

(2009) 08 DEL CK 0438

Delhi High Court

Case No: CS (OS) No. 990 of 2003

Naresh Gaur and Others

APPELLANT

Vs

Uma Gupta

RESPONDENT

Date of Decision: Aug. 13, 2009

Acts Referred:

- Contract Act, 1872 - Section 23
- Limitation Act, 1963 - Article 54
- Specific Relief Act, 1963 - Section 28
- Transfer of Property Act, 1882 - Section 54

Citation: (2009) 4 CivCC 550 : (2009) 163 DLT 25 : (2010) 7 RCR(Civil) 1614

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: Maninder Singh and Pratibha M. Singh, for the Appellant; Maninder Acharya, for the Respondent

Judgement

S. Muralidhar, J.

Seven plaintiffs have joined together to file the present suit seeking specific performance of an agreement to sell dated 18th October 1994 in respect of an industrial Plot No. 34 measuring 360 sq.m. in the Functional Industrial Estate, Patparganj, Delhi-110092 (hereafter "suit property"). The parties to this agreement were plaintiff No. 1, the predecessor-in-interest of plaintiffs 2 to 7 late Shri Suresh Gaur who was the elder brother of plaintiff No. 1 and the Defendant.

2. The background to the filing of the present suit is that on 20th March 1990 an allotment was made by the Industries Department of the aforementioned industrial plot in favour of Shri Bhagwan Das Gupta. A Will was executed on 27th June 1990 by Shri Bhagwan Das Gupta. Under the Will one half of the undivided share of the plot was bequeathed to Smt. Laxmi Devi Gupta, the wife of Shri Bhagwan Das Gupta and the other half of the share was bequeathed to the Defendant. It was provided in the

Will that after the death of Smt. Laxmi Devi Gupta her share in the undivided plot would devolve on the Defendant who would become the sole owner of the property. Shri Bhagwan Das Gupta expired on 13th November 1990. A Probate Case No. 40 of 1991 was filed in this Court in respect of the said Will dated 27th June 1990.

3. The Defendant and Smt. Laxmi Devi Gupta entered into the aforementioned agreement dated 18th October 1994 with plaintiff No. 1 Shri Naresh Gaur and his elder brother Shri Suresh Gaur agreeing to sell the suit property to them for a consideration of Rs. 14 lakhs. A sum of Rs. 7 lakhs was paid to the Defendant and Smt. Laxmi Devi Gupta at the time of the execution of the agreement to sell towards part payment of the sale consideration. Of the said sum of Rs. 7 lakhs, the Defendant received Rs. 4,50,000/- in cash and a sum of Rs. 2,50,000/- by way of two demand drafts dated 21st September 1994 for Rs. 1,25,000/- each. A receipt dated 18th October 1994 was executed by the Defendant and Smt. Laxmi Devi Gupta in acknowledgment of the receipt of Rs. 7 lakhs.

4. Under the agreement to sell, the clauses of which will be discussed hereafter, it was agreed that the balance sum of Rs. 7 lakhs would be received by the sellers at the time of delivering the vacant physical possession of the suit property and execution or registration of the concerned documents such as the general power of attorney ("GPA"), agreement to sell, affidavit, Will, receipt or sale deed in favour of the purchasers or their nominees "within three months". The agreement further stipulated that the balance amount would be payable "after 15 days from execution of the sale deed in the name of the first party and informing to the second party by the first party." It was further agreed that the price was settled and would neither be reduced nor enhanced by either party. The second party i.e. the purchasers were entitled to get the sale deed registered in their names "after 15 days from getting the information of transfer of the lease deed in the name of the first party." The agreement acknowledged the pendency of the probate case. It was agreed that "if the seller failed to get the case cleared from the High Court within three months then the purchasers shall have the full right to take back the said amount...with back interest within a period of one week." The balance payment was to be made within 15 days from the date of execution of the lease deed in respect of the said plot "as well as taking over of the possession of the abovesaid plot by the second party by the Commissioner of Industries."

5. According to the plaintiffs they paid the Defendant a further sum of Rs. 1 lakh on 29th July 1995.

6. On 15th January 1996 this Court granted probate of the Will. Thereafter in 1998 the Defendant appears to have applied to the Industries Department for the grant of lease in her name. It may be mentioned here that on 25th May 1998 Smt. Laxmi Devi Gupta died and therefore in terms of the Will of late Shri Bhagwan Dass Gupta, which was probated by that date, the Defendant became the absolute owner of the plot. The elder brother of plaintiff No. 1, Shri Suresh Garg expired on 14th

November 2000 leaving behind plaintiffs 2 to 7 as his legal heirs.

7. The plaintiffs did not hear from the Defendant thereafter. In the plaint it is stated that when enquiries were made from Shri R.D. Gupta, husband of the Defendant, working as Joint Director, Department of Industries, Govt. of National Capital Territory of Delhi, the plaintiffs were informed that the process for the execution of the lease was underway.

8. In the month of November 2002 the husband of the Defendant, Shri R.D. Gupta informed the plaintiffs that a perpetual lease deed had already been executed by the Department in favour of the Defendant on 3rd July 2002. Although in terms of the agreement the Defendant was to inform the plaintiffs of the execution of the lease deed, they did not do so and the plaintiffs learnt of it only upon making enquiries with Shri R.D. Gupta. On 12th, 18th, 27th November and 9th December 2002 meetings were held by the plaintiffs with the Defendant. According to the plaintiffs when called upon to execute the sale deed the Defendant demanded an additional sum of Rs. 12 lakhs which the plaintiffs were unwilling to pay. On their part the plaintiffs informed the Defendants of their readiness and willingness to perform their obligations under the agreement to sell dated 18th October 1994. They were in other words willing to make the balance payment of Rs. 6 lakhs. However the Defendant was demanding an additional sum of Rs. 6 lakhs.

9. Thereafter a lawyer's notice dated 23rd December 2002 was sent to the Defendant by the plaintiffs calling upon her to execute the sale deed in favour of the plaintiffs within seven days. The willingness of the plaintiffs to pay the balance amount of Rs. 6 lakhs was reiterated. This notice was not replied to. Thereafter the present suit was filed praying inter alia for a decree of specific performance and in the alternative for a decree for damages in the sum of Rs. 30 lakhs being the present market value of the property minus the amount of Rs. 14 lakhs and refund of Rs. 8 lakhs along with pendente lite interest and future interest @ 18% per annum. It may be mentioned that the court fee has been paid on the said amount of Rs. 30 lakhs.

10. The stand of the Defendant in the written statement was that time was the essence of the contract. Since the probate of the Will was not granted within three months of the execution of the agreement to sell, the said agreement stood dissolved. Consequently the plaintiffs could only claim refund of the money deposited by them with the Defendant. It was contended by the Defendant that it was not the intention of the parties that the agreement to sell should remain valid and enforceable for an indefinite period. Neither the Defendant nor late Smt. Laxmi Devi Gupta would have agreed to be bound down to a fixed price particularly if had been known that the transaction would not be completed within three months of the execution of the agreement to sell. In the written statement it was pointed out that possession of the suit property was delivered to the Defendant on 8th October 2002. The market price had by then risen considerably. Even according to the

plaintiffs the current price (as on the date of the written statement i.e. 29th July 2003) was Rs. 35 lakhs.

11. As regards the events that transpired after the expiry of the three-month period in January 1995, the Defendant stated that she had "repeatedly impressed" upon the plaintiff No. 1 and Shri Suresh Gaur to take back the amount of Rs. 7 lakhs paid by them along with interest as per the agreement of the parties. However, plaintiff No. 1 and Shri Suresh Gaur did not do so and rather impressed upon the Defendant and late Smt. Laxmi Devi Gupta to accept another instalment of Rs. One lakh only and wait for a further three months thereafter. According to the Defendant, on 29th July 1995 she reluctantly accepted the amount of Rs. One lakh. However, once again despite the passage of three months thereafter, neither the probate petition was finalised nor the lease in respect of the suit property executed in favour the Defendant and Smt. Lakshmi Devi Gupta nor its possession delivered. It is claimed by the Defendant that on the expiry of three months from 29th July 1995, i.e. some time in. in November, 1995, the Defendant and Smt. Laxmi Devi Gupta verbally communicated to the plaintiff No. 1 and Shri Suresh Gaur, their intention to cancel the transaction in exercise of the rights under the Agreement since they could wait any longer to receive the balance consideration and to complete the transaction." Notwithstanding these contentions, the Defendant submits that it would be unjust to specifically enforce the agreement dated 18th October 1994. It is submitted that in that event the agreement is liable to be declared null and void u/s 23 of the Contract Act.

12. It is further contended in the written statement that under Clause (5)(a) of the lease deed dated 23rd July 2002 the lessor i.e. Delhi Administration was entitled to charge 15% unearned increase which in the present case works out to Rs. 6,10,000. The agreement in question did not deal with the aspect of the obligation of payment of unearned increase to the lessor i.e. Delhi Administration in the event of the transfer of the suit property by the Defendant to the plaintiffs. Since this was a substantial liability, not anticipated at the time of entering into the agreement, there was no consensus between the parties on this aspect and therefore the agreement was not enforceable. It is also pointed out that under Clause 5(a) of the perpetual lease deed no alteration or transfer of the suit property could take place without the previous consent of the lessor i.e. Delhi Administration. The proviso to the said clause states that consent should not be given for a period of ten years from the commencement of the lease deed unless exceptional circumstances exist for the grant of such consent. It is pointed out that on the date of the agreement i.e. 18th October 1994 neither the Defendant nor late Smt. Laxmi Devi Gupta were co-owners of the suit property since the Probate of the Will of late Sri Bhagwan Das Gupta had not been granted in their favour. It is accordingly submitted that the agreement cannot be enforced.

13. In the replication it is pointed out that the acceptance of Rs. 1 lakh by the Defendant on 29th July 2005 i.e. beyond the expiry of the three months from 18th October 1994 indicated that time was not the essence of the contract. The contention of the Defendant that she had communicated to the plaintiffs about her intention to cancel the agreement was denied as being factually incorrect. On the other hand she demanded Rs. 12 lakhs additionally for executing the sale deed.

14. On the basis of the pleadings and the documents, this Court by an order dated 18th January 2005 framed the following issues:

1. Whether agreement dated 18.10.1994 was conditional and whether parties stood discharged from their respective liabilities thereunder? OPD
2. Whether the agreement dated 18.10.1994 is void for the reasons stated in the preliminary objection No. 9 by the defendants? OPD
3. Whether the suit is barred by limitation? OPD
4. Whether the agreement dated 18.10.1994 is not enforceable under law? OPD
5. Whether the plaintiffs were ready and willing to perform their obligations under the agreement dated 18.10.1994? OPP
6. If the relief of specific performance is denied, whether plaintiffs are entitled to decree or damages, if so in what amount? OPP
7. Relief.

15. The submissions of Mr. Maninder Singh, learned Senior counsel appearing for the plaintiffs and Ms. Maninder Acharya, learned Counsel appearing for the Defendant have been heard.

16. Issue No. 3: Whether the suit is barred by limitation? A perusal of the agreement dated 18th October 1994 shows that the entitlement of the plaintiffs to seek execution of the sale deed in their favour would arise only on the expiry of 15 days after receiving intimation that the lease stood mutated in the name of the Defendant. The transfer of the lease in favour of the Defendant admittedly took place only on 3rd July 2002. Thereafter four meetings were held in November and December 2002 between the parties. However, no sale deed came to be executed. The suit was filed on 3rd May 2003. Since the cause of action to seek specific performance arose only after the mutation of the lease in favour of the Defendant, it cannot be said that the suit is barred by limitation. This issue is accordingly decided against the Defendant and in favour of the plaintiffs.

17. Issue No. 1: Whether agreement dated 18th October 1994 was conditional and whether parties stood discharged from their respective liabilities thereunder?

The stand of the Defendant has been that time is the essence of the contract. It is contended that under the agreement dated 18th October 1994 the sale deed was to

be executed and possession to be handed over to the plaintiffs within three months of the Agreement. It is submitted that the said period of three months could be reckoned either from 18th October 1994 itself or at the highest the expiry of three months after 29th July 1995 when the further sum of Rs. 1 lakh was received by the Defendant. It is submitted that on either of these parameters, the agreement came to an end latest on 28th October 1995. It is accordingly submitted that beyond that date the plaintiff cannot seek specific performance. Inasmuch as the Defendant has filed the suit only in 2003, long after the Defendant stood discharged from her obligation, the suit is not maintainable as such. Reliance is placed by the Defendant on the judgment of this Court in [Subhash Chander Kathuria Vs. Umed Singh and Another](#), . Reliance is also placed on the judgment in [K.S. Vidyanadam and Others Vs. Vairavan](#), .

18. On behalf of the plaintiffs it is pointed out that they have throughout been willing to perform their part of the contract. Reference is made to the evidence and to the decisions in Indira Kaur v. Sheo Lal Kapoor (1998) 2 SCC 488 and [P. D'Souza Vs. Shondrilo Naidu](#), to plead that it is the obligation of the Court to lend its hand for enforcement of the contract. Reference is also made to the judgment in [Gurdial Kaur \(D\) through LRs. Vs. Piara Singh \(D\) through LRs.](#), . On the aspect of limitation reference is made to the judgment in [Panchanan Dhara and Others Vs. Monmatha Nath Maity \(Dead\) thr. LRs. and Another](#), , [Shri Kuldip Gandotra Vs. Shri Shailendra Nath Endlay and Another](#), and [Mrs. Nisha Raj and Another Vs. Mr. Pratap K. Kaula and Others](#), . Reference is also made to Section 54 of the Transfer of Property Act, 1882 to contend that time is not the essence of the contract in transactions of sale of immovable property.

19. The submissions have been considered. In the present case the paras and clauses of the agreement when read together show that the parties did not intend time to be essence of the contract. The agreement consists of paras by way of a preamble followed by paras 1 and 2 (hereafter for convenience referred to as "paras") followed by the actual Clauses of the agreement which are again numbered from 1 to 10 (hereafter referred to as "Clauses"). Para 1 makes a reference to the time limit of three months for completion of several tasks including delivering of vacant physical possession, execution and registration of concerned documents such as GPA, agreement to sell, affidavits, Will and simultaneous payment of the balance sum of Rs. 7 lakhs. However Para 2 contemplates that the said balance sum of Rs. 7 lakhs would be payable "after 15 days from execution of the lease deed in the name of the first party and informing to the second party by the first party." When Para 2 is read together with Clauses 2, 8, 9 and 10 the position that emerges is that time does not begin to run for the buyers till they have been informed by the seller about the leased having been mutated in her name and 15 days have elapsed thereafter. Clauses 2, 8, 9 and 10 read as under:

2. That the second party shall be entitled to get the Sale Deed /proper documents executed and registered either in their own name or in the names of their nominee(s) after fifteen days from getting the information of transfer of the lease deed in the name of the first party.

8. After getting the Lease Deed in their own name, the first party will be responsible to inform the second party in written as soon as possible.

9. That if the first party fails to get the case cleared from the High Court within three months, then the second party shall have full right to take back the said amount, which is paid to the first party by the second party, with Bank Interest within a period of one week.

10. That the balance consideration amount shall be payable by the second party to the first party within a period of 15 days from the date of execution and registration of lease deed of the above mentioned plot as well as taking over the possession of the above said plot by the first party from the Commissioner of Industries/ Authority concerned.

20. It is not possible for this Court to agree with the learned Counsel for the Defendant that notwithstanding the fact that the obligation on the part of the buyers to make the payment of the balance sum did not arise till they were informed of the lease being mutated in favour of the Defendant, the Agreement itself would come to an end on the expiry of three months after either 18th October 1994 or 29th July 1995. The conduct of the Defendant in accepting the payment of Rs. 1 lakh on 29th July 1995 is indeed a pointer that the parties did not intend the Agreement to come to an end on the expiry of three months after 18th October 1994.

21. The evidence of the parties in this aspect may be looked at. In her evidence the Defendant who examined herself as DW-1 specifically stated that she applied for the mutation of the lease in her name in 1998. This belies the stand of the Defendant that she had not taken any step in pursuant to the Agreement after the expiry of three months from 29th July 1995. In her written statement the Defendant stated that she had repeatedly asked the plaintiffs to take back the money together with the interest. However in answer to the questions posed to her during cross-examination she answered as under:

Q. Had you written any letter to the plaintiffs after three months had expired?

A. No we had not written any letter but had verbally informed them in the meetings we had with them.

Q. Can you give the dates of these meetings?

A. The meetings were held on 12.11.02, 18.11.02, 27.11.02 and 9.12.02.

Q. These were the only meetings and no other meeting were held?

A. Yes.

Q. I put it to you that the agreement between you and the plaintiffs is subsisting and did not expire after three months, firstly as you had received the payment of Rs. 1 lakh after the expiry of three months and, secondly all the meetings took place in 2002 after the execution of the lease deed in your favour?

A. It is incorrect to say so.

Q. I put it to you that you got the possession of the plot on 8.10.02?

A. Yes.

Q. Who all were present in the meetings which you have mentioned above?

A. I was there, Sh. Ajay Gaur, Sh. Naresh Gaur and one or two more people from their side were present in these meetings.

Q. I put it to you that your husband was also present in these meetings? A. No.

Q. You have stated that in these meetings you were willing to return the money to the plaintiffs. Had you got prepared any demand draft or pay order for that purpose prior to the meetings?

A. No (Vol.) If they had been willing to take the money back I would have got the same prepared immediately.

Q. Is this correct that you had not met the plaintiffs from 1995 to 2002 for returning the money?

A. I had verbally told them to take the money back.

Q. Whom had you conveyed that you were willing to refund the money and whom did you call?

A. I had never called and it was the plaintiffs who used to call.

22. The above answers of the Defendant create a serious doubt whether she seriously intended to return the moneys to the plaintiffs. According to her, the communication with the plaintiffs in this regard was verbal but no dates are forthcoming. She later admits that it was the plaintiffs who got in touch with her. This conduct of the Defendant is not consistent with her plea that the Agreement had come to an end three months after either 18th October 1994 or 29th July 1995. Inasmuch as the plaintiffs have in the instant case been able to prove by leading evidence and on the recitals of the Agreement, that time was not the essence of the contract, the decision of the Supreme Court in K.S. Vidyanadam v. Vairavan is of no assistance to the Defendant.

23. What is unusual about the agreement is that 50% of the sale consideration was paid by the plaintiffs upfront even at the time of execution of the sale deed. Then a

further sum of Rs. 1 lakh was paid. Therefore out of a total consideration of Rs. 14 lakhs, 8 lakhs stood paid within a year of the execution of the agreement. This was even prior to the Probate in respect of the Will of late Sri Bhagwan Das Gupta being granted. It was even prior to the leased being mutated in favour of the Defendant and possession being obtained by her of the suit property. The facts in Subhash Chander Kathuria were that an earnest money of Rs. 2 lakhs was given in relation to a total consideration of approximately Rs. 21 lakhs. In the instant case however almost 60% of the sale consideration was already paid even before the Defendant could perfect her title. The contention of the learned Senior counsel that this was the reason the parties decided to freeze the sale consideration is not without merit. Payment of Rs. 8 lakhs as against the total consideration of Rs. 14 lakhs cannot be termed as earnest money. Further the Agreement in the instant case does not enable the Seller to wriggle out of her obligations. On the contrary, if she defaults, it is the Purchasers who can demand the return of the moneys with Bank interest. Further in Subhash Chander Kathuria there was no question of the Seller not having perfected title. The only requirement there was to make an application to the authorities seeking permission for the sale. However in the instant case the Defendant could not have conveyed the suit property to the plaintiffs at any time prior to the lease in respect of the suit property being mutated in her favour and possession thereof being obtained by her. In the circumstances, had the plaintiffs filed a suit for specific performance in 1995 it would have been premature. The Agreement makes it clear that the Purchasers can seek specific performance only after the expiry of 15 days after being informed of the execution of the lease deed in favour of the Defendant.

24. A third factor which distinguishes this case from Subhash Chander Kathuria is that in that case the Seller had not responded at all. As far as the present case is concerned, the Defendant accepted payment of Rs. 1 lakh on 29th July 1995. During the meetings held in 2002 the Defendant did not say that the Agreement had come to an end. She in fact made a demand for a further sum of Rs. 12 lakhs. In her cross-examination on this aspect DW-1 denied that she made a demand for a further sum of Rs. 12 lakhs for performing her part of the obligation under the Agreement. She also gave the following answers:

Q. In your cross examination you stated that as you did not require money you do not wish to sell the suit property. Was that the only reason?

(The question is objected to by the Id. Counsel for the plaintiff that the same does not arise out of the cross examination. The objection can only be decided by the Hon"ble Court and is left open for decision of the Hon"ble Court at the time of final arguments).

A. Requirement of money is not the only reason for not wanting to sell the property. The agreement stood extinguished after the expiry of the period mentioned in the same and secondly my husband has retired and we require the plot of our own use.

25. Shri Rajinder Sharma PW-2, Shri Nanak Chand PW-1 and Shri Ajay Gaur PW-3 who went along the plaintiffs to meet the Defendant in 2002 support the case of the plaintiffs that a demand for the additional sum was made by the Defendant. On a conspectus of the above facts, the stand of the Defendant that she was prepared to perform her part of the obligation under the Agreement does not appear to be correct. Clearly, on account of the increase in the market rate of the property, the Defendant was making an extra demand for money. The law does not permit a party to wriggle out of an Agreement to sell obligation only on this account. This coupled with the fact that it is not the case of the Defendant that in the interregnum she intended to put the suit property to any use weighs against her in accepting her contention that to compel her to sell the suit property to the plaintiffs at the agreed rate would be inequitable and unjust.

26. In *Panchanan Dhara* it was observed by the Supreme Court in para 27 as under:

27. Performance of a contract may be dependent upon several factors including grant of permission by the statutory authority in appropriate cases. If a certain statutory formality is required to be complied with or permission is required to be obtained, a deed of sale cannot be registered till the said requirements are complied with. In a given situation, the vendor may not be permitted to take advantage of his own wrong in not taking steps for complying the statutory provisions and then to raise a plea of limitation.

In the same case it was held that merely because the Defendants had not perfect title by them would not be a reason for denying specific performance. It was observed in para 22 as under:

22. A bare perusal of Article 54 of the Limitation Act would show that the period of limitation begins to run from the date on which the contract was to be specifically performed. In terms of Article 54 of the Limitation Act, the period prescribed therein shall begin from the date fixed for the performance of the contract. The contract is to be performed by both the parties to the agreement. In this case, the First Respondent was to offer the balance amount to the Company, which would be subject to its showing that it had a perfect title over the property. We have noticed hereinbefore that the courts below arrived at a finding of fact that the period of performance of the agreement has been extended. Extension of contract is not necessarily to be inferred from written document. It could be implied also. The conduct of the parties in this behalf is relevant. Once a finding of fact has been arrived at, that the time for performance of the said contract had been extended by the parties, the time to file a suit shall be deemed to start running only when the plaintiff had notice that performance had been refused. Performance of the said contract was refused by the Company only on 21.8.1985. The suit was filed soon thereafter. The submission of Mr. Mishra that the time fixed for completion of the transaction was determinable with reference to the event of perfection of title of the Second Respondent cannot be accepted. The said plea had never been raised before

the courts below. Had such a plea been raised, an appropriate issue could have been framed. The parties could have adduced evidence thereupon. Such a plea for the first time before this Court cannot be allowed to be raised. Even otherwise on a bare perusal of the agreement for sale dated 18.4.1971, it does not appear that it was intended by the parties that the limitation would begin to run from the date of perfection of title.

27. The plea of increase in prices being a ground for refusing specific performance has not been accepted by the Supreme Court in *Gurdial Kaur v. Piara Singh* or *P. D'Souza v. Shondrilo Naidu*. For all of the above reasons this Court answers Issue No. 1 by holding that the parties were not discharged of their respective obligations under the Agreement. The issue is answered against the Defendant and in favour of the plaintiffs.

28. Issue No. 2: Whether the agreement dated 18th October 1994 is void for the reasons stated in the preliminary objection No. 9 by the Defendant? Issue No. 4: Whether the agreement dated 18.10.1994 is not enforceable under law?

The case of the Defendant is that by requiring specific performance of an agreement 15 years after it was executed and in particular in relation to an immovable property it would be unjust and inequitable and subject the Defendant to hardship. It is further contended that such Agreement would in that case be hit by Section 23 of the Contract Act 1872 as being opposed to public policy. It is also contended that since the execution of the sale deed in the instant case is conditional upon payment of unearned increase and the prior consent of the Delhi Administration, the agreement was not capable of being enforced.

29. The question as regards the Defendant not being relieved of her obligation to perform her part of the contract notwithstanding the passage of time has been dealt with already by this Court. As regards the payment of unearned increase, the Agreement is indeed silent as to who is liable to pay such sum. But this by itself cannot be a ground to refuse specific performance. In [Shri Vishwa Nath Sharma Vs. Shyam Shankar Goela and Another](#), it was observed that although without the permission of the Land and Development Officer the decree holder may not be in a position to enforce the decree, "but it cannot be held that such a permission is a condition precedent for passing a decree for specific performance." Reference was made to the decision of the Privy Council in AIR 1930 287 (Privy Council) where it was laid down that if the vendor had agreed to sell the property which can be transferred only with the sanction of some government authority, the court has the jurisdiction to order the vendor to apply to the authority within a specified period, and if the sanction is forthcoming, to convey to the purchaser within a certain time. It was also laid down that there is always an implied covenant on the part of the vendor to do all things necessary to effect transfer of the property agreed to be sold.

30. At this juncture it must be noted that learned Senior Counsel for the plaintiffs on instructions informed the Court that since they are keen on getting the sale deed executed in their favour the plaintiffs would pay the amount Constituting the unearned increase as well. This is an additional factor that weighs with the court in not denying to the plaintiffs the decree of specific performance.

31. Accordingly, issues (2) and (4) are answered in favour of the plaintiffs and against the Defendant.

32. Issue No. 5: Whether the plaintiffs were ready and willing to perform their obligations under the agreement dated 18.10.1994? The evidence led by the parties clearly show that the plaintiffs have been willing to perform their part of the obligations under the agreement. The plaintiffs repeatedly informed the Defendant that they are willing to pay Rs. 6 lakhs which is the balance sale consideration. This has not been disputed by the Defendant in her cross-examination. In addition, we have the evidence of Rajinder Sharma, Nanak Chand and Ajay Gaur who all have supported the case of the plaintiffs in this aspect. Having parted with 60% of the total sale consideration within one year of the Agreement, the plaintiffs have been relentlessly pursuing this suit ever since the Defendant, despite getting the lease in her favour in 2002, reneged on her obligations under the Agreement. This issue is therefore answered in favour of the plaintiffs and against the Defendants.

33. Issue No. 6: If relief of specific performance is denied, whether plaintiffs are entitled to decree or damages, if so in what amount? In view of the finding that the plaintiff is entitled to a decree for specific performance, this issue does not arise for consideration.

34. Relief:

It appears from some of the decided cases that while directing specific performance of an agreement to sell, the Court has directed the Purchasers to pay something more than the amount which was agreed upon. In Vishwa Nath Sharma the Supreme Court while upholding the decree for specific performance observed as under:

11. Above being the position we find no merit in this appeal. However, considering the long passage of time it was suggested to respondent No. 1 that he could pay an additional sum to the appellant. Learned Counsel for the respondent left the quantum to be decided by this Court. To a similar effect was the suggestion of learned Counsel for the appellant. Considering the background facts, we direct that as a matter of good gesture, let the respondent pay a sum of rupees five lakhs to the appellant within a period of four months from today.

Likewise, in Gurdial Kaur the Supreme Court in exercise of its discretion as also Section 28 of the Specific Relief Act directed the purchaser to pay an extra amount to the Seller due to the passage of time. The Madhya Pradesh High Court in

Khemchand Sahu v. Chhingelal Rai 2008 (2) MPHT 184 and a learned Single Judge of this Court in Nisha Raj took note of the changed circumstances and decreed the suit by directing the Purchaser to pay an extra amount.

35. At one stage of these proceedings this Court enquired from the parties whether they would be willing to settle the disputes with the plaintiffs offering to pay something extra. However there was no agreement and therefore the suit was heard on merits. Learned Senior counsel for the plaintiffs stated on instructions that the plaintiffs would be willing to pay any reasonable sum that the Court may direct, after accounting for the fact that 60% of the total sale consideration has already been paid to the Defendant more than 14 years ago. He has placed on record the prevailing circle rates for the Patparganj Industrial Area in category "G". The minimum rate of valuation for land for residential use is Rs. 13,700 per sq.m. It would be twice as regards industrial use. On the said basis the present value of the suit property of 360 sq.m works out to Rs. 98.64 lakhs approximately. These are circle rates which may be less than the market rates. Nevertheless, keeping in view the facts and circumstances and the fact that the Defendant has kept with her the sum of Rs. 8 lakhs for a period of over 14 years, and accounting for the interest that it would have earned, it appears to this Court just and equitable to direct that the plaintiffs should be granted the relief of specific performance subject to the plaintiffs paying to the Defendant a sum of Rs. 87 lakhs simultaneous with the execution of the sale deed in their favour.

36. It is directed that the Defendant will, not later than two weeks from today and if not already done, apply to the GNCTD both for conversion of the suit property to freehold as well as for prior permission to sell it to the plaintiffs. The plaintiffs will bear the costs of conversion and also pay any unearned increase as may be demanded by the authorities. Upon the grant of permission to sell and conversion of the suit property to freehold by the authorities, within a period of 12 weeks thereafter, the Sale Deed will be executed in favour of the plaintiffs in respect of the suit property subject to the plaintiffs paying to the Defendant at the time of the execution the aforementioned sum of Rs. 87 lakhs. Simultaneous with the above payment and execution of the Sale Deed the Defendant will hand over vacant possession of the suit property to the plaintiffs. It is made clear that the plaintiffs will bear the stamp duty and costs of registration and other incidental expenses. The differential court fees will be paid by the plaintiff before the decree is drawn up.

37. The suit is accordingly decreed in the above terms with costs. Decree sheet be drawn up accordingly.