

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RFA No.1393 of 2009 (O&M)

Date of Decision:23.04.2018

RAM CHANDER

....Appellant

Versus

MUNICIPAL CORPORATION, GURGAON AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr.Abhilaksh Grover, Advocate for the appellant.
Mr.S.K.Mahajan, Advocate for respondent No.1.
Mr.Shivendra Swaroop, Assistant Advocate General, Haryana

G.S. SANDHAWALIA, J. (ORAL)

CM No.13371-CI of 2011

Application under Order 41 Rule 27 read with Section 151 CPC
for permission to place on record copy of judgement dated 8.3.2011 and
1.3.2001 by way of additional evidence is allowed as prayed for.

CM stands disposed of.

RFA No.1393 of 2009

The present appeal under Section 54 of Land Acquisition Act,
1894 has been filed against the award of the Reference Court, Gurgaon
dated 07.01.2009 whereby it has been held that Gram Panchayat of Village
Kanhai was entitled to receive the entire compensation of the acquired land.
Further right has now accrued to the Municipal Corporation, Gurgaon
keeping in view the extension of the limits of the Corporation.

The case of the appellant to claim compensation was on
account of the fact that he was tenant on the land in question which was

repelled on the ground that an ejectment order dated 18.03.1999 (Exhibit R-1) had been passed by the Assistant Collector First Grade, Gurgaon which was upheld in the appeal upto the Commissioner on 15.06.2000 (Exhibit R-4).

The Reference Court noticed that the unauthorized possession was since 1981 and therefore, declined the benefit to be granted for receiving the entire compensation as such. It is not disputed that the Section 4 notification was issued on 08.07.1997 when the land was sought to be acquired for the development of the residential and commercial institutions in Sectors 26 to 28 and 42 to 43 of Gurgaon. The ejectment application was already pending at that point of time since the possession of the petitioner was stated to be unauthorized since 1981 and, therefore, once the ejectment order has become final in as much as CWP No.14 of 2002 filed by the petitioner was dismissed as withdrawn on 8.3.2011 with liberty to take the pleas as available to the petitioner in the proceedings under Section 30 of the Land Acquisition Act, 1894.

The sole argument raised by counsel for the appellant is on the basis of the application of additional evidence and on strength of order passed in favour of his brother in RFA No.666 of 1997 on 01.03.2001 (Annexure A-1) whereby he was held entitled to compensation to the extent of 3/4th share by dismissing the appeals of the Gram Panchayat. It is accordingly argued that he should also be given the same benefit by the counsel for the appellant. The said decision was based on the judgement in ***1996 LACC, 377, Mangat Ram etc Vs. State of Haryana and others***” and resultantly the order of the Reference Court was up held in that case.

Counsel for the appellant could not point out as to whether any

eviction order as such has been passed in case of his brother or not, whereas in the present case a specific order was passed and as noticed upheld. The unauthorized possession as such thus relates back to the date of filing of the petition and merely because the proceedings are pending at the time before notification as such came into operation could not as such give the benefit to the appellant that his possession was authorized in any manner. The Apex Court even otherwise has now in ***Haryana Wakf Board Vs. State of Haryana*** 2018(1) RFR (Civil) 150 held that the apportionment of the right of the tenant also is only to the extent of 10% wherein also long possession gave rights on account of displacement. The relevant portion reads as under:-

“This Court in the aforesaid dictum has come to the eventual answer to the question raised for its consideration, that in such case the tenants should have been paid the compensation in its entirety as he had right to purchase property in accordance with provisions of the Tenancy Act, 1953. That is not the situation in the instant case available as per the provisions contained in the [Wakf Act](#).

14. Thus, this Court in Mangat Ram (supra) relied upon the aforesaid two decisions in Inder Parshad (supra) and Harvinder Singh Brar (supra) which did not deal with nor laid down the law with respect to the rights of tenants for apportionment of compensation, who were not having any title or right of tenancy for exceeding a period of three years and such leases being void under aforesaid provisions of the [Wakf Act](#). They will be deemed to be trespassers. This aspect was not raised for consideration nor decided in Mangat Ram (supra) or in relied upon cases. The ratios of relied upon cases was totally different and could not form the foundation for apportionment of compensation in Mangat Ram (supra). Thus, it could not be an authority on the said issue. Such person could at the most be granted 10% of the amount considering the long possession and for displacement.

15. We clarify that we are not holding that this ratio shall apply to other cases. But it will depend upon the facts and circumstances of each case

and nature of rights. In any view of the matter, such tenants under void arrangement could not have been granted 3/4th compensation.

Nothing could as such is pointed out that the appellant who was in possession on the basis of lease for two years had any occupancy right as such by which he was entitled for the major chunk of benefit to the tune of 75%.

In such circumstances, the order passed by the Reference Court does not warrant any interference and accordingly, the present appeal is dismissed.

23.04.2018
raman

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No