Before Amit Rawal, J.

M/S TANMAY DEVELOPERS PRIVATE LIMITED—*Appellant*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

RFA No. 1940 of 2013

February 4, 2015

Land Acquisition Act, 1894 - Ss. 3, 4, 6, 9, 30 & 96 - Specific Relief Act, 1963 - Ss. 20 & 21 - Jurisdictional error - Agreements to sell were executed between appellants and land owners and earnest money was received - Before legal action could be taken by parties, notifications under Sections 4 and 6 of Land Acquisition Act, 1894 were issued for acquisition of these lands - Appellant filed a suit for recovery - Land Acquisition Collector (LAC) pronounced award and compensation amount was deposited - Before Reference Court question arose as to whether forfeiture clause could be enforced or relief could be granted under Sections 20 and 21 of Specific relief Act to refund earnest money - Reference Court, held that it did not have jurisdiction to determine such an issue - High Court held that appellants fell in category of 'person interested' as contemplated under Section 3(b) of Act of 1894 - Reference Court, thus, had jurisdiction to determine lis between parties taking recourse to Section 30 of the 1894 Act - Earnest money ordered to be returned to appellants with interest, as agreements to sell and receipt of earnest money had not been disputed by parties.

Held, that the Hon'ble Supreme Court has held that the landowners could not have forfeited the amount of advance/earnest money and, therefore, directed the landowners to refund the amount of advance paid to the appellants within the statutory period, failing which it would carry some interest. Same was the view laid down by this Court in *Harbhajan's v. Ruppa and another* 2004(1) RCR (Civil) 120, wherein this Court, while interpreting the provisions of Sections 2(b) and 9(1) of the Act, culled out the ratio decidendi by holding that the status of the buyer would be undoubtedly a person interested as he can claim the amount advanced by him together with interest from the land and in the absence

of the land from the money which represents the converted value of that land, though he may not be having interest as contemplated under the Transfer of Property Act, but he would, in any case, be a person interested to claim apportionment in view of the provisions of Section 3(b) of the Act.

(Para 12)

Further held, that in the instant cases, the agreements to sell and receipt of earnest money have not been disputed by the parties. What has been disputed in the written statement is that the appellants had no right to claim the refund of the earnest money as the amount had been forfeited and, therefore, the question which is/was liable to be determined by the Reference Court, was as to whether the appellant-vendees had any right to apportion the amount of enhanced compensation awarded for the acquired land on the ground that agreements to sell had been entered into.

(Para 14)

Further held, that in my view, the Reference Court was required to determine the apportionment as per law laid down in *Baldev Singh v. Keshwa Nand and others* 2011(1) RCR (Civil) 911 and *Netra Pal v. V.S.K.D. Smith and others* 2012(2) PLR 45, wherein it has been held that Reference Court was enjoined upon an obligation to decide the rival claims of the claimants/person interested.

(Para 15)

Further held, that in view of the ratio decidendi laid down in the aforementioned judgments, findings rendered by the Reference Court that it did not have jurisdiction to determine the lis between the parties is not only erroneous, but illegal and, thus, hereby set-aside. It was the duty of the Reference Court to determine the claims of the appellants in view of the fact that the appellants fall in the category of "person interested" as per provisions of Section 3(b) of the Act. Since the agreements to sell and receipt of earnest money were admitted, therefore, this Court deems it appropriate to direct the respondents to return the earnest money to the appellants along with interest.

(Para 16)

Aashish Chopra, Advocate, *for the appellants* in all the appeals.

Abhinash Jain, AAG, Haryana, for the State.

O.P.Goyal, Senior Advocate with N.D.Achint, Advocate and Bhawesh Chaudhary, Advocate, for respondent No.5 in RFA No.1940 of 2013, for respondent Nos.3 to 6 in RFA No.1941 of 2013, for respondent Nos.3 to 8 in RFA No.1942 of 2013.

Lokesh Sinhal, Advocate, for respondent No.3 to 8 (in RFA No.2831 of 2013).

AMIT RAWAL, J.

(1) This order will dispose of five Regular First Appeals, i.e., RFA Nos.1940 to 1942, 2831 and 2832 of 2013 as common questions of law and facts are involved in all these appeals. For decision of the aforementioned appeals, the facts are being taken from RFA No.1940 of 2013.

(2) The controversy which has arisen between the appellants and private respondents is on account of the apportionment of amount of compensation determined by the Land Acquisition Collector in pursuance to the acquisition of the land in dispute. Preceding the notification issued under Section 4 of the Land Acquisition Act, 1894 (for short "the Act"), three agreements to sell dated 22.7.2006, i.e., in RFA Nos.1940, 1941 and 1942 of 2013 and two other agreements to sell of different dates, i.e., 24.7.2006 and 21.6.2006 in RFA Nos.2831 and 2832 of 2013 were executed between the appellants and the land owners. The details of the land agreed to be sold in aforementioned appeals are extracted herein-below:-

Sr. No.	*RFA No.*	*Date of agreement to sell*	*Land*	*Earnest money*	*Total sale consideration*	*Target date*
1	1940/2013	22.7.2006	Agreement to sell for land measuring 24 kanals 3 marlas comprised in Khewat No.328 measuring 9 marlas to the extent of 1/24 share, Khewat No.70 measuring 6 kanals to the extent of 7/32 share measuring 1 kanal 6 marlas, Khewat No.376 measuring 80 kanals 7 marlas to the extent of ¼ share measuring 20 kanals 2 marlas, Khewat No.379, measuring 2 kanals 1 marla to the extent of 1/24 share measuring 2 marlas, Khewat	₹5425000/-	₹45281250/-	22.9.06, which was extended upto 23.10.06

Sr. No.	*RFA No.*	*Date of agreement to sell*	*Land*	*Earnest money*	*Total sale consideration*	*Target date*
			No.266, measuring 4 kanals 8 marlas to the extent of 1/24 share measuring 3 marlas, Khewat No.22, Rect.No.78, Killa No. 3/2(4-0), 4/2(6-0) to the extent of ¼ share measuring 2 kanals 10 marlas, situated in the revenue estate of Kherki Majra, Tehsil and District Gurgaon.			
2	1941/13	22.7.2006	Agreement to sell for land measuring 66 kanals 18 marlas, comprised in Khewat No.328, measuring 9 marlas to the extent of 1/6 share measuring one marla, Khewat No.380, measuring 21 kanals 4 marlas, Khewat No.377 measuring 19 kanals 7 marlas, Khewat No.69 measuring 22 kanals 11 marlas, to the extent of 14/16 share measuring 19 kanals 15 marlas, Khewat No.266 measuring 4 kanals 8 marlas to the extent of 1/6 share measuring 15 marlas, Khewat No.77 measuring 5 kanals 9 marlas, Khewat No.379 measuring 2 kanals 1 marlas to the extent of 1/6 share measuring 7 marlas, in all measuring 66 kanals 18 marlas situated in the revenue estate of Kherki Majra, Tehsil and District Gurgaon.	₹15600000/-	₹125437500/-	22.9.06, which was extended upto 23.10.06
3	1942/13	22.7.2006	Agreement to sell of land measuring 8 kanals 1 marla, comprised in Khewat No.328, Rect.No.77, Killa No.25/2 (0-9) to the extent of 1/72 share, Khewat No.70, Rect.No.78, Killa No.2/1 (0-3), 2/3(2-8), 3/1/2(3-9) to the extent of 7/96th share (measuring 9 marla), Khewat No.376 (80-7) to the extent of 1/12th share (measuring 6 kanals 14 marlas), Khewat No.379 (2-1) to the extent of 1/72 share (measuring 1 marla), Khewat No.22, Rect.No.78, Killa No.3/2(4-0) and 4/2(6-0) to the extent of 1/12th share (measuring 17 marlas), Khewat No.266 (4-8), to the extent of 1/72 share, (measuring 1 marla), situated in	₹ 2100000/-	₹ 15093750/-	22.9.06, which was extended upto 23.10.06

Sr. No.	*RFA No.*	*Date of agreement to sell*	*Land*	*Earnest money*	*Total sale consideration*	*Target date*
			the revenue estate of Kherki Majra, Tehsil and District Gurgaon.			
4	2831/13	24.7.2006	Agreement to sell for land comprised in Khewat/Khatoni No.126/177/1, Rect.No.3, Killa Nos.21(7-8), 22(7-7), 23/1(3-8), 28(0-12), Rect.No.5, Killa Nos. 3/2/2(0-16), 4(2-2), 6/2(4-16), 7(8-0), 8/1(4-0), 14/1(4-8), 27(0- 11), Rect.No.9, Killa Nos.5(8-0), 6 (8-0), 15(8-0), 16/1(7-7), Rect.No.10, Killa Nos.1(6-19), 2/1 (3-11), 3(8-0), 4(8-0), 10(7-8), 11 (7-8), 20(7-8), 21/1/1(4-8), Rect. No.20, Killa Nos.1/3 (0-0), 8/2/2 (2-3), 13/2(7-7), 14/1/2 (3-18), 16/2(5-4), 17/1(4-0), 20(7-3), 25 (8-0), Rect.No.21, Killa Nos. 15 (8-0), 16(8-0), 17(8-0), 24(8-0), 25 (7-19) to the extent of 1/5th share measuring 41 kanals, situated in the revenue of Village Dhanwanpur, Tehsil and District Gurgaon	₹ 9000000/-	₹ 77131250/-	09/09/06
5	2832/13	21.6.2006	Agreement to sell for land comprised in Khewat/Khatoni Nos.42/66 to 68, Khasra No.33 (2-6-0), 24(2-6-0), 35(2-4-0), 32(2-7-0), measuring 9 Bighas 3 Biswas, to the extent of 1/24 share, situated in the revenue estate of Village Basai, Tehsil and District Gurgaon	₹ 260000/-	₹ 1429687/-	20.9.2006

(3) Before any legal action could be taken by the parties to the lis, a notification under Section 4 of the Act was issued for acquisition of land sought to be sold by the land owners. Consequently, notification under Section 6 of the Act was issued on 18.3.2008. Before the Land Acquisition Collector could pronounce the award, the appellant, realizing the fact that the land owners did not have a transferable right, filed a suit for recovery on 24.3.2008 in RFA No.1940 of 2013, which is stated to be pending. However, the details of the suits either for recovery or for specific performance in respect of other R.F.As are given below:-

Sr. No.	*RFA No.*	*Nature of suit*	*Instituted on*
1	1941 of 2013	Suit for recovery	14.9.2009
2	1942 of 2013	Suit for specific performance of agreement to sell	24.3.2008. Suit was decreed on 18.4.2014 and the appeal filed by the land owners is stated to be pending
3	2831 of 2013	Suit for recovery	08.09.09
4	2832 of 2013	Suit for recovery	17.9.2009

(4) Thereafter, the Land Acquisition Collector pronounced the award on 19.9.2008. Since the Land Acquisition Collector had determined the amount of compensation and the same had been deposited, a dispute arose between the appellants and the private respondents with regard to the apportionment of the amount of compensation and accordingly, petitions under Section 30 of the Act were filed by the appellants on 6/7.1.2010 in all the aforementioned cases.

(5) In two R.F.As, i.e., 2831 and 2832 of 2013, the appellant is stated to have filed suits for recovery on 8.9.2009 and 17.9.2009. Since the matter in controversy before the Reference Court was as to whether the appellants, in pursuance to the agreements to sell, would have a right for refund of the earnest money, de hors of the fact that they had not acquired any right, title or interest in the suit by virtue of agreements to sell, the parties to the lis led evidence in support of their respective averments.

(6) The Reference Court, while dismissing the petitions under Section 30 of the Act, held that it did not have the jurisdiction to determine as to whether the time was essence of the contract or the forfeiture clause would be applicable or not, much less, to adjudicate upon and as well as the fact that it did not have the jurisdiction to grant or deny relief under Sections 20 and 21 of the Specific Relief Act and the jurisdiction lied only with the Civil Court. The operative part of the impugned judgment of the Reference Court is extracted hereinbelow:-

> *"17. It is clear at the outset that under section 30 of the L.A.Act, 1894 this court has the limited jurisdiction to decide the dispute arising as to the apportionment of compensation or any part thereof and the vexed question of the title or the civil rights of the*

parties arising out of the certain transactions cannot be adjudicated by substituting this judicial forum into the civil court. This court can neither adjudicate upon such question nor grant any such relief of refund of earnest money like a civil court by applying the provisions of Chapter 2 of part II of Specific Relief Act, 1963, in this regard as in a suit for specific performance. Even the discretion as to grant the specific performance or to award alternative relief under section 20 of the Specific Relief Act or in case the contract has become incapable of specific performance as provided under section 21 of the Specific Relief Act, 1903 can only be exercised by the civil court. Therefore, the petitioner has no right to seek such relief under the garb of apportionment of compensation under section 30 of the L.A.Act. So, the petitioner cannot derive any benefit from Thiriveedhi Channaiah case (supra), Gian Singh case (supra), Sardari Lal case (supra) relied upon by its counsel. Similarly the question as to whether the time was essence of the contract or the forfeiture clause would be applicable or not cannot be adjudicated under section 30 of the L.A.Act as these all the questions can only be decided by the civil court in the suit for specific performance filed by the petitioner. So, the petitioner cannot derive any benefit from K.S. Satyanarayna case (supra), Smt. Swarnam Ramachandran case (supra), Shanti Sports Club case (supra) relied upon by its learned counsel as the facts of this case are entirely differed from the facts of the cases relied upon. The case of the respondents is supported by Munshi Ram case supra, K.Venkata Rao case (supra), Coromandel Indag Products case (supra) and Shyam Lal and others case (supra) relied upon by their learned counsel."

Accordingly, the aforementioned Regular First Appeals have been filed in this Court.

(7) Mr. Aashish Chopra, learned counsel appearing on behalf of the appellants in all the appeals submitted that the appellants would be "person interested" as per the provisions of Section 3(b) of the Act and therefore, the appellants despite having availed the remedy of recovery

of earnest money/specific performance of the agreement to sell would be entitled to claim the refund of earnest money along with reasonable amount of interest. He further submitted that since the land owners did not have transferable right, therefore, the proceedings in a suit for specific performance would only be a farcical exercise. He, in support of the grounds raised in the R.F.As, relied upon the following case law:-

(a) ***Harbhajan v. Ruppa and another(1)*****;**

(b) ***Baldev Singh v. Keshwa Nand and others(2)*****; and**

(c) ***Netra Pal v. Smt. V.S.K.D. Smith and others(3)***

(8) Mr.O.P.Goyal, learned Senior Counsel, Mr.N.D.Achint and Mr.Lokesh Sinhal, learned counsel appearing for the private respondents, in support of their contentions, submitted that the award passed by the Reference Court is just, equitable and cannot be interfered with, as the appellants have already availed the remedy by instituting suits for recovery/specific performance and the liability, if any, to pay the earnest money or not, much less, as to whether they have forfeited the earnest money or not would be within the realm of the Civil Court. They further argued that there was enough time available to the appellants to seek specific performance of the agreements to sell as the notification under Section 4 of the Act had been issued in the year 2008 and, therefore, the respondents-land owners have suffered a huge loss as the appellant-vendees having failed to execute and register the sale deeds. They further submitted, according to their stand taken in the written statement, as per clause 3 of the agreement, that the earnest money had been legally forfeited.

(9) I have heard the learned counsel for the parties and appraised the impugned award and as well as the case law cited in support of their respective submissions and is of the view that the present appeals are liable to be allowed.

(10) From the reading of the contents of the written statement

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(1) 2004(1) RCR (Civil) 120

(2) 2011(1) RCR (Civil) 911

(3) 2012(2) PLR 45

filed by the land owners in reply to petition under Section 30 of the Act, it is irresistibly concluded that the respondent-land owners have admitted the execution of the agreements to sell, but have taken a stand that the appellants had lost the enforceable right in view of the fact that they did not file the suit for specific performance, before the notification under Section 4 was issued as there was enough time for them to avail the remedy and claim the discretionary relief under Section 20 of the Specific Relief Act. In essence, they have raised the plea that since the appellants failed to avail the remedy of enforcing the agreement as per the terms and conditions of the agreement, the earnest money had been forfeited. Be that as it may, in view of the facts narrated above, it is noticed that one of the suit for specific performance to the agreement to sell in RFA No. 1942 of 2013 has already been decreed, though appeal is pending.

(11) No doubt, whenever a suit for specific performance is filed, the parties to the agreement to sell always come out with the defences available to them either by raising a plea that one of the parties was not ready and willing or dispute their signatures on the agreement or that vendee had failed to perform the part of the agreement and, therefore, in such circumstances, the earnest money had been forfeited. Even assuming for argument sake that the original Court having jurisdiction to try and entertain the civil suit had passed the decree, either, decreeing or dismissing the suit and one of the party had availed the statutory remedy under Section 96 of the Act, but the fact remains that in the meantime where a notification for acquiring the land had been issued and where an award determining the amount of compensation had already been announced, the landowners would not have transferable right. Similar controversy came up for adjudication before the Hon'ble Supreme Court in ***Thiriveedhi Channaiah v. Gudipudi Venkata Subba Rao (Dead) by L.Rs and others(4)*** and the Hon'ble Supreme Court, after noticing the respective pleas of the parties to the lis, laid down the "ratio decidendi" that since the vendor did not have the transferable right, he could not have performed his part of the agreement. In the instant case, the respondents have not led any evidence, much less, even raised the

(4) (2009) 17 SCC 341

point in the written statement which could not have been better than the stand purported to have taken in the written statement filed in response to the suit for recovery or specific performance, that, prior to the filing of the suit, they had already intimated the vendee-appellants that earnest money had already been forfeited and they had suffered damage. It is for the first time in the written statement, the stand of forfeiture and suffering of the alleged damage had been taken. This part of the plea had also been pondered upon by the Hon'ble Supreme Court in Para 11 of the judgment in ***Thiriveedhi Channaiah*** *(supra)*. For the sake of brevity, para 11 of the judgment is extracted hereinbelow:-

> *"The only question which arises for our consideration is as to whether in a situation of this nature, the respondent could exercise his right of forfeiture of the entire amount. It is not his case that he had suffered any damage. He did not deny or dispute that after the agreement of sale was executed, a notification under Section 4(1) of the Act had been issued. He himself raised a contention that the agreement stood frustrated. It may be true that he not only questioned the validity of the said notification, but had also filed a suit, but indisputably the parties were aware that unless and until, the notification was set aside, the agreement for sale, in the aforementioned situation, cannot be enforced by either of them."*

(12) After examining the aforementioned ratio decidendi, the Hon'ble Supreme Court has held that the landowners could not have forfeited the amount of advance/earnest money and, therefore, directed the landowners to refund the amount of advance paid to the appellants within the statutory period, failing which it would carry some interest. Same was the view laid down by this Court in ***Harbhajan's case*** *(supra)*, wherein this Court, while interpreting the provisions of Sections 3(b) and 9(1) of the Act, culled out the ratio decidendi by holding that the status of the buyer would be undoubtedly a person interested as he can claim the amount advanced by him together with interest from the land and in the absence of the land from the money which represents the converted value of that land, though he may not be having interest as contemplated under the Transfer of Property Act, but he would, in any

case, be a person interested to claim apportionment in view of the provisions of Section 3(b) of the Act.

(13) For the sake of brevity, Section 3(b) of the Act is extracted hereinbelow:-

> *"3(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land."*

(14) In the instant cases, the agreements to sell and receipt of earnest money have not been disputed by the parties. What has been disputed in the written statement is that the appellants had no right to claim the refund of the earnest money as the amount had been forfeited and, therefore, the question which is/was liable to be determined by the Reference Court, was as to whether the appellant-vendees had any right to apportion the amount of enhanced compensation awarded for the acquired land on the ground that agreements to sell had been entered into.

(15) In my view, the Reference Court was required to determine the apportionment as per law laid down in ***Baldev Singh*** and ***Netra Pal's cases*** *(supra)*, wherein it has been held that Reference Court was enjoined upon an obligation to decide the rival claims of the claimants/ person interested.

(16) In view of the ratio decidendi laid down in the aforementioned judgments, findings rendered by the Reference Court that it did not have jurisdiction to determine the lis between the parties is not only erroneous, but illegal and, thus, hereby set-aside. It was the duty of the Reference Court to determine the claims of the appellants in view of the fact that the appellants fall in the category of "person interested" as per provisions of Section 3(b) of the Act. Since the agreements to sell and receipt of earnest money were admitted, therefore, this Court deems it appropriate to direct the respondents to return the earnest money to the appellants along with interest @ 6% per annum from the date of payment till the judgment of the Reference Court within a period of four months, failing which the appellants would further be held entitled to interest @ 12% per annum.

(17) Since the amount of compensation has been deposited in the Court, the charge of equal amount of earnest money along with interest @ 6% per annum is created on the said amount till the landowners clear the liability, much less, refund the earnest money as ordered and the same would be lifted, the moment landowners discharge their liability.

(18) It is further made clear that if the landowners have already withdrawn the amount of compensation, then the appellants shall be entitled to seek the execution of this order in accordance with law.

(19) The appeals are allowed and the impugned awards of the Reference Court are hereby set-aside. Decree-sheets be prepared accordingly.

P.S.Bajwa

Before S.S. Saron & S.P. Bangarh, JJ.

INDERJEET SINGH—*Petitioner*

versus

STATE OF PUNJAB—*Respondent*

CRM No. M-13140 of 2012

January 31, 2014

Narcotics Drugs and Psychotropic Substances Act, 1985 - Ss. 2(xiv), (xi) & (xxiii), 21 & 22 - Drugs and Cosmetics Act, 1940 - Ss. 8, 16, 17, 17A, 17B, 18 and 27 - Drugs and Cosmetics Rules, 1945 - Rules 59(1), 60, 61, 62A, 62B, 62C, 97, 104, 104A & 105 - Narcotics Drugs and Psychotropic Substances Rules - Rl. 65 & 65A - Notification S.O. 826(E) dated 14-11-1985 and notification dated 29-1-1993 - Accused was found in possession of 'manufactured drugs' in terms of section 2(xi) of NDPS Act, but these contained an exception as regard percentage of dosage in drug - Question arose that whether an accused could be tried for an offence under NDPS Act - Petitioner's case was that he could be penalised only under D&C Act - Held that possession of manufactured drugs in contravention of NDPS Act would entail criminal prosecution of offender under stringent provisions of NDPS Act - Drugs which are covered under 'manufactured drugs' under