

219.

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

Civil Revision No.654 of 2014 (O&M)

Date of decision:17.02.2016

Daya Kaur and others

... Petitioners

versus

Attar Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sartej Singh Narula, Advocate,
for the petitioners.

Mr. Satya Pal Khatri, Advocate,
for respondents 1 to 4.

Mr. A.K. Kansal, Advocate,
for respondent No.6.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The revision petition is against the order of the Executing Court allowing for an apportionment made pursuant to the order already passed by the Reference Court under Section 28-A (3) of the Land Acquisition Act. Through the proceedings of the Reference Court for land acquired by the Government, 75% of the land acquired, namely, of 78 kanals 18 marlas of land was directed to be given to the tenants and 25% was directed to be given to the

landowner-gram panchayat. The manner of apportionment amongst the tenants themselves had not been stipulated clearly but the Reference Court had allowed the tenants the benefit of the land to the extent to which they held the tenancy rights.

2. One of the tenants, who had not joined in the proceedings in the reference under Section 30, moved an application before the Collector under Section 28-A for grant of compensation for the property held in tenancy along with persons who had already sought the reference and obtained the awards. Since there was a case pending before the High Court at the relevant time, the Collector had directed the adjudication to be made before the Reference Court itself and the Reference Court has passed the order under Section 28-A(3) on 30.10.2012. In the said order, the Reference Court has observed that the persons, who moved the application under Section 28-A were entitled to the amount of $\frac{3}{4}$ th share being reserved for tenants along with other persons, to the extent of land held under their tenancy, namely, $\frac{1}{4}$ th share in the land/tenancy. The persons, who had moved the application under Section 28-A who are the respondents herein, pressed for a contention that they are entitled to $\frac{1}{4}$ th share of $\frac{3}{4}$ th share reserved for the tenants' rights. On a plea that they had held $\frac{1}{4}$ th of whole of the property in their tenancy, the petitioners, who had sought the original reference and who are the petitioners before the court,

contended that the property acquired was 78 kanals 18 marlas and the respondents themselves had 1/4th share not in respect of the entire extent of 78 kanals 18 marlas but had a right only in 30 kanals 5 marlas including a pond of an extent of 13 kanals 9 marlas. In respect of the remaining extent, the petitioners alone held the tenancy and, therefore, the Executing Court must so read the order of the Reference Court to allow for 1/4th amount of the share reserved for tenants corresponding to the extent of land held by them under tenancy. The Executing Court rejected this objection of the petitioners and allowed for 1/4th amount of the share reserved for tenants without assessing the actual property held by them as tenants.

3. I had at the previous hearing directed the counsel appearing on behalf of the petitioners to furnish to me a memorandum of calculation detailing the properties admittedly held under tenancy by the respondents, so that the apportionment as originally ordered by the Reference Court could be given effect to by reference to the property held in tenancy by the respondents. I am satisfied that there is an area of adjudication that would become necessary, namely, of ascertaining the actual property held under tenancy by the respondents, namely, of whether the 1/4th share of 78 kanals 18 marlas which was acquired or 1/4th share of a lesser extent in the manner canvassed by the petitioners before me. That

adjudication would require to be done by the Executing Court before allowing for withdrawal of the amounts deposited as representing the compensation assessed.

4. The order already passed is set aside and the matter is remitted for evidence to be given by both parties and the adjudication will be to examine the claim of the respondents before here, who were the petitioners before the Executing Court to assess the extents of property held in tenancy by them and apportion to them such amounts as their holding would permit of. This is to give effect to the apportionment that is already done by the Reference Court. There is a duty of the Executing Court to read through the judgment of the Reference Court to properly understand what the dispute is between parties and ensure that the claimants before it, namely, the respondents herein, do not obtain more than what has been already guaranteed to them through the order passed under Section 28-A(3) of the Land Acquisition Act.

5. The revision petition is ordered on the above terms.

(K.KANNAN)
JUDGE

17.02.2016
sanjeev