

A

GIAN CHAND  
v.  
GOPALA AND ORS.

JANUARY 18, 1995

B

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

C

*Contract Act, 1872—Section 33—Contingent contract—Agreement to purchase land—Earnest money paid—Notification u/s 4(1) Land Acquisition Act already published—Whether vendee entitled to obtain refund of earnest money—Held, yes.*

D

The appellant entered into an agreement with the respondent to purchase land belonging to the respondent for a consideration and paid a sum of Rs. 20,000 as earnest money. The sale deed was to be executed on or before 30-4-1978. The appellant came to know that notification u/s 4(1) of the Land Acquisition Act, 1894 was published on 3.8.1977 which fact was concealed from the appellant. He filed a suit for refund of the earnest money. The Trial Court decreed the suit. The decree was reversed on appeal. The appellate court set aside the suit on the ground that he was not ready and willing to perform his part of the contract. In second appeal, the High Court dismissed the same *in limine*. Hence this appeal.

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The question raised for consideration was whether the appellant was entitled to obtain refund of earnest money.

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Allowing the appeal, this Court

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**HELD :** 1. The contract in question being a contingent contract based on uncertain future events, (here is a case of suppression of fact even otherwise) that event having occurred by notification issued under s.6 of the Land Acquisition Act, 1894, the contract became impossible of performance. Therefore, it got frustrated and the contracting party was entitled to enforce the terms of the contract for refund of earnest money. His readiness and willingness was not relevant in such circumstances after the notification under s.4 (1) and declaration under s.6 were published.

H

[414-G-H, 415-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4710 of A  
1992.

From the Judgment and Order dated 11.8.86 of the Punjab &  
Haryana High Court in R.S.A. No. 931 of 1986.

G.K. Bansal and Sanjay Bansal for the Appellant B

Prem Malhotra for the Respondents.

The following Order of the Court was delivered :

This appeal, by special leave, arises from the judgment of the learned C  
Single Judge of the High Court of Punjab & Haryana in R.S.A. No.  
931/1986, dated 11.8.1986. The appellant had entered into an agreement  
with the respondent on 13.1.78 to purchase 1/3rd share of the land belong- D  
ing to the respondent for a total consideration of Rs. 78,000 and paid a  
sum of Rs. 20,000 as earnest money. The sale deed was to be executed on  
or before 30.4.78. Later the appellante came to know that notification u/s  
4(1) of the Land Acquisition Act, 1894 was published on 3.8.77 which fact  
was concealed to the appellant, so he had filed the suit for refund of the  
earnest money. The Trial Court in Suit No. 620/82 decreed the suit for  
refund of the earnest money with interest at 6% per annum from 25.1.1980  
till the date of realisation of the decree amount. Feeling aggrieved, the  
respondent filed Civil Appeal No.110/83. The District Judge by his Judg- E  
ment and decree dated 28.9.1985 reversed the decree and dismissed the  
suit. In Second Appeal, the High Court dismissed the same *in limine*. Thus  
this appeal, by special leave.

The only question for consideration is whether the appellant is  
entitled to obtained refund of earnest money. One of the terms of the  
contract, admittedly entered into between the parties, is that in the event  
of acquisition of land by the Government for a public purpose, the respon-  
dent "shall return the earnest money without interest. " Admittedly, since  
the notification u/s 4(1) of the Land Acquisition Act was already published, G  
the question arises whether the appellant could get a sale deed executed  
and in its absence whether he is entitled to obtain refund of earnest money  
paid under the agreement. On publication of notification under s.4(1) of  
the Act, though it is not conclusive till declaration u/s 6 was published, the  
owner of the land is interdicted to deal with the land as a free agent and H

- A to create encumbrances thereon or to deal with the land in any manner detrimental for public purpose. Therefore, though notification u/s 4(1) is not conclusive, the owner of the land is prevented from encumbering the land in that such encumbrance does not bind the Government. If ultimately, declaration under s.6 is published and acquisition is proceeded with, it would be conclusive evidence of public purpose and the Government is entitled to have the land acquired and take possession free from all encumbrances. Any sale transaction or encumbrances created by the owner after the publication of notification under s.4(1) would therefore be void and does not bind the State. In this perspective, when the necessary conclusion is that the agreement of sale stands frustrated, the question of readiness and willingness on the part of the vendor or vendee does not arise. The appellate court wrongly held that the appellant was not ready and willing to perform his part of the contract. In the face of the notification how the appellant could get a valid title? Any attempt on his part would be futile exercise and avoidable expenditure. Both the Courts have concurrently found that time is not essence of the contract. Under those circumstances, the plaintiff is entitled to lay the suit for refund of earnest money within three years from the date of refusal of the performance of the contract. In this case, declaration under s.6 was published and so it was conclusive of public purpose and the land was acquired. The contract was, therefore, frustrated. Since one of the terms of the Contract is to return the earnest money, in the event of acquisition being made by the State, the vendee appellant is entitled under s.33 of the Contract Act, as rightly and legally held by the trial court, to seek refund of the earnest money.

Section 33 of the Contract Act reads thus :—

- F "33. Contingent contracts to do or not to do anything if an uncertain future even does not happen can be enforced when the happening of the event becomes impossible, and not before.
- G The contract in question being a contingent contract based on uncertain future events, (here is a case of suppression of fact even otherwise) that event having occurred by notification issued under s.6 the contract became impossible of performance. Therefore, it got frustrated and the contracting party is entitled to enforce the terms of the contract for refund of earnest money. The Trial Court had rightly decree the suit for return of the earnest money. The district Judge refused the relief on the ground that he was not
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ready and willing to perform his part of the contract. As stated earlier, his readiness and willingness is not relevant after the notification under s.4(1) and declaration under s.6 were published. Under those circumstances, the District Judge had taken an erroneous view in reversing the decree of the trial court. The High Court did not apply its mind nor did it advert to any these relevant circumstances. It simply dismissed the second appeal *in limine*, as if it was a routine. Therefore, we hold that the decree of the High Court and that of the District Judge are vitiated by manifest gross errors of law. They are set aside accordingly. The decree of the trial court is restored.

The appeal is allowed. In the circumstances, parties are directed to bear their own costs.

A.G.

Appeal allowed.