(2006) 09 CAL CK 0061

Calcutta High Court

Case No: F.A.T. No. 1219 of 2002

Harendra Nath Ghose and Another		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: Sept. 27, 2006

Acts Referred:

- Contract Act, 1872 - Section 25, 72
- Specific Relief Act, 1963 - Section 34
- Transfer of Property Act, 1882 - Section 55

Citation: (2007) 3 CHN 34 : (2008) 1 CTLJ 114

Hon'ble Judges: Sanjib Banerjee, J; Kalyan Jyoti Sengupta, J

Bench: Division Bench

Advocate: Saktinath Mukherjee, Kalimuddin and Umesh Kumar Singh, for the Appellant;S.K. Garai and Tanushri Chanda, for the Respondent

Final Decision: Allowed

Judgement

Kalyan Jyoti Sengupta, J.

The appellants before us having suffered a money decree in a suit for recovery of the excess consideration amount, have assailed the judgment and decree passed by the learned Civil Judge (Senior Division, First Court, Krishnanagar). The first respondent, Union of India through the Divisional Organizer, Special Service Bureau (in short, S.S.B.), South Bengal Division, Calcutta, Group Centre at Sarat Pally, P.O.-Krishnagar, P.S.-Kotwali, District - Nadia had filed the suit in which decree was passed directing the defendants viz. the appellants herein as well as the respondent Nos. 2 to 7 and the proforma respondent Nos. 8 to 24 and the respondent Nos. 25 and 26.

2. The facts stated in the plaint are briefly reproduced hereinafter. The S.S.B., Directorate General of Security under the Cabinet Secretary, Government of India

had its central office at ''Raj Bati'' at Krishnagar under police station Kotwali in the District of Nadia. For setting up its own headquarters the local group centre of S.S.B., South Bengal at Krishnagar was looking for a suitable piece of land. After inspection and survey the land belonging to the appellants herein and proforma respondent Nos. 8 to 24 were ultimately chosen to be suitable for the aforesaid purpose. The appellants along with other proforma respondents in or about September, 1991 offered to sell their land to the plaintiff. On receipt of this offer the plaintiff took various steps for ascertaining marketable title, location etc. Thereafter for the purpose of valuation a request was made by the appropriate officials of the plaintiff to the District Collector, Nadia for fixing the price of the said land. It was made clear to the appellants herein and the proforma respondents who were the vendors that the valuation so to be fixed by the Collector had to be accepted by them. The Collector on this request arranged for and it was done. Such valuation was also accepted by the appellants and the proforma respondents in respect of all the plots of land barring plot bearing No. 403 for which enhanced price was claimed by the owner/vendor concerned. However, ultimately, upon negotiation and persuasion the appellants and the proforma respondents ultimately agreed not to insist on higher price, and accepted the valuation arrived at by the then officials of the Collectorate. The local official of the plaintiff after having been satisfied with everything regarding valuation, title, nature and character of the land sent the proposal for purchase of the land by the mode of private deal and negotiation for sanction and approval of the higher authority. The Cabinet Secretary duly granted sanction for purchase of the land at a price which had been agreed upon by the plaintiff as well as the vendors. Thereafter, by and under two registered deeds of conveyance dated 11th November, 1992 and 13th November, 1992 the appellants and the proforma respondents duly sold and the plaintiff purchased the said plots of land for an aggregate sum of Rs. 74,28,607/-. After the said deal was completed the possession of the land had been taken and the plaintiff started foundation works on the said plots of land. Upto this period there was no dispute or difficulty. After the aforesaid transactions having been closed, the plaintiff discovered a news item published in February, 1983 in a local daily viz. ''Sandhya Pratibedan'' and a Bengali daily ''Dainik Bartaman'' that the sold plots of land were purchased at an abnormally high price. Having seen these news items, the then Collector passed an order for making fresh valuation of the said plots of land which had already been conveyed. While doing so a review of the category of entire land was made. A review of the valuation of the suit properties was also made by the joint inspection made by the officials of the District Collectorate and also the plaintiff. On such review it was found that the valuation of the land would be Rs. 59,63,471/- in lieu of Rs. 89,86,325/- as per categorization made later. This review of valuation was intimated by the Special Land Acquisition Officer to the plaintiff.

3. The plaintiff thereafter charged the Collector and his officials that because of the negligence in making appropriate valuation, rather making erroneous valuation, the

plaintiff has suffered pecuniary loss of Rs. 23,48,988/-. The Collector and his officials were charged by the plaintiff that had they made the valuation bona fide and with prudence and diligence the aforesaid loss would have been avoided. The plaintiff made a request to the Collector to take steps for recovery of the excess amount from the appellants and the proforma defendants, before filing the suit.

4. The suit was contested by all the defendants including the officials of the Collectorate. Defendant Nos. 1 to 6 filed their joint written statement to contest the suit and to refute the claim made by the plaintiff. In the written statement specific plea was taken that the suit was not maintainable and the officials of the Estate Department had no authority to file a suit on behalf of the Union of India. It is stated that the officials had no obligation under the law to make valuation but in order to help the Central Government the Collectorate officials undertook the valuation as per norms and rules followed in case of land acquisition proceedings. A provisional valuation was made and it was made clear to the officials of the said department of the plaintiff that valuation had not been finalized. Without waiting for the finalization of valuation, the officials of the plaintiff had hastily completed the deal. The vendors also accepted the valuation made by the officials of the State Government provisionally and so it was also accepted by the plaintiff. After completion of the deal and as a reaction to a news item published in the newspapers, the suit had been filed. It was also contended that the suit was barred by limitation. In any view of the matter fresh valuation was made having noticed the news item and the plaintiff was intimated about the valuation on review. It is alleged in the written statement specifically that if any loss had been suffered by the plaintiff, it was due to the hasty deal made by the plaintiff''s officials; rather, they were negligent, not waiting for the finalization of the valuation with regard to the land in question.

5. The appellants and the proforma respondents who were the vendors filed their two written statements forming two separate groups. However, the defence taken in both the written statements is identical. Their defence is very clear that each of the vendors agreed to the terms put forward by the plaintiff. In fact, they abandoned their claim for increase in valuation of a plot of land being No. 403 though price of the same could have been much more. The officials of the plaintiff after conducting necessary search and enquiries through the State Government department and having obtained clearance from all concerned, purchased the lands at a price determined by the Collectorate and accepted by both the parties. After registration of the conveyance the plaintiff had no right to claim for refund of alleged excess amount. The plaintiff had no cause of action to file the suit. It had no legal right nor any common law right to claim for recovery of the alleged excess amount against them. Officials of the plaintiff keeping their eyes open had completed the deal by way of the private negotiation. As such, under the provision of Section 55 of the Transfer of Property Act there was no scope to reopen this transaction nor any of the terms of the conveyance confers any right upon the

plaintiff to recover any amount whatsoever. Significantly, the sale has not been asked to be cancelled nor the conveyance was directed to be delivered up or cancellation. A specific plea was taken that the claim was barred by limitation and the maintainability of the suit was also challenged.

6. The plaintiff, in order to prove this case examined two witnesses. Defendant No. 26 came to depose on his own behalf and apparently on behalf of the defendant Nos. 1, 2, 3, 4, 5 and 6. Defendant No. 17, the first appellant, came to depose on his own behalf as well as on behalf of the defendant Nos. 7, 8, 10 to 17 and 20. Defendant No. 25 (Pinaki Garai), appellant No. 2 herein, also came to depose for his own behalf and on behalf of the defendant Nos. 21, 22, 23 and 24. The learned Trial Judge reading pleadings of the contesting parties framed as many as ten following issues:

1. Is the suit maintainable?

2. Has the plaintiff any cause of action and right to sue ?

3. Is the suit barred by limitation?

4. Is the suit bad for defect of parties?

5. Is the suit barred u/s 34 of the Specific Relief Act?

6. Is the plaintiff entitled to get the decree as prayed for?

7. To what other relief, if any, the plaintiff is entitled?

8. Has the Divisional Organizer any locus standi to file this suit?

9. Whether the plaintiff is estopped from its claim by the letter vide memo No. IV/LAND/GCK/HQRS/91 (Q) 2542?

10. Whether the suit is bad for multifariousness of cause of action?

7. It appears from the judgment that the learned Trial Judge decided the issue No. 5 in favour of the plaintiff as it was not seriously urged by the defendants. Issue No. 4 has been decided against the plaintiff. Issue Nos. 1, 3, 6, 7, 8, 9 have been decided jointly and in substance the same have been decided in favour of the plaintiff. It appears that the learned Judge had come to a conclusion that there has been overpayment due to negligence on the part of the defendant Nos. 1, 2, 3, 4, 5 and 6 but no decree has been passed against them, but decree was passed against the appellants and the proforma respondents directing them to refund the excess amount of Rs. 23,48,988/- within three months from the date of passing decree, failing which the decretal amount would carry interest @ 6% per annum by way of compensation.

8. Mr. Saktinath Mukherjee, learned Senior Counsel appearing on behalf of the appellants, submits that it is strange how a suit could be filed or be decreed going

by the statements and averments made in the plaint. In the plaint, the cause of action has been disclosed as against the officials of State respondent not against the appellants and proforma respondents. Indeed there cannot be any cause of action in the eye of law against the appellants and proforma respondents who are the vendors.

9. He has drawn our attention to the prayer portion of the plaint and submits that there has been no prayer for cancellation or delivery up of the conveyance and after having accepted the sale being valid the suit is founded on the basis of negligence or error in calculation of the market price and consequently for refund of the excess amount. It is clear from the plaint as well as the evidence of the plaintiff and so also the defence that there has been no dispute that the sale was completed upon negotiation between the parties and by private deal and both the parties viz. the purchaser and the vendors agreed to and did accept the valuation fixed by the District Collector to whom the plaintiff referred the price. It was the choice of the plaintiff that the Collector would fix the valuation. The valuation was done at the instance of the plaintiff without considering the vendor''s contentions and, in fact, one vendor''s plea for increase of the valuation in respect of plot No. 403 was not accepted. The Cabinet Secretariat duly accepted such valuation and granted sanction for buying the property. The property was conveyed upon payment being made by executing and registering necessary documents. According to him, after a sale is over the vendors or the buyers cannot have any right or liability in absence of contract, otherwise than as mentioned in Section 55 of the Transfer of Property Act. In the conveyance there is no covenant between the parties for reviewing the valuation or for refund of excess payment on such review. The plaintiff''s right does not come even within the scope of Section 55 of the Transfer of Property Act. Even assuming the plaintiff has justiciable right and the suit is maintainable for overpayment of the consideration money, excess payment does not vitiate the transaction, as inadequate consideration is not a factor to hold any contract being void. In this connection he has referred to Mulla''s Contract Act, 12th Edition and Section 25, and test thereof at page 769. He has also drawn our attention on the aforesaid proposition, to Anson''s Principle of the English Law of Contract, 22nd Edition at page 91 and Cheshire and Fifoot''s Law of Contract, 7th Edition at page 67.

10. His further contention is that the District authorities had no jurisdiction nor had any obligation to take the unilateral step for review of the status of the land or for making fresh valuation at the instance of the plaintiff. So-called valuation has been made without any notice or giving any hearing of the appellants and each of them.

11. Issue of overprice of the property has no legal footing and for that matter claim cannot be sustained by filing a suit. In support of his contentions he has relied on one decision of Madras High Court reported in Lakshmanprasad and Sons Vs. A. Achutan Nair, and that of Calcutta reported in AIR 1946 Cal 245. He criticizes the findings of the learned Trial Judge contending that in spite of having found that the

officials of State Government were negligent, he did not pass any decree nor grant relief against them. Surprisingly, the plaintiff without having any cause of action against them and without any fault on the part of the appellants or proforma respondent, the decree has been passed against them. He submits further that the way the suit was decreed, was shocking and it does not and can not have in any manner legal sanction.

12. Mr. Swapan Garai, learned Advocate appearing for the respondent, Union of India, contends that because of the fault on the part of the appellants, the learned Trial Judge has rightly passed decree and such a claim always sustainable in equity. The officials of the plaintiff relied on bona fide determination of fair valuation of the property by the District Collector and his subordinates. It was their duty to ascertain correct market price. Subsequently, it was discovered that the price of the land was not fair and it was grossly overvalued. Because of this negligence, the plaintiff had to suffer loss of Rs. 23 Lakhs and odd that the defendants, who are the appellants herein, and the proforma respondents, who are recipients of excess amount, cannot be unjustly enriched. He further submits that the valuation made on subsequent review was not challenged by the appellants or the proforma respondents. As such, there is no cause for interference with the judgment and decree passed by the Learned Trial Judge.

13. We have gone through the pleadings and evidence of both the parties. We find that the core issue in this appeal is whether or not the learned Trial Judge could pass a decree against the appellants and proforma respondents on the basis of the allegation made in the plaint, in other words whether plaintiff has any cause of action. Whether any decree could be passed without any finding of the fault on the part of the vendors. We are unable to understand how the suit could be filed by the plaintiff being vendee after having purchased property on lawful negotiation and with full understanding for recovery of alleged excess amount of consideration. To our comprehension evidence given in support of the plaintiff really supports the case of the appellants and the proforma respondents. P.W.I had no personal knowledge about the transaction and so-called overvaluation. It appears from the pleading and the evidence that the District Collector and Magistrate was requested to make a valuation by an official of the plaintiff. The defendant No. 26 actually undertook valuation exercise for sale of the property. He deposed that he took comparable instances from the registering authority available at that time. He says that at that time there was no finalization or valuation. He goes on to say that without waiting for finalization with regard to the valuation, the then officials of the plaintiff hastily completed the deal with the sanction of the higher authority. Mr. Saktinath Mukherjee has rightly pointed out that there was no cause of action disclosed against the appellants or the proforma respondents. The allegations of negligence have been levelled against the District Collector and his officials, ot against the appellants and the proforma respondent. There is no pleading of collusion, connivance or fraud. We are surprised to see how a decree could be

passed against the persons against whom there is no allegation and no grievance.

14. It is surprising further that it took about more than three years to file a suit after discovery of the alleged overvaluation of the property and that too from the report of some newspapers. It is noteworthy that the sale has been accepted and no grievance has been made as regards legality and validity of the sale. In this situation there cannot be any conclusion except that everything has to be accepted including the amount of consideration.

15. Ordinarily the Government department buys land through acquisition proceedings initiated under appropriate laws. There are quite a good number of laws for acquisition even for speedy and instant acquisition of land. Notwithstanding legal machinery for acquisition of land the officials of the plaintiff proceeded to acquire the land by way of private negotiation or deal. In fact, the District Collector and their officials had no obligation under the law otherwise to oblige them to undertake any valuation. According to us, when it was agreed by the parties that valuation by the Collector should be accepted, it is not open either for the plaintiff or for the appellants/proforma respondents to question valuation on the plea of over-pricing after the transaction is over. They are estopped from doing so. In a private bargain when the parties keeping their eyes open have accepted certain terms they are bound to incur possible risk of overvaluation and under-valuation, they are bound to accept the same without any demur and grumbling because of their own choice and/or decision.

16. In our opinion, as rightly pointed out by Mr. Mukherjee, after sale is complete no right can be enforced other that Section 55of the Transfer of Property Act which is set out hereunder:

55. Rights and liabilities of buyer and seller.-In the absence of a contract to the contrary, the buyer and the seller of Immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

(1) The seller is bound--

(a) to disclose to the buyer any material defect in the property or in the seller''s title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary case discover;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller''s possession or power;

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at

a proper time and place;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller''s possession or power:

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and (b) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer, of the lot of greatest value, is bound upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncancelled and endefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled--

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

(5) The buyer is bound--

(a) to disclose to the seller any fact as to the nature or extent of the seller''s interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from encumbrances, the buyer may retain out of the purchase-money the amount of any encumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any encumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled--

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller''s interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), Clause (a), and paragraph (5), Clause (a), is fraudulent.

17. Upon reading of the plaint it will appear that the case of the plaintiff is not founded upon any of the rights mentioned in Section 55 of the said Act. The title of the land was thoroughly searched and marketability of the same was also ascertained and thereafter property was purchased admittedly after sanction having been granted by the Cabinet Secretariat.

18. In any view of the matter a contract cannot be said to be void on the ground of inadequacy of the consideration as provided in Section 25 of the Contract Act. Similarly a contract cannot be said to be void on the ground of over-consideration. In this context we appropriately get passage from Anson''s Principles of The English Law of Contract, 22nd Edition at page 91 as placed by Mr. Mukherjee, which is set out hereunder:

Consideration need to be adequate to the promise, but it must be of some value in the eyes of the law. The Courts will not make bargains for the parties to a suit and, if a man gets what he contracted for, will not inquire whether it was an equivalent to the promise which he gave in return. The consideration may be of benefit to the promisor, or to a third party, or may be of no apparent benefit to anybody, but merely a detriment to the promisee; in any case ''the adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced''.

The aforesaid exposition of the law makes it plain that after a contract is completed the Court cannot reopen the same unless the Court finds the contract is void and further voidable and it has affected the parties. Neither of the parties has avoided the said transaction of the sale, rather the transaction has been accepted as we have noted already. It is not the duty of the Court to fix price or reopen pricing after transaction is over, unless contractual transaction becomes void on legal foundation.

19. Cheshire and Fifoot, in the Law of Contract, 7th Edition, at pages 66 and 67 have commented:

It has been settled well over three hundred years that the Courts will not inquire into the adequacy of consideration. By this meant that they will not seek to measure the comparative value of the defendants'' promise and of the act or promise given by the plaintiff in exchange for it, nor will they denounce an agreement merely because it seems to be unfair. The promise must, indeed, have been procured by the offer of some return capable of expression of terms of some value. A parent who makes a promise in consideration of love and affection or to induce his son to refrain from being boring him with complaints can not be sued upon it, since the essential elements of a bargain are lacking. But if these elements be present the Courts will not balance the one side against the other. The parties are to be capable of appreciating their own interests and of reaching their own equillibrium.

20. It is settled law that a contract cannot be void on the ground of mistaken assumption of a fact by the parties, particularly when there was scope and chance to discover such mistake. If any benefit is derived upon mistaken application of law the party cannot be allowed to be unjustly enriched and in that case the party who has been affected must be restituted. The equity of restitution is recognized by the Indian Contract Act u/s 72. If any transaction does not come within the purview of Section 72 of the Contract Act it cannot be said that the consideration money was paid by mistake. We find a classic exposition of law in this direction from a judgment of Madras High Court as cited by Lakshmanprasad and Sons Vs. A. Achutan Nair, it is stated as a proposition of law analyzing the facts mentioned therein as follows:

The learned Judge was of the opinion that the case came u/s 72, Contract Act. With due respect to the learned Judge, we do not agree with him. The money was not paid by mistake. It was paid as money rightly payable under the contract, as it stood. The payment was not by mistake; it was the contract which was entered into on a mistaken assumption that the price was Rs. 9135. But the mistake occurred at the time of the formation of the contract. Once the contract had come into existence, there was no mistake made so far as the payment was concerned. What was paid was what was due under the contract. This distinction, the learned Judge apparently overlooked.

21. We cannot restrain our temptation from quoting an old decision of this Court rendered in case of Jagadish Prosad Pannalal v. Produce Exchange Corporation Ltd. reported in AIR 1946 Cal 245 which was approved by the Privy Council in the case of Shiba Prasad v. Srish Chandra Nandi. In this case it was held by the learned Judge that the contract becomes void on the promulgation of the Government order that the buyer was not entitled to recover the difference of the contract price and the price fixed by the Government either u/s 25 of the Contract Act or u/s 72 of the Contract Act. The learned Judge held that the payment of the entire contractual sum was made in ignorance of the fact that the contract had become void because of mistake and the buyer could recover the entire amount and claim of return the goods, but he cannot speed up the payment and claim of the excess amount as made mistakenly u/s 72 of the Act.

22. In this case, on the date of the conclusion of the contract both the parties understood the consideration amount of the property. Subsequently it was said to have been discovered that the price of such property would not be as was paid. But the subsequent discovery of the overvaluation cannot afford any ground to claim for excess payment without asking for cancellation of the entire deal.

23. The action could have been entertainable had there been a challenge by way of annulment on the ground of fraud either on the factual or legal basis against transaction and return of the entire consideration money paid. The plaintiff cannot be allowed to approbate and reprobate just because it is the Government litigant. We do not find any legal provision to treat the plaintiff differentially to allow it to

keep the property on the one hand treating the sale being lawful and valid and, on the other hand, and ask refund of alleged excess amount. The plaintiff cannot take the portion of the contract which is advantageous to it and ignore and/or abandon which is disadvantageous to it.

24. We cannot comprehend how a suit of this nature could be filed or for that matter the argument advanced by Mr. Gorai that the defendants are unjustly enriched and should return the so-called excess consideration amount.

25. Firstly, in the evidence with the greatest degree of scrutiny we do not find how the valuation was arrived at subsequently and what were the comparable instances or the basis. There was simply no material except some news items published in the Bengali daily which is worse than hearsay evidence to question the earlier pricing. The reporters have not come forward to depose before the Court that the valuation was done wrongly. We are not told what prompted the State officials to go in for further valuation in this case. Besides, the so-called valuation and review of the entire matter was done ex parte and without notice to the plaintiff.

26. In view of the discussion as above it is absolutely impossible for us to accept the findings and judgment of the learned Court below. It is simply harassing tactics on the part of the plaintiff to take advantage of the official position. It further appears to us, for which we have no hesitation, that the learned Trial Judge was swayed by the official position of the Government. Similarly the State Government officials were also swayed by the Central Government officials.

27. Therefore, the decree is set aside. The suit is also dismissed with exemplary costs assessed at Rs. 30,000/- to be paid by the plaintiff. The concerned department is directed to enquire into the matter as to how this kind of frivolous suit could be filed and whether any sanction was granted or not for such purpose. Ordinarily a civil suit is filed through the appropriate Secretary of the Ministry concerned but not by the officials.

28. Thus the appeal is allowed.

Sanjib Banerjee, J.

29. Even as I agree with the judgment and order of my learned Brother, I am tempted to add a few words.

30. The suit was always doomed to fail. And, I suspect, it was filed with knowledge that it could never succeed.

31. Pursuant to negotiations, the parties arrived at the consideration that was to be paid and received. The transaction was completed and the plaintiff/respondent had constructed upon the land. The land was not being offered back, but a mere reduction in the price was demanded.

32. The learned Court below was overwhelmed by the fact that the plaintiff was the Union of India and that the Union of India claimed that it had substantially overpaid the vendors. However, what the learned Court below overlooked was the finality in the offer made by the Union of India to the vendors. It is no sin for a seller to accept a higher value offered for his ware; no more a sin in this case where the sale related to a piece of land.

33. It is possible that the vendors received a consideration that was in excess of what the land was worth. But, it is the Union of India which gave a go-by to the usual procedure of acquisition and determination of compensation that is ordinarily followed in such cases.

34. There is a stench of something being amiss. Propriety, particularly in the context of our appellate jurisdiction in a decree passed by a Civil Court, demands that we do not seek to venture further as to how and why things may have gone wrong. It calls for an executive rather than judicial pronouncement.

35. The reversal of the decree does not imply our endorsement of the valuation attached to the land, It merely means that the plaintiff was not entitled to the decree that it obtained or it had prayed for.

36. The matter calls for an enquiry that should look into the circumstances in which the usual procedure was abandoned in favour of the misadventure of a negotiated sale. It should also look into the circumstances leading to the tentative valuation being accepted and the vendors being offered such price. Finally, it should be investigated as to the steps that were taken upon discovery of the purchase having been made at an apparent overvalue; whether follow-up was restricted merely to the filing of a stillborn suit or the persons involved in the transaction were otherwise queried as to the wisdom of their decision.