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

**RFA No.6834 of 2015 (O&M)**
**Date of Decision:02.02.2018**

Gram Panchayat Padiawas, Tehsil & District Rewari through its Secretary

....Appellant

Versus

Hari Singh and others ...Respondents

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

Present: Mr. Ajit Kumar Sharma, Advocate for
Mr. R.D. Yadav, Advocate
for the appellant.

**G.S. SANDHAWALIA, J. (ORAL)**

The present appeal has been filed against the order dated 31.03.2015 whereby the Reference Court had held that the respondents had been proprietors of Bhaanpatti and Kushayala Patti of village Padiawas and also entitled to receive compensation in respect of the acquired land to the extent of their share. Resultantly, Gram Panchayat appellant has challenged the said order.

The petition under Section 30 of the Land Acquisition Act, 1894 was filed by the present respondents in view of the fact that on account of pro rata contribution by the proprietors of the village they were owners of the Shamlat Land. A dispute regarding apportionment had arisen to the same and the Collector had referred the dispute to the Court. The acquisition notification dated 27.01.2003 under Section 4 of land measuring 138.15 acres of village Padiawas was for the development and utilization of land as residential and commercial sectors. Stand of the private respondents was thus on account of pro rata contribution being the proprietors of the village, and that they were the owners of shamlat land and the Gram Panchayat was not authorized under the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948, to put the land to any other use. It was averred that since the land has been acquired for the purpose of development of Sectors 18, 19, 20 part and Sector17 part of Rewari, and was not being put to use of village inhabitants and therefore, it would vest with the proprietors of the village.

Stand of the appellant Panchayat was that the Panchayat was the owner of the land which was kept for Gau Charand and put to auction every year by the Gram Panchayat. It was submitted that land measuring 118 Kanal of common land inclusive of 79 Kanal 19 Marla reserved for the purpose of grazing ground has been acquired for the construction of commercial/residential sector.

Reference Court, accordingly after examining 4 witnesses on behalf of private respondents and 2 witnesses on behalf of the appellant-Panchayat came to the conclusion that the Sarpanch of the village could not state that what was the area of Shamlat land after consolidation proceedings. In cross-examination, she had shown ignorance where the building of government school exists.

It was recorded that there is no dispute that the land was kept reserved for Gau Charand during the consolidation proceedings and there was no evidence that it was being used for the said common purposes and therefore, the land of proprietors could not be used for the purpose it had been contributed and therefore, the proprietors could not be deprived. It was also recorded that there is no evidence regarding usage of Gau Charand of the land and rather the Panchayat had been leasing it out for generating revenue.

Resultantly, in such circumstances the benefit goes to the private respondents. Reliance has also been rightly placed upon the judgment of Division Bench in ***Onkar Singh and others Vs. State of Haryana and others 2010(4) PLR 146*** in which similar land in question belonging to the proprietors of the village had been used for common purposes in village. Accordingly keeping in view the judgments of the Full Bench in ***Jai Singh Vs. State of Haryana, 2003 (2) RCR (Civil) 578***, it was held that the same would not vest with the Gram Panchayat and payment had to be disbursed to the landowners.

Resultantly, the petition was allowed and Land Acquisition Collector was to disburse the compensation to the petitioner and the co-owners whose land had been acquired since the same had not been deposited after the award had been passed. Relevant portion of the judgment reads as under:

> *"9. A bare perusal of sub-para (iii) of para 62 of the aforesaid judgment rendered in Jai Singh's case (supra) shows that the land which have been contributed by the proprietors on the basis of pro-rata cut on their holdings during consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under Section 14 read with Rules 5 and 7. If such a land is entered in the column of ownership as Jumla Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat and in the column of possession it is shown in the name of the proprietors then the same is not to vest in the Gram Panchayat or the State Government on the basis of sub-Section (6) of Section 2(g) and the explanation appended thereto or any other provisions of the Act or the East*

*Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The crux of the matter appears to be that the land of the proprietors which has remained un-utilised for village common purposes would continue to be the land owned by the proprietory body of the village and it would not vests in the Gram Panchayat. The aforesaid view is further elucidated in para 64 and 66 of the judgment in Jai Singh's case (supra), which reads thus:-*

> *"64. Even though, therefore, land in the aforesaid case may have been shown in the column of ownership as if vesting with the proprietors, inasmuch as, it was being used for common purposes, pursuant to a scheme prepared under the Act of 1948, it was held to be belonging to Gram Panchayat. For the kind of land, as mentioned above, it is too apparent that there was no necessity at all to sanction mutation in favour of the Gram Panchayat and change the entries recorded in the column of ownership from proprietors to that of Gram Panchayat. Further, as mentioned above, irrespective of provisions contained in Rule 6(ii) that such lands shall be shown to be vesting in the proprietors, the fact remains that the proprietors are divested of their ownership on the basis of Section 23-A as also Section 3 of the Act of 1961 as also in view of the Full Bench decision of this Court in Kishan Singh's case (supra).*
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> *65. xxx xxx xxx xxx xxx xxx xxx xxx xxx*
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> *66. Insofar as all other cases are concerned, same shall stand disposed of in light of law laid down by us. Resultantly, if the mutations might have come into being on the dint of Act No. 9 of 1992 challenged herein in favour of the State or Gram*

*Panchayat, the said mutations shall stand cancelled or set aside, leaving open for the Gram Panchayat to file an application for eviction under Section 7 or title suit under Section 13-A, as the case may be, if the lands are such which have since been earmarked for common purposes under the scheme and the proprietors are in unauthorised occupation and, the proprietors to file a title suit in case the lands are such which form part of Bachat land, having not been earmarked for any common purpose in the scheme of consolidation and yet the Gram Panchayat is asserting its title or is in possession thereof."*

*10. It is, thus, clear from the aforesaid two paras that the land belonging to the land owners and reserved on the basis of pro-rata cut for the common purposes of the village community, if not being used for that purpose then it would continue to be the ownership of the owners and would not vest in the Gram Panchayat."*

Thus, keeping in view the above settled proposition and since the appellant has not proved its stand that they were owners of the land in question and the same had never been mutated in favour of the Gram Panchayat, the award under challenge does not suffer from infirmity and requires no interference.

Appeal is dismissed.

**(G.S. SANDHAWALIA)**
**JUDGE**

02.02.2018
pvd

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