

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RFA No.29 of 2015 (O&M)
Date of decision : 10.02.2015

Shri Prem Properties Pvt. Ltd.

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R. Kartikeya, Advocate
for the appellant.

Mr. Abhinash Jain, AAG, Haryana
for respondent Nos.1 & 2.

AMIT RAWAL, J. (Oral)

The controversy arose between the appellant and respondent No.3 on account of apportionment of the compensation determined by the Land Acquisition Collector in pursuance to the acquired land measuring 114.31 acres situated within the revenue estate of Village Choma, Tehsil & District Gurgaon. Notification under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter to be referred as the 'Act') was issued on 25.01.2008 and 18.03.2008, respectively, and agreement to sell dated 14.05.1996 was entered into between the appellant and respondent No.3.

As per the averments made in the petition, respondent No.3 is stated to have executed following documents:-

1. Will
2. General Power of Attorney.

Before any legal action could be taken by the parties as stated above, the notification under Section 4 of the Act was promulgated. The Land Acquisition Collector pronounced the award, vide Award No.66 dated 23.12.2009, and determined the compensation at the rate of ₹60 lacs per acre. Since the appellant is alleged to have paid a sum of ₹1,11,300/- as earnest money in lieu of the agreement to sell and respondent No.3 had also executed a General Power of Attorney, much less, Will, though the appellant being “interested person” filed a petition under Section 30 of the Act for refund of the earnest money, the Reference Court, on the basis of the evidence, brought on record dismissed the petition filed under Section 30 of the Act and held as under:-

“Keeping in view the arguments advanced by learned counsel for the parties and perusing the record of the case carefully, it came into the notice that the present petitioner has filed the present petition under Sections 18 & 30 of the Land Acquisition Act. The petitioner has alleged that he is the owner in possession of the land comprised in Rect. No.50, killa No.11/2 (0-3-7) measuring 0 kanal 3 marlas 7 Sarsai situated in the revenue estate of Village Choma, Tehsil and District Gurgaon on the basis of agreement to sell dated 14.5.1996. The statement No.19 filed by the LAC speaks that the petitioner is not the owner of the land, whereas the respondent No.3 Ravi is owner in possession of the land acquired in view of the statement No.19 of the LA Act. Agreement Ex.R1 and GPA Ex.R2 no where proved by any of the executant of the said documents. Therefore, in the said circumstances these documents cannot be treated as proved on record. Moreover, agreement confer no title. The counsel for the petitioner has argued that the

*agreement to sell creates right in favour of the person who purchased the land in view of the law settled in **2004(1) RCR (Civil) 120, Harbhajan Vs. Ruppia and another and 2002(1) ICC page 44 Executive Director, Mr. G. Devandanam Property Association of Baptist Church Pvt. Ltd. Nellore Vs. LAO and Revenue Divisional Officer, Markapur.** The authorities speak that the earnest money taken in view of agreement was satisfied from the claim amount of compensation, while the facts of the present case are quite different which is under Sections 18 and 30 of the Land Acquisition Act. At the time of arguments, the counsel for the petitioner also relied upon the law settled in **FGP Limited Vs. Saleh Hooseini Doctor and anr. 2010(1) Apex Court Judgments 143 (SC) and Huvappa Irappa Ballari Vs. Basava and anr. cited as 2005(12) SCC page 164**, but the said law nowhere touch the bone contention of the instant petition. However, the same are in connection with the part performance in view of the provision of Section 53-A of the Transfer of Property Act and the other is in connection with the retaining of possession on the basis of agreement. As discussed above, no document of any kind mentioned above was properly proved and agreement confer no title and interest in the immoveable property. Therefore, in the said circumstances when the ownership and the interest has not been properly proved with regard to the land in question, no doubt in the said circumstances the petitioner has no right to raise the claim under Sections 18 and 30 of the Act. In this regard, this Court also finds support from the case law settled in **Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana and anr. AIR 2012 Supreme Court 206**. Therefore, in the said circumstances, the petitioner is not the owner and interested person of the land in question acquired by respondents No.1 & 2 as mentioned in statement No.19 of*

the LA Act. Therefore, in the said circumstances, the petitioner is not entitled to get the compensation, nor entitled to enhance the compensation nor entitled to apportion of any compensation in view of the provisions contained in Sections 18 and 30 of the Act. Moreover, the respondent No.3 did not appear before the court and was proceeded against exparte, nor raised any kind of counter claim with regard to enhancement of compensation in view of the provisions contained in Section 18 of the Act, therefore, no compensation of any kind could be enhanced in his favour. Accordingly, this issue is decided against the petitioner.”

Learned counsel appearing on behalf of the appellant submitted that appellant would be an “interested person’ as per the provision under Section 3(b) of the Act and, therefore, he is entitled to refund of the earnest money along with reasonable amount of interest. In support of his contention, he has relied upon following cases:-

- a) **Harbhajan Versus Ruppa and another**, 2004 (1) RCR (Civil) 120;
- b) **Baldev Singh Versus Keshwa Nand and others**, 2011 (1) RCR (Civil) 911; and
- c) **Netra Pal Versus Smt. V.S.K.D. Smith and others**, Vol. CLXVI-(2012-2) Punjab Law Reporter 45.

Respondent No.3 did not contest the petition filed under Section 30 of the Act. The averments made in the pleadings as well as statement made in the shape of examination-in-chief are deemed to be admitted.

It was the duty of the Reference Court to determine the claim of the appellant in view of the fact that appellant falls under the category of “person interested”. Since agreement to sell, General Power of Attorney and Will have not been disputed by respondent No.3, respondent No.3 did not have transferable right and he could not perform his part of the agreement. In view of the fact that there is no transferable right in favour of the respondent No.3, this Court is left with no other option but to direct the respondent No.3 to refund the earnest money of ₹1,11,300/- along with interest @ 7.5% p.a. within four months from the date of payment till the passing of this order, failing which the appellant would be entitled to interest @ 12%.p.a.

Since amount of compensation has been deposited in the Court, the charge of equal amount of earnest money along with interest @ 7.5% p.a. is created on the said amount till the respondent No.3-land owner or his agent or any assignee/nominee clears the liability, much less, refund the earnest money as ordered and the charge would be lifted, the moment landowner discharge the liability.

It is further made clear that if the land owner had already withdrawn the amount of compensation, then the appellant shall be entitled to seek the execution of this order in accordance with law.

The present appeal is allowed and the impugned award of the Reference Court is hereby set aside. Decree-sheet be prepared accordingly.

10.02.2015

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**(AMIT RAWAL)
JUDGE**