

AN AWARD PASSED BY AN ARBITRAL TRIBUNAL FOR THE DETERMINATION OF PRICE OF LAND IS NOT EXECUTABLE LIKE A DECREE FOR SPECIFIC PERFORMANCE OF A SALE AGREEMENT

*The Supreme Court of India in its recent decision in **Firm Rajasthan Udyog and others v. Hindustan Engineering and Industries Ltd.** [Civil Appeal No. 2376 of 2020] has held that an award passed by an Arbitral Tribunal on the limited reference of determination of price of land is not executable like a decree for Specific Performance of a Sale Agreement.*

FACTS:

Appellant No.1, a partnership firm owned 249.60 bighas (approx. 100 acres) of land. The said land was acquired by the Respondent – Company vide notification dated 13th March, 1973. The said notification under Section 4 of the Rajasthan Land Acquisition Act, 1953 was challenged by the Appellant before the Rajasthan High Court as well as the Supreme Court and the appeals were dismissed. Pursuant thereto, the Appellant firm and the Respondent – Company entered into an Agreement dated 1st February, 1980 (“**the Agreement**”) wherein it was decided that about 145 out of the 249.60 bighas of land would be sold to the Respondent – Company subject to the fixation of price of land, construction, etc. to be finalised through arbitration.

The matter was referred to the sole arbitrator on a very narrow reference pertaining to the dispute regarding determination of compensation of land. An award dated 9th

June, 1985 therefore came to be passed by the Arbitral Tribunal which determined the compensation value and did not provide any opinion or direction as regards sale of the said land. The Respondent – Company filed a suit for Specific Performance of the Agreement but withdrew the same unconditionally. The Respondent – Company also filed an execution application qua the Arbitral Award only and prayed that the Appellant be directed to execute the sale deed on the stamp papers filed by the Respondent and thereafter produce the said sale deed before the Sub Registrar for its registration. The Executing Court allowed the execution application. The order of the Executing Court was upheld by the Hon’ble Rajasthan High Court.¹ The Appellant carried the said order before the Supreme Court.

¹2016 SCC OnLine Raj 6699

ISSUES:

The issue in the instant case was whether an Arbitration Award, which determined the compensation amount for the land to be paid under the agreement, can be directed to be executed as a suit for specific performance of the agreement, when the reference to the Arbitrator (as per the agreement) was only for fixation of price of land in question, and the Arbitration Award was also only with regard to the same.

The bench also considered whether the execution of an award could have been directed in the absence of there being any direction in the award for execution of the sale deed without a case being made out for execution of the Agreement.

SUBMISSIONS:

The Appellant contended that they had agreed to sell their land to the Respondent – Company at the rate to be fixed in future by the Arbitrator, and the Respondent – Company was given an option in the Agreement to be exercised within a period of 45 days of the fixing of the price by the Arbitrator, either to purchase or decline to purchase the land. The executing court had therefore travelled beyond the award while passing the impugned order inasmuch as the Arbitration Award only determined the price of the land and did not declare, create or

confer any right, title or interest upon the Respondent – Company. Further, neither was the Arbitration Award nor the underlying Agreement registered and therefore, could not be executable. It was urged that the parties had not concluded the sale at the time of the passing of the award and the Respondent – Company had an exit option available under the Agreement, therefore, no direction was given by the arbitrator or could have been given by the Arbitral Tribunal in relation to the execution of a sale deed which was beyond the scope of the arbitration.

The Respondent – Company, on the other hand, argued that the Agreement was binding between the parties and was executable after the price of the land was determined by the Arbitrator. The Executing Court had powers wide enough to interpret the award, the Agreement upon which the award is based, as well as the pleadings and was justified in ordering the execution of the Agreement. .

JUDGEMENT:

The Apex Court quashed the order of the High Court upholding the execution order passed by the Additional District Judge and held that in the present case, the Court was concerned about execution of the award and not the Agreement. In the award passed by the Arbitrator, the price of land was fixed, which was to be executed in terms of the Agreement, and that too at the option of the

Respondent. Thus, there could be no direction to execute the sale deed at the price fixed in the award, that too in a petition for execution of the award, without there being any prayer for execution of the Agreement.

The Apex Court reiterated the rationale that the execution of an award can be only to the extent what has been awarded/decreed and not beyond the same as held in the case of *Gurdev Singh v. Narain Singh*². The Court further observed that going behind the decree for doing complete justice, would not mean that the entire nature of the case could be changed, and what was not awarded in favour of the Respondent, could be granted by the executing court. It was only after the Respondent had exercised its right to purchase the land at the price fixed by the Arbitrator that a right to enforce the Agreement could have arisen in favour of the Respondent. The award of the Arbitrator, in the present case, in itself was not a conclusive contract between the parties, which could be executed.

² (2007) 14 SCC 173

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.