

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.6468 of 2014
Date of decision : 20.10.2015**

Najar Khan

...Petitioner

Versus

Basir Ahmed and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rakesh Dhiman, Advocate
for the petitioner.

Mr. J.P. Ahlawat, Advocate for
Mr. N.D. Achint, Advocate
for respondent No.1.

Mr. Amit Kumar Jain, Advocate
for respondents No.9 to 13.

RITU BAHRI, J. (ORAL)

The petitioner has come in civil revision against the order dated 04.02.2014 passed by the learned Addl. District Judge, Nuh at Mewat, vide which the application under Order 6 Rule 17 CPC for amendment of the reply to the reference petition filed under Section 30 of the Land Acquisition Act (for short – 'the Act'), has been dismissed.

The State of Haryana has issued a notification under Section 4 of the Act, for acquiring the land in the revenue estate of Village Dheer Dhoka, Tehsil Nuh and District Mewat. There was a dispute pertaining to the entries in the revenue record which was the basis for getting the apportionment of the compensation, therefore,

the respondents filed an application under Section 30 of the Act.

Learned counsel for the petitioner has filed reply to the petition (Annexure P-2).

In the reply, it was stated that as per the copy of the jamabandi for the year 2004-05, father of the occupant was recorded as owner of 1/12th share as also self-mortgagee of remaining 11/12th share and the entire land belongs to the respondents.

Thereafter, an amendment application (Annexure P-3) to the reply was made. In para 3 of the application, it has been stated that the petitioner had obtained old revenue record and come to know that as per the copy of jamabandi for the year 1907-08, the predecessor in interest of the applicants i.e. Chandru was the occupancy tenant. Mutation No.5 of mortgage was rejected on 17.08.1910. Despite rejection of the mutation No.5 of mortgage, the possession of the occupants or prior to them their predecessors-in-interest were wrongly described as mortgagee instead of tenant. After coming into force of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, the petitioners became the occupancy tenants as they have never paid any rent and no revenue assessed for the suit land. The application has been dismissed on the ground that the impugned order dated 04.02.2014, will change the entire nature of dispute between the parties. By the proposed amendment, the applicants want to change the very basic plea earlier raised. It is further observed that a co-sharer cannot be a tenant. However, this finding of the Lower Appellate Court is wrong. As per the copy of the

jamabandi 1907-08, the status of the predecessor-in-interest of the present petitioner was of that occupancy tenants and the entry with regard to Mutation No.5 relating to the mortgage has been rejected on 17.08.1910. For all intents and purposes, the predecessor-in-interest of the present petitioner was never recorded as co-sharer in the revenue record.

The amendment sought to be made in the reply would be required for a fair decision of the reference under Section 30 of the Act as the information has been sought from the revenue/official record of the Revenue Department..

Consequently, the order is set aside and the necessary amendment (Annexure P-3) is allowed.

Allowed accordingly.

20.10.2015
yogesh

(RITU BAHRI)
JUDGE