IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FORM ORDER NO. 587 OF 2022
WITH
INTERIM APPLICATION NO. 3494 OF 2022
IN
APPEAL FORM ORDER NO. 587 OF 2022

Vikas Bhaskar Vartak Thr. C. A. Nilesh Ravindra Mhatre ...Appellant

Versus

Competent Authority and Sub-Divisional Officer & Ors. ...Respondents

...

Mr. R. S. Apte. Sr. Advocate i/b A. R. Gole for the Appellant.
Mr. Mayur Khandeparkar a/w Mr. Yogesh Rawool a/w Ms. Pravada Raut i/b Shailesh Redekar and Mr. Himalay Chandhari, for the Respondent Nos. 2 to 6.
Ms. Tanaya Goswami AGP/State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 22th JUNE, 2022.

P.C.

1. Heard finally at the stage of admission.

2. The Appellant herein has assailed order dated 6.5.2022 whereby the learned Civil Judge, Senior Division, Vasai, dismissed Application at exhibit 5 filed in Special Civil Suit No. 36 of 2022.

3. The Appellant is the Plaintiff and the Respondents are the Defendants in the Suit and they shall be referred to as per their array in the Suit. The Plaintiff has filed a suit for specific performance, with an application for interim relief at Exhibit-5, seeking to restrain Defendant No.1 from disbursing compensation of Rs.5,85,78,467/- and to restrain the other Defendants from creating third party rights in respect of the property under Survey No.33 Hissa No.4, 5 and 9 and Survey No.15, Hissa No.2 and 5, which shall be hereinafter referred to as 'the suit properties'.

4. It is the case of the Plaintiff that one Narayan Laghu Patil was the owner of Survey No.12 Sub Division 1, 5 and 8, Survey No.13 Sub Division 4, 5, 6, 8, and 9 and Survey No.15 Sub Division 2 and 5, more particularly described in para 3 of the plaint and referred to as the 'entire suit properties'.

5. The properties under Survey No.12 Sub Division 1, 5 and 8, Survey No.13 Sub Division 4(part), 5(part), 6, 8 and 9(part) described in para 4 of the plaint and referred to as the 'acquired properties' were acquired by the Defendant No.1 for the purpose of the project of Mumbai Baroda National Highway. The remaining properties, excluding acquired properties, which are surveyed under Survey

No.13 Sub Division 4(part), 5(part), 9 and Survey No.15 Sub Division 2 and 5, are referred to as the suit properties.

6. Said Narayan Laghu Patil died on 12.9.1990. Dattu Narayan Patil, son of Narayn Patil had predeceased him. The Defendant Nos.4 to 6 are the heirs of Dattu Narayan Patil whereas Defendant Nos.2, 3 and 7 are the heirs of Narayan Patil.

7. It is the case of the Plaintiff that sometime in the year 2012, Harishchandra Naryan Patil, the eldest son of Narayan Patil orally agreed to sell to the Plaintiff his ¼ share in the entire property for sale consideration of Rs.70,00,000/-. The Plaintiff claims that he had paid to the Defendant No.2 Harishchandra Patil a sum of Rs.11,53,000/- from 2012 to 2013 towards part sale consideration. Since the entire suit properties were Class-VI lands, it was necessary to obtain sale permission from the competent authority and accordingly the Plaintiff submitted an Application dated 12.3.2013 before the Tahsildar, seeking sale permission of land under Survey No. 13/4. The Tahsildar, after conducting necessary enquiry passed an order dated 05.04.2013, thereby converting the classification of the land from Class VI to Class I with further direction to deposit nazrana/ unearned income. Accordingly, Plaintiff deposited Rs.2,46,500/- towards nazrana/

unearned income as a condition precedent for grant of sale permission.

8. The Plaintiff claims that the Defendant No. 2 had represented to him that the Defendant No. 3 to 6 were also ready and willing to sell their 2/4th share in the entire suit property. Accordingly, by two separate agreements for sale, both dated 15.09.2016, Defendant Nos. 3, 4 and 6 agreed to transfer, assign and convey their respective shares in the entire suit properties in favor of the Plaintiffs for sale consideration of Rs.1,07,55,000/-. The Plaintiff paid Rs. 5,01,000/- to Defendant No. 3 and an amount of Rs. 5,01,000/- to Defendant Nos. 4 to 6 and balance amount of Rs.58,47,000/- and Rs.1,02,54,000/- was to be paid upon execution and registration of the sale deed.

9. On 08/03/2017 the Plaintiff submitted an Application for sale permission in respect of the entire land. While the said Application was being processed, Notification dated 01/03/2018 for acquisition of the land came to be issued. The Defendant Nos.2 to 6 claimed right to receive the entire compensation on the basis of the entries in the revenue records. The Plaintiff submitted his objection and claimed the entire amount of compensation. Notices for disbursement of compensation of Rs. 7,81,04,623/- were issued under Sections 3(H)

and 3(E) of the National Highway Act. Apprehending that the Defendant No.1 would disburse the amount, the Plaintiff filed Regular Civil Suit No. 27 of 2020 seeking to restrain Defendant No.1 from disbursing the compensation with further directions to deposit the compensation in the Court.

10. The Defendant Nos. 2 to 6 denied execution of agreement in favour of the Plaintiff. The plaintiff therefore filed Writ Petition No. 96316 of 2020 before this Court. By order dated 25.11.2020 this Court directed Defendant No.1 to decide the objections raised by the Plaintiff. The said objections came to be rejected on 18.02.2021. Aggrieved by which another writ petition came to be filed seeking to restrain Defendant No.1 from disbursing the compensation. The said petition was disposed of with permission to the Plaintiff to file a Suit to get his rights adjudicated from the competent civil court. It was under these circumstances, that the plaintiff filed the Suit seeking declaration that oral agreement between the Plaintiff and Defendant Nos. 2 to 6 were valid, subsisting and binding upon all the defendants and for specific performance of the said agreement. The plaintiff also sought partition of the property by meets and bounds and claimed damages of Rs. 5,85,78,467/-. Since the specific performance in respect of the land

which was acquired has become impossible he sought direction in this regard against Defendant No. 1. The plaintiff also filed an application at Exh.5 seeking to restrain to Defendant No. 1 from disbursing the compensation of Rs. 5,85,78,467/- and to restrain other defendants from creating third party right in respect of suit property.

11. Learned Judge dismissed the application at Exh.5 mainly on the ground that the plaintiff had failed to prove oral agreement with Defendant No.2. Learned Judge held that the application for sale permission was only in respect of one property i.e. Survey No.13/4 and that this fact prima facie falsifies the case of the Plaintiff that the Defendant No.2 has agreed to sell his share in respect of the entire suit properties. Learned Judge further held that the statements recorded by the Talathi do not bear seal or signature and prima facie appear to be doubtful. The learned Judge further held that though the bank entries show that some amount was credited in the account of Defendant No. 2, the said credit entries do not tally with the amount allegedly paid by the Plaintiff towards part sale consideration. Learned Judge took note of the defence that the money received was relating to vertical farming project. Learned Judge further held that in the absence of any written agreement it cannot be prima facie inferred

that the said amount was towards the sale consideration as per the oral agreement with Defendant No. 2. The learned Judge also held that the execution of the other written agreement is suspicious. The learned Judge further held that the written agreements with Defendant Nos.2 to 6 are not registered. The said agreements state that Rs.4,51,000/- was paid in cash and Rs.50,000/- was paid in cheque. Learned Judge has doubted payment of an amount of Rs.4,51,000/- in cash. Learned Judge held that the Plaintiff has failed to prove prima facie case. Learned Judge held that the property was acquired before filing of the suit. The subject matter of the alleged agreement has become incapable of specific performance and in such circumstances, the Plaintiff, at the most, would be entitled for compensation under Section 21 of Specific Relief Act.

12. Shri Apte, learned Senior Counsel for the plaintiff submits that the material on record prima facie reveals that the plaintiff had entered into an agreement with Defendant No.2 in respect of his $1/4^{th}$ share for sale consideration of 70,00,000/- out of which he had paid to the Defendant No.2 total sale consideration of Rs. 11,53,000/-. The learned Senior Counsel further submits that the records also indicate that, acting upon the said agreement the plaintiff had applied for sale

permission before Tahsildar. He further submits that agreement for sale dated 15/09/2016 also prima facie reveals that the Defendant Nos. 3 to 6 had also agreed to sell to the plaintiff their undivided share in respect of their entire suit property for sale consideration of Rs. 1,07,55,000/- in respect of each of the agreements. The plaintiff had paid part consideration. He submits that permission was granted and plaintiff has also paid nazrana to the government for grant of sale permission. Relying upon the decision of the Hon'ble Supreme Court in ***Sukhbir vs. Ajit Singh AIR online 2021 SC 266,*** learned Senior Counsel submits that the plaintiff is entitled to receive compensation in respect of the land which was acquired by the government. He submits that since the portion of the land is acquired after the plaintiff had entered into the agreement for sale, the plaintiff is entitled to received the compensation of acquired land.

13. Per contra, Mr. Khandeparkar learned Counsel for Defendant Nos. 2 to 6 submits that the Plaintiff has failed to prove execution of any oral agreement with the Defendant No.2. He submits that Defendant Nos. 4 to 6, who are legal representatives of deceased Narayan Laghu Patil, have independent right, and these defendants had not entered into any agreement with the plaintiff and as such they

are not bound by any agreement allegedly executed by the other defendants in favour of the plaintiff. Shri Khandeparkar, learned Counsel for the Defendants further submits that the Plaintiff has failed to prove execution of the oral agreement with Defendant No.2 and payment of sale consideration to him in respect of his share. He submits that the land was acquired by the government before filing of the suit. Pleading as well as prayer in the plaint clearly indicate that the contract had become unenforceable and that the plaintiff has himself claimed damages. Hence, the plaintiff is not entitled for compensation in respect of the acquired land. He submits that in the event plaintiff succeeds in the suit he may at the most be entitled for damages. He has relied upon the judgment of the Hon'ble Supreme Court in ***Gangotri Enterprises Limited vs. Union of India 2016 11 SCC 720*** and decision of this Court in ***ECT Media Private Limited vs. Sadaharta Retail Limited 2009 SCC Online Bombay 1813.***

14. Mr. Khandeparker learned counsel for the defendant under instructions has made a statement that during the pendency of the suit Defendant Nos. 2 to 6 shall not create third party right in respect of the suit.

15. I have perused the records and considered the submissions

advanced by learned Counsel for the respective parties. As noted above, the defendants have undertaken not to create third party right in respect of the subject land during the pendency of the suit. Hence, the only question for consideration is whether the plaintiff has prima facie proved that he is entitled to receive the compensation in respect of the acquired land.

16. It is not in dispute that the claim of the plaintiff is based on oral as well as unregistered agreements for sale. As on date the plaintiff has no title to the property. In ***Sukhbir*** (supra) the land was acquired during the pendency of the second appeal. In view of the acquisition the High Court modified the judgment and decree for specific performance to the extent holding that the original Plaintiff shall be deemed to have stepped into the shoes of the vendor and shall be entitled to the entire amount of compensation along with interest and statutory benefits. The Hon'ble Supreme Court referred to the previous decision in *Jagdish Singh vs. Nathu Singh* wherein it was held that where specific performance of the contract becomes impossible for no fault of the Plaintiff, Section 21 enables award of compensation in lieu and substitution of the specific performance. It was held that compensation is ascertainable with reference to the determination of

the market value in the land acquisition proceedings. Applying the law laid down in ***Urmila Devi vs. Deity Mandir Shri Chamunda Devi AIR 2018 SC 640 ,*** it was held that the High Court has not committed any error in modifying the decree and in holding that the Plaintiff will be deemed to be the in the shoes of Defendant and therefore shall be entitled to the amount of compensation determined and awarded under the provisions of the Land Acquisition Act.

17. In the instant case, the Defendants have denied execution of agreement for sale. There is no prima facie material to prove payment of huge amount in cash. Moreover, it is not in dispute that the Defendant Nos. 3 to 6 are the legal representatives of Dattu Narayan Patil, son of the original owner and they have independent right to the suit property. They are not parties to the agreement for sale and prima facie are not bound by the agreement. Prima facie, right of the Plaintiff to seek specific performance of agreement is under a shadow of doubt.

18. It is not in dispute that the portion of the land was acquired by the government under the provisions of National Highway Act, much before filing of the suit. The question whether the Plaintiff would be entitled for decree of specific performance, needs to be

adjudicated on merits. As noted above, execution of the agreement is itself in dispute. The said agreement has become unenforceable in view of acquisition of the property. In the event the Plaintiff succeeds in the suit he will be entitled for damages. However, a claim for damages for breach of contract is not a claim for sum presently due and payable. Hence, until the rights of the parties are finally adjudicated and the damages are crystallized, there is no existing obligation on the part of the Defendants to pay any amount to the Plaintiff. Consequently, at this stage the Plaintiff cannot seek any relief in respect of the money payable to the Defendants towards market value of the land of which they were the lawful owners.

19. The Defendants have already made a statement that they will not alienate the remaining property or create third party right during the pendency of the Suit. Under the circumstances, impugned order to the extent of disbursement of compensation does not warrant any interference. Hence appeal is dismissed.

20. Interim Application stands disposed of in view of dismissal of this Appeal.

(SMT. ANUJA PRABHUDESSAI, J.).