

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6670 OF 2021
[@ SPECIAL LEAVE PETITION (C) NO. 23885 OF 2012]

HEERA CHAND (SINCE DECEASED) THR.LRS Appellant (s)

VERSUS

THE MUNICIPAL COUNCIL, JAIPUR AND OTHERS Respondent(s)

WITH

CIVIL APPEAL NOS. 6671-6672 OF 2021
[@ SPECIAL LEAVE PETITION (C) NO. 4812-4813/2013]

O R D E R

Leave granted.

We have heard learned counsel for the parties.

The primary argument raised by learned senior counsel appearing for the appellants is that the agreement to sell the land in question is void as it was in breach of sub-section 7 of Section 80 of Rajasthan Municipalities Act, 1959. It is also argued that the amendment carried out by the Rajasthan Municipalities (Second Amendment) Act, 1972 would not have retrospective effect so as to validate the action of the Administrator of the Municipal Board to enter into an agreement with the seller i.e. Defendant No. 1. It is also argued that since

liquidated damages were contemplated in the agreement, the Division Bench, in an *intra court* appeal, could not have granted decree for specific performance of the agreement. Reliance is placed on Section 10, 14 and 20 of the Specific Relief Act, 1963.

We do not find any merit in the arguments raised above. Sub-section 8 of Section 80 of the Rajasthan Municipalities Act, 1959 provides for consequences of non-compliance of sub-section 7 of Section 80 of the Rajasthan Municipalities Act. It contemplates that such agreement shall not be binding on a Board unless the requirements specified therein are complied with. In other words, in a case initiated against the Municipal Board, the Municipal Board has the liberty to take up a plea that such an agreement is not binding, however, the Municipal Board can always assert its right arising out of the agreement in question. Still further, the amending Act is procedural inasmuch as the proviso inserted vide the amendment of the Rajasthan Municipalities (Second Amendment) Act, 1972 is only to validate the actions already taken. The amendment had thus not taken away any right of the defendants.

In respect of sale of immovable property, the general rule is of specific performance of the

agreement. Reference may be made to AIR 1979 SC 1241 [Prakash Chandra Vs. Angadlal]. In fact, the defendant No. 1 had denied the execution of the agreement and Defendant Nos. 1 to 7, said to be the members of the Hindu Undivided family, had not appeared as a witness before the trial court to support their assertion. The learned Trial Court decreed the suit returning the findings in favour of the plaintiff but granted decree for recovery of damages claimed as an alternative relief. The first appeal was filed by the plaintiff claiming decree for specific performance of the agreement. No cross-appeal or cross-objections were filed by any of the defendants before the First Appellate Court. The learned Single Judge affirmed the finding recorded by the trial court, however, reversed the finding on Issue No. 5 that the agreement is not enforceable in law as it has not been entered in accordance with Section 80 of the Rajasthan Municipalities Act, 1959.

An intra court appeal was filed by the plaintiff in the year 1986, before the amendment of Code of Civil Procedure, 1908 in the year 2002. The Division Bench held that there was no elected board at the relevant time and an Administrator had been appointed. The legislature added a new proviso to sub-section 7 which "shall be and shall always be

deemed to have been added". It thus found that the agreement has been validly entered upon by the Administrator and such agreement is enforceable. The Division Bench reversed the finding and granted decree for specific performance of the agreement.

We find that the judgment and decree passed by the Division Bench of the High Court is in accordance with law and does not suffer from any illegality, which may warrant interference in the present appeals. Consequently, the appeals are dismissed.

Pending interlocutory application(s), if any, is/are disposed of.

.....J.
[HEMANT GUPTA]

.....J.
[V. RAMASUBRAMANIAN]

New Delhi;
NOVEMBER 08, 2021.

ITEM NO.25 Court 10 (Video Conferencing)

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 23885/2012

(Arising out of impugned final judgment and order dated 19-03-2012 in DBSA No. 64/1986 in SBCFA No. 211/1972 passed by the High Court Of Judicature For Rajasthan At Jaipur)

HEERA CHAND (SINCE DECEASED) THR.LRS

Petitioner(s)

VERSUS

THE MUNICIPAL COUNCIL JAIPUR AND OTHERS

Respondent(s)

(IA No. 1/2013 - Application for impleadment)

WITH

SLP(C) No. 4812-4813/2013 (XV)

(FOR ON IA 2/2014

(I.A. Nos. 2-3/2014 - An Application for impleadment)

Date : 08-11-2021 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

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parties

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Mr. Ashutosh Jha, AOR

Ms. Supriya Juneja, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are dismissed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed
of.

(JAYANT KUMAR ARORA)
COURT MASTER

(RENU BALA GAMBHIR)
COURT MASTER

(Signed order is placed on the file)