

CR No. 4798 of 2015 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 4798 of 2015 (O&M)

Date of Decision: July 13, 2016

Bhoop Singh Daulat Ram & others

...Petitioners

Versus

Kuria through LRs & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Abhishek Yadav, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.15285-CII of 2015

Prayer in this application is for bringing on record the legal representatives of deceased-petitioner No.2-Suresh son of Daulat Ram, who is stated to have died on 13.07.2012. The details of legal representatives of deceased-Suresh are mentioned in para 2 of the application, which is duly supported by the affidavit of Nawal Singh son of Lal Chand-petitioner No.7.

In view of the above, the present application is allowed. The legal representatives as detailed in para 2 of the application are brought on record subject to just exceptions and for the purpose of present litigation only.

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Exemption is granted from filing certified copies and typed copies of Annexures P-1 to P-3, subject to all just exceptions.

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Application stands disposed of.

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Challenge in this revision petition is to the order dated 30.09.2014 passed by the Additional District Judge, Rewari, whereby, a petition preferred under Section 3-H (4) of National Highway Act, 1956, by respondent Kuria son of Bhupla, has been accepted and he has been granted compensation to the extent of 3/4th of the compensation amount which has been awarded and the remaining 1/4th has been held to be the entitlement of the petitioners.

It is the contention of the learned counsel for the petitioners that the land measuring 10 Kanal and 7 Marla situated within the revenue estate of Village Khijuri, Tehsil & District Rewari, was acquired by the National Highway Authority of India, vide notification dated 31.11.2009. Award was announced on 02.07.2010 which was in favour of the petitioners as they were the owners of the said land. It is, in this situation, an application under Section 3-H (4) of the National Highway Act, 1956, was preferred by the respondent Kuria claiming himself to be in possession of the land as gair marusi. He contends that although as per the revenue record, respondent Kuria and his predecessors have been shown to be in possession till 16.03.2008 but thereafter, there is nothing on record indicating that the possession of the respondents continues on the said land. He contends that in the light of the fact that the respondent had not paid any rent for the last 5-6 years, the petition for eviction was filed on 18.04.2011 which is pending consideration before the Competent Authority. He contends that the impugned order could not have been passed as it is

dependent upon the outcome of the final order to be passed in the eviction petition which would determine whether the respondents are in possession of the land or not. His further contention is that the order as passed and is being impugned cannot be sustained as the respondent is only holding the land as a gair marusi, whereas, the petitioners are the real owners of the land. He, thus, contends that the impugned order deserves to be set aside.

I have considered the submissions made by the learned counsel for the petitioners and with his assistance, have gone through the impugned order as also the records of the case.

The facts as has been narrated above are not in dispute and therefore, are not being referred to again to avoid repetition. It is not in dispute that as per the khasra girdawari from the year 2002-03 upto 16.03.2008, respondent Kuria and his predecessors were shown to be in possession of the land as gair marusi. It is also not in dispute that the land in question was acquired by the National Highway Authority of India vide notification dated 31.11.2009 for public purposes and the award was announced on 02.07.2010. Prior to the passing of the award, no steps have been taken by the petitioners for eviction of the respondent-Kuria. The admitted position is that the eviction petition was preferred on 18.04.2011, which is after the passing of the award. It is, therefore, established that on the date of the notification as also on the date of the award, petitioners were not in possession of the land, rather, it was respondent-Kuria who was in possession of the land in question. Therefore, the finding of the Court below in this regard in the impugned order is fully justified.

As regards the claim of the petitioners that a gair marusi tenant

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is not entitled to 3/4th of the compensation amount as has been awarded, also cannot be accepted in the light of the judgment of this Court in **Gram Panchayat, Kanehi Gurgaon Vs. Ram Kumar & Ors.**, 2001 (2) LACC 441 (P&H). In the said judgment, on which reliance has been placed by the Court below, it has been clearly held that a gair marusi tenant is entitled to 3/4th of the compensation amount. The entitlement as held of the respondents, therefore, being in accordance with law, cannot be said to be illegal. The findings and the relief, therefore, given by the Court below being in accordance with law do not call for any interference by this Court in the present revision petition.

Finding no merit in the present petition, the same stands dismissed.

CM No.15287-CII of 2015

In view of the order passed in the main revision petition, no order is required to be passed in the present application for staying the execution of judgment and decree dated 30.09.2014 passed by the Additional District Judge, Rewari, as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

July 13, 2016
Harish