IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(1) RFA No.3744 of 2017 (O&M)

Gram Panchayat Kanwersika ....Appellant

Versus

Ahmad Khan & others ...Respondents

(2) RFA No.3786 of 2017 (O&M)

Gram Panchayat Kanwersika ....Appellant

Versus

Mohd. Khan & another ...Respondents

(3) RFA No.3787 of 2017 (O&M)

Gram Panchayat Kanwersika ....Appellant

Versus

Ahmad Khan ...Respondent

Decided on: 22.02.2018

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

Present: Mr.Pankaj Jain, Advocate, for the appellant.

None for the respondents.

G.S. SANDHAWALIA, J.

The present judgment shall dispose of 3 appeals bearing RFA-3744, 3786 & 3787-2017, filed by the appellant-Gram Panchayat, directed against the Reference Court award dated 17.02.2017, under Section 54 of the Land Acquisition Act, 1894 (for short, the 'Act'), passed by the Addl.District Judge, Mewat, under Section 18 of the Act. The Reference Court came to the conclusion that the private-respondents were proprietors of the entire land and were entitled to receive the compensation, as per their shares, as per settlement No.19. The shares were to be settled in execution after preparation of goshwara.

The finding is on the basis that revenue record shows that the land belongs to the proprietors patti of village Kanwersika and there was no evidence that the land was being used for common purposes. Mutation entered in favour of the Gram Panchayat, had been decided in their favour, in view of the decision of the Full Bench in **Jai Singh Vs. State of Haryana (2003) 2 RCR (Civil) 578**. The Gram Panchayat who had been given liberty to file eviction petitions and applications under Section 13 of the Act, had not taken any such action. Reliance was also placed upon an earlier award dated 04.11.2015, wherein the land-owners had been held as co-sharers in possession as proprietors and entitled for receiving compensation. The appeals having been pending before this Court and mere pendency, as such, was held to be no ground to take a different view. It was, accordingly, noticed that there was no stay and therefore, the same view was followed and the land-owners were granted benefit.

The pleaded case of the private-respondents was that the land had been acquired for the purpose of setting up an industrial model township, on the award having been passed on 31.05.2010 in pursuance of Section 4 notification dated 31.03.2008. The plea taken was that they were owners in cultivating possession being proprietors and were entitled to get compensation.

The defence of the Gram Panchayat was that they had filed application on 31.05.2010 and claimed that they have been recorded in possession as "Darina Kasht" but the application was rejected by the DRO and an earlier plea had been taken by the land-owners to the same effect. Keeping in view the fact that the land was owned by Mustarka Malkan and Digar Hakdaran Araji Hasab Rakba and possession of the petitioner prior to that of their predecessor, the reasoning is that the Division Bench in **Onkar Singh & others Vs. State of Haryana & others 2010 (4) PLR 146**, has held that the land contributed had not been used for common purpose, then it would revert back to the proprietors and they would be entitled to the compensation. Resultantly, the Division Bench directed that the Land Acquisition Collector shall disburse the amount to the land-owners whose land had been acquired, since the amount 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).

65. xxx xxx xxx xxx xxx xxx xxx xxx xxx

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."

Counsel for the appellant-Gram Panchayat is not in a position to show that the land was used for any common purposes on the basis of which the said judgment would not be applicable. Neither any action had been taken by the Gram Panchayat to file eviction petition against the persons in possession nor they had filed title suit. From the impugned judgment, the counsel could not demonstrate that there was any such evidence led that the land was being used for common purposes so that the benefit, as such, of compensation, could go to the Gram Panchayat.

Keeping in view the above, this Court is of the opinion that the orders which have been passed by the Reference Court, do not suffer from any infirmity or illegality which would warrant interference by this Court. Accordingly, all the appeals are, hereby, dismissed.

22.02.2018 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*