record as to whether compensation consequent to the acquisition of the suit land has been received by defendant No.6(respondent No.1 to the appeal) or not.

16. Taking into consideration overall facts of the present case, we are of the view that ends of justice be served in awarding compensation of Rs.10 lakh in favour of the plaintiffappellants out of the compensation received consequent to the acquisition of the suit land. The rest of the compensation, if any, received towards land and shops in question has to be paid to the land owner that is defendant Nos.1 to 5 (respondent Nos.2 to 6 to this appeal) after deducting an amount of Rs.10 lakh out of the said compensation. We further direct in event compensation has not yet been disbursed, the compensation be disbursed to the appellants (legal heirs of the plaintiff) and respondent Nos.2

to 6 in the above manner and in the event the compensation has been received by defendant No.6 (respondent No.1), respondent No.1 shall return the compensation to the extent of Rs.10 lakh to the appellants and the rest of the amount to defendant Nos.1 to 5 (respondent Nos.2 to 6). The judgment and decree of the High Court dated 02.11.2012 is modified to the above extent.”

25. Learned counsel for the petitioner relied upon the judgment in case of **Sukhbir v. Ajit Singh** reported in **(2021) 6 SCC 54**, relying upon earlier judgments in case of Jagdish Singh (supra) & Urmila Devi and others (supra) and held in paragraph no. 10, 11, 12 & 13 as under:

“10. Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case in hand, it cannot be said that the High Court has committed any error in modifying the decree for specific performance. As rightly held by the High Court, as such, the plaintiff will be deemed to be in the shoes of the defendant and therefore shall be entitled to the amount of compensation, determined and awarded under the provisions of the Land Acquisition Act.

11. Now so far as the submission on behalf of the appellant that as compensation has not been specifically prayed by the plaintiff in the suit, the plaintiff shall not be entitled to any amount of compensation even considering Section 21 of the Specific Relief Act. The aforesaid has no substance. The decree for compensation is passed as an alternate decree and in lieu of the decree for specific performance.

12. Now so far as the amount of compensation is concerned, as observed by this Court in the case of Jagdish Singh (supra), the compensation determined and awarded under the Land Acquisition Act may safely be taken into consideration. Therefore, the High Court has rightly observed and held that the plaintiff shall be entitled to the entire amount of compensation awarded under the Land Acquisition Act together with interest and solatium. However, at the same time, the defendant – original land owner shall also be entitled to the deduction therefrom of money value of the services, time and energy expended in pursuing the claims of compensation and the expenditure incurred by him in the litigation culminating in the award. As such, nothing is on record to suggest that any expenses have been incurred by the appellant. However, in the facts and circumstances of the case and considering the decisions of this Court in the cases of Jagdish Singh (supra) and Urmila Devi (supra), ends of justice will be served if the

plaintiff is awarded the entire amount of compensation determined under the Land Acquisition Act together with interest and solatium less Rs. 2,50,000/- + Rs.50,000/- (towards the balance sale consideration).

13. In view of the above and for the reasons stated above, the present appeal is disposed of by modifying the impugned judgment and order passed by the High Court to the extent directing and holding that the plaintiff – respondent herein shall be entitled to recover the entire amount of compensation along with solatium and interest awarded under the provisions of the Land Acquisition Act, which is reported to be lying/deposited with the acquiring body with respect to the land in question minus Rs. 3,00,000/- (Rs. 2,50,000/- towards the expenses which might have been incurred in pursuing the claims of compensation and the expenditure incurred by him in the litigation culminating in the award + Rs. 50,000/- towards balance sale consideration). Therefore, the appellant – defendant shall be entitled to Rs. 3,00,000/- from the amount of compensation deposited with the acquiring body and the balance amount of compensation together with interest and solatium to be paid to the original plaintiff.”

26. I have perused the judgments relied upon by learned counsel for the petitioner. There is no dispute as to the law as laid down by the Apex Court that in a suit for specific performance of an agreement to sell, in case, a relief of specific performance cannot be granted for no fault of the defendant (for example where the land is subject matter of the agreement, is acquired during the pendency of the suit), relief can be moulded and compensation can be awarded to the plaintiff and the compensation to be awarded to the plaintiff would be the compensation which was to be paid to the defendant in the acquisition proceedings after adjusting the balance of sale consideration and the amount which has been incurred by the defendant in acquisition proceedings. Before granting alternative relief of damages in a suit for specific performance, a finding has to be recorded that the breach of agreement was not on the part of plaintiff and was on the part of defendant and that the petitioner is entitled for specific relief but for no fault of petitioner, the same cannot be granted.

27. In cases relied upon by the plaintiff/petitioner, such relief was granted and can be granted only in a suit for specific performance of an agreement to sell after recording a finding that the plaintiff was entitled for decree of specific performance but because of acquisition of the land during the pendency of the suit, such relief could not be granted to the plaintiff and in alternate, the damages can be awarded by the court while deciding the suit. In all the cases, referred above by the learned counsel for the petitioner, relief was granted to the plaintiff in proceedings arising out of suit of specific performance of contract. There is no dispute to the proposition that such a relief can be granted in a suit for specific performance of contract.

28. Learned counsel for the respondent has rightly contended that though such relief can be granted in a suit for specific performance but the same cannot be granted while considering an application under Section 76 of the Act of 2013. Learned counsel for the respondent further contended that no such relief can be granted under Section 76 of the Act of 2013 as the scope of enquiry is very limited. The authority while exercising the power under Section 76 of the Act of 2013 has to consider the rival claim of the parties on the basis of right which has accrued to the either of the parties and not on the basis of a right which is yet not decided by a competent court of law. It has also been contended by learned counsel for the respondent that right to claim compensation in a suit for specific performance of an agreement is dependent on various factors such as that the fault was on the part of the defendant i.e. executor of the agreement and not on the part of the plaintiff. In case, such findings are recorded by the court while deciding the suit for specific performance and after holding the plaintiff to be entitled for a decree for specific performance, relief can be moulded by the court while deciding the suit, if it comes to the conclusion that though the plaintiff is entitled for a decree for specific

performance but for a intervening circumstance, such as compulsory acquisition of land which was subject matter of the suit, by the State, for no fault of the plaintiff, the said relief cannot be granted. It has been pointed out by the learned counsel for the respondent that all the cases relied upon by the learned counsel for the petitioners, wherein the principle of grant of damages in lieu of decree for specific performance of contract, the orders were passed in proceedings arising out of suit for specific performance and not in proceedings under Section 76 of the Act of 2013 or under Section 30 of the Land Acquisition Act, 1894. There is no dispute to the proposition that damages can be awarded in a suit for specific performance. In case, an agreement is not capable of specifically enforcing for no fault of the plaintiff. But said relief cannot be granted in a proceedings under Section 76 of the Act of 2013 while deciding the claim of apportionment of the compensation between the rival claimants.

29. Word apportionment frequently denotes the distribution and not division and in its ordinary technical sense, the distribution of one subject in proportion to another. To apportion means to assign a proper portion. The action of apportioning means, the division of rights or liabilities among several persons entitled or liable in accordance with their respective interest. The acquisition transforms the property into a certain sum of money, but the right of the parties relatively to this sum ought to be the same and they were with reference to the properties.

30. The scope of enquiry under Section 76 of the Act of 2013, is to decide the apportionment on the basis of existing rights of the parties and not upon the rights which might accrue to the person in later point of time such as after the decree in a suit for specific performance. The damages can be awarded in a suit for specific performance only in case, the plaintiff succeeds in proving his case but not otherwise.

31. Learned counsel for the respondent relied upon the judgment of Supreme Court in case of **Ramesh Chand and others v. Tanmay Developers Pvt. Ltd.** reported in **(2017) 13 SCC 715**. In case of Ramesh Chandra (Supra) certain agreements to sell were executed. The land owners on failure of purchaser to get the sale deed executed forfeited earnest money. Suits for recovery of earnest money were filed and one suit was filed for specific performance of agreement to sell by the intending buyer. No reference under Section 18 of the Land Acquisition Act was sought by the prospective buyers and during the pendency of the suit already filed for return for earnest money, an application under Section 30 was filed for recovery of earnest money. The reference court rejected the reference. The order of the reference court was challenged and allowed and directed that the earnest money be refunded.
32. The Supreme Court in the said circumstances, held that there are serious disputed question of fact such as, whether earnest money was rightly forfeited by the land owners due to failure of the agreement holder to obtain sale deed executed within a specified time fixed under the agreement where the respondents were ready and willing to purchase the property and had arrangement of consideration for payment to the land owners. Relevant paragraph no. 8 & 9 of the judgment in case of Ramesh Chand and others (supra) are quoted as under:

“8. 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.

9. 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.”

33. The Supreme Court in case of **Ram Chander Darak v. Ganeshdas Rathi and others** reported in **AIR 1984 SC 42 (MANU/SC/0300/1983)** rejected the claim of apportionment of compensation in respect of property acquired, in his capacity as the reversioner of the last male owner on the ground that in the life time of the widow, the reversioner cannot claim any title in presenti to the property which was subject matter of the acquisition and consequently he is not entitled to receive compensation in life time of the widow and therefore, could not have asked for apportionment of the compensation in his favour.
34. Apportionment presupposes an existing right in a person regarding the land. Apportionment cannot be claimed only on the basis of a right which may accrue to the person claiming apportionment in future. Since, an agreement to sell only enables the intending buyer to claim specific performance of an agreement on proving its terms. No right can be said to be in existence during the pendency of the suit unless the holder of an agreement is able to prove his case and is found entitled for a decree of specific performance in a suit filed by him. Further law as in India does not recognise any equitable estate in favour of the intending purchaser on the basis of an agreement to sell. Section 54 of the Transfer of Property Act in specific terms provides that a contract for sale does not, of itself, create any interest in or charge on the property, covered by the estate such an agreement/contract is merely a document creating a right to obtain another document in the form of a sale deed to be registered in accordance with law. In other words, a contract for sale is a right created in personam and not in estate. No privity in estate can be deduced there from which can bind estate. In

fact, even if, a decree for specific performance of contract is obtained and no sale deed is actually executed, it cannot be said that any interest in the property has passed. Admittedly, in the present case, the value in the property involved is more than hundred crores, and therefore, there cannot be any transfer of interest in favour of the intending buyer merely on the basis of an agreement to sell. In the facts of the present case, since the suits for specific performance of agreements to sell, are already pending, therefore, there was no occasion for the reference court to consider the entitlement of the petitioners on the basis of agreements to sell executed in their favour. The rights of the parties will be dependent on the outcome of the pending suits.

35. Learned counsel for the petitioner lastly submitted that disbursement of compensation should be stayed and the amount may be directed to be deposit in a fixed deposit till disposal of the suit filed by the petitioners. It has further been submitted by learned counsel for the petitioner that in case, petitioner succeeds in the suits filed by the petitioners, for specific performance of agreements which are pending till date and a decree for damages is passed against the respondents, if the money is not deposited, there is likelihood that the respondents in order to frustrate the decree passed against them may dispose of the compensation amount. The contention of the learned counsel for the petitioner is misconceived. In case, the petitioners succeed in the suits filed by the petitioners, and are able to obtain a decree for damages, the same will be the money decree capable of being executed. At present, it cannot be said that how much time will be consumed in deciding the suits filed by the petitioners and in case, the money is directed to be deposited in fixed deposit and be not paid to the recorded owner of the property, may cause prejudice to the recorded owner who is otherwise entitled for the same. Further, in case, the petitioners fail and their suits are dismissed, irreparable loss will

be caused to the respondents as they will be entitled only for the bank interest, in case, the money is directed to be deposited which otherwise can be used by them at present. In case, the petitioners succeed, the decree will be a money decree which is capable of being executed. There is no likelihood of any irreparable injury to the petitioners.

36. In view of the discussion made above, I am of the view that no illegality has been committed by the Land Acquisition Rehabilitation and Resettlement Authority, Meerut, in passing the order impugned.

37. Accordingly, this petition is **dismissed**.

(Manish Kumar Nigam, J.)

September 15, 2025

Ved Prakash