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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CASE COMMENTARY: **AGRA DEVELOPMENT AUTHORITY V. STATE OF** **UTTAR PRADESH**

AUTHORED BY - OM KHANNA,
4TH YEAR BA.LLB. (HONS), UPES

INTRODUCTION

This group of First Appeals indicates a terrible state of affairs in the state of Uttar Pradesh in terms of compensation given for land acquisition. This case further establishes the principle that the mere right to sue cannot be transferred and raises a suspicion whether the respondents only the litigants but not the purchaser of the land have the locus standi to litigate against the authority.

FACTS

FIRST APPEAL (FIRST INCIDENT)

Ratan Lal was the original tenure holder in First Appeal of 2002. The litigation was purchased by Sri P.N. Gupta respondent No. 4 from Ratan Lal by registered sale deed on 30.10.1991 for Rs. 12,000/- prior to the S.L.A.O.'s award. The S.L.A.O. determined compensation of Rs. 1,15,060/-, which was given to respondent No. 4 P.N. Gupta, and the Court below ordered compensation of Rs. 6,24,701.47 for the abovementioned land. As a result of the foregoing circumstances, after paying Rs. 12,0000/-. P.N. Gupta had already been awarded Rs. 1,15,060/- by S.L.A.O., and the Court below has now given him Rs. 6,24,701/-.

FIRST APPEAL (SECOND INCIDENT)

The land in question in First Appeal of 2002 belonged to Bhoop Singh and others who sold their right in the land after notification under sections 4 and 6 of the Land Acquisition Act in favour of a society-respondent No. 3(a) to the petition, represented by its Secretary respondent No. 4, for a sum of Rs. 18,69,904/- by 13 different sale deeds executed on 6.6.1991 and 7.8.1991.

On November 8, 1991, the S.L.A.O. made his award under Section 11 of the Land Acquisition Act, giving Rs. 19,12,366.70 paise to respondent No. 3(a). Following that, the society filed a reference application under Section 18 of the Land Acquisition Act, and while the reference application was pending, for a fee of Rs. 1,35,000/-, the society transferred all of its rights to the property and the litigation to respondent Nos. 5 to 11. Respondents 5 to 11 have been given compensation of Rs. 1,02,99,491/-. The first appeal has been filed against this ruling of the Court below.

FIRST APPEAL (THIRD INCIDENT)

The land acquired in First Appeal of 2002 is 14-6-4 bigha belonging to Banwari and Kisni. They received the compensation provided by the S.L.A.O. under the Land Acquisition Act. Banwari and Kisni then filed a reference application pursuant to Section 18 of the Land Acquisition Act. During the pendency of this application, they sold the litigation to respondent Nos. 4 and 5 for Rs. 40,000/- through three separate sale deeds dated 25.5.1998 (Rs. 10,000/-), 26.6.1998 (Rs. 10,000/-), and 23.11.1998 (Rs. 20,000/-). Respondent No. 4 sold a portion of the land to Respondent No. 6 for Rs. 15,000/- on 27.1.2001. Respondent No. 4 sold a portion of the land to respondent No. 5 for Rs. 25,000/- on 3.7.2002. Respondents 4, 5, and 6 were impleaded in the pending reference in place of the original tenure-holders. Banwari and Kisni based on the sale documents in their favor. The lower court granted them Rs. 70,94,180.70 in compensation. The above facts show that after paying Rs. 40,000/- respondent Nos. 4, 5 and 6 have been awarded Rs. 71,00,000/- by the Court below.

CONTENTION OF THE SUPREME COURT

These facts reveal the deplorable condition of affairs that exists in the District Courts of the Upper Peninsula, and it is no surprise that the public is outraged with this state of affairs, which stinks of pervasive corruption.

All of these appeals, in the opinion of Apex court, should be accepted since a simple right to sue cannot be transferred under section 6(e) of the Transfer of Property Act. In all of these situations, the respondents have purchased merely the litigation, which is a violation of section 6(e).

JUDICIAL PRECEDENTS

The rule that a bare right to action for damages is not assignable was established in *Ellis v. Torrington* on the basis that the law will not recognize any transaction resembling maintenance or champerty. The restriction in section 6(e) is based on public policy considerations. It was seen in *Monmatha Nath Dutt v. Matilal Mitra*.

"The question in this case is whether what was assigned was merely a right to sue or property with an incidental remedy for recovery and consequential benefit." An assignment of a mere right to sue does not convey any property; for example, if any person out of possession of immovable property makes an assignment granting the assignee a right to sue without conveying any interest in property, the assignee would not be entitled to maintain any suit for the recovery of property. However, if the property itself is transferred, it will be otherwise." The similar point of view was expressed in *Gangadin v. Piyare* and *Jaggannath v. Kalidas*.

This Court concluded in *Ram Dayal v. Mukat Manohar*⁵ that property does not include just the right to sue for breach of contract. As a result, under section 6(e) of the Transfer of Property Act, the right to sue for breach of contract could not be transferred.

The Allahabad High Court ruled in *Motilal v. Radhey Lal* that a claim for unliquidated damages for breach of contract is not actionable under section 3 of the Transfer of Property Act, and hence it cannot be transferred in light of section 6(e).

The Calcutta High Court held in *Sri Ishwar Gopal Jew v. Globe Theatres Ltd.* that an action for damages in tort is not assignable and that a person cannot initiate an action for damages for the tort of trespass committed on the premises before he becomes the owner thereof.

In *Manmatha Nath Mullick v. Sheikh Hedait Ali*, the Privy Council held that if what was assigned was a claim for a definite sum of money that the lessee was bound by his contract with the lessor to repay, it would be an actionable claim to which section 130 of the Transfer of Property Act applied, and thus section 6(e) had no application.

DISTINCTION U/s 6(e) of the TP ACT, 1882

(Actionable Claim or Mere Right)

The preceding ruling demonstrates a contrast between a mere right to sue and an actionable claim. For example, if A files a suit against B claiming certain property or certain money, and then executes a deed in favour of C transferring all his rights in respect of the litigation before the suit is decided, such a conveyance would be invalid because it would be in violation of section 6(e) of the Transfer of Property Act. However, if A's suit against B is decreed, and after the decree but before its execution, A transfers all of his rights under the decree to C, this conveyance is not barred by section 6(e).

In this situation, we believe that what has been transferred is merely a right to sue rather than any property or actionable claim.

It is obvious that the land was not transferred in this case, but rather the right to prosecute the litigation to obtain compensation was transferred. This, in our opinion, is obviously prohibited by section 6(e) of the T.P. Act, and so the conveyance deeds in favour of the respondents are completely unlawful, and they cannot maintain any claim on that basis.

ISSUES CITED

1. "Whether the transferees of the original claimants are entitled to the compensation in place of the original claimant? If so to what extent?"

The Court below answered issue in the affirmative, holding that the right to compensation is a transferable right. However, given the reasons stated above, we believe that the aforementioned issue has not been properly resolved and that the correct legal procedure has not been followed.

The transferees of the original claimants have no right to receive compensation because a simple right to sue cannot be transferred.

2. “Whether the compensation given by the S.L.A.O. is not proper, if not what rate is proposed?”

The S.L.A.O. gave his award under section 11 of the Land Acquisition Act on 8.11.1991 awarding Rs. 19,12,366.70 paise which was received by the respondent No. 3(a). The above facts show that after paying Rs. 40,000/- respondent Nos. 4, 5 and 6 have been awarded Rs. 71,00,000/- by the Court below. the original tenure holders were awarded compensation by the S.L.A.O. of Rs. 31,53,041.30 which was paid to them. This litigation was purchased by the respondent P.N. Gupta for Rs. 50,000/- by sale deed. The amount of compensation for the land acquisition fixed by the Court below is Rs. 60,16,375.77. Thus Sri P.N. Gupta having paid Rs. 50,000/- for purchasing the litigation has been awarded Rs. 28,63,334.

In view of the above it is not necessary to go into the correctness or otherwise of the finding on issue.

CONCLUSION

Section 6 of the transfer of property act deals with the concept of what may be transferred. Property and interests in property as a general rule are transferable. The very transferability of the property is based on the maxim ‘alienation rei prefertur juri accrescendi’, and the meaning of the maxim goes like this – Law favours alienation to accumulation. In order to know the difference, it also becomes important to know the link which exists between the transfer of property and section 60 of the Civil Procedure Code. Mere right to sue is something which cannot be transferred. Here the word ‘mere’ itself means that the transferee has developed no interest than just a bare right to sue. Hence such transfers are violative of section 6(e) of the Transfer of Property Act.