

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.750 of 2018 (O&M)

Decided on: 27.02.2018

Gram Panchayat, Barhi

....Appellant

Versus

Balishter & others

...Respondents

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

Present: Mr.Vikram Singh, Advocate, for the appellant.

G.S. SANDHAWALIA, J.

The present appeal has been filed by the Gram Panchayat under Section 54 of the Land Acquisition Act, 1894 (for short, the 'Act'), against the award of the Reference Court, Sonapat, dated 30.09.2015, along with application for condonation of delay of 788 days in filing the appeal.

Vide the impugned award, the petition, filed under Sections 18 & 30 of the Act, filed by the private-respondents, was dismissed regarding the issue of enhancement of the market value qua the compensation which had been granted to the tune of Rs.27,35,19,281/-, by the Land Acquisition Collector, vide its award dated 28.01.2010. However, the said respondent-applicants were held entitled to 3/4th share of the compensation in equal shares being tenants whereas the appellant-Gram Panchayat was held entitled for compensation to the extent of 1/4th share.

The acquisition in question was initiated under Section 4 on 02.05.2007 for 55 acres 7 kanals 14 marlas of land in Village Garhi Barhi, Hadbast No.4 Tehsil Ganaur, District Sonapat, for public purpose, for development of industrial and residential complex in Phase-III of Barhi. The private-respondents had been shown as gair-marusi in the revenue record on payment of chakota of Rs.30/- for one year since the time of their fore-fathers, on the land measuring 7 kanals 4 marlas and filed petition

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under Sections 18 & 30 of the Act, claiming enhancement and their share. The present-appellant contested the said reference petition on the ground that they are absolute owners of the property at the time of the acquirement and it had given the suit property situated in killa No.76//5 (7-8) on lease after open bid and claimed to be absolute owner of the property. Respondent No.1 appeared as a witness and tendered into evidence jamabandi for the years 1962-63 and for the subsequent years, for the periods 1967-68, 1972-73, 1977-78, 1982-83, 1987-88, whereas the Panch of the Village Rohtash, appeared and tendered into evidence the lease deeds Exts.R-3 to R-5. Keeping in view the possession from 1962-63 onwards in the jamabandies Exts. P-3 to P-7, the benefit has been granted of apportionment. Reliance had been placed by the Reference Court upon the judgment in ***Gram Panchayat, Kanehi Vs. Ram Kumar 2001 (2) PLR 186.***

Counsel for the appellant has vehemently argued that the said private-respondents were gair marusi without payment of any rent and therefore, should not have been granted the the said benefit. For the delay of a period of over 2 years, the plea taken was that the case had been decided in the tenure of the earlier Sarpanch and the appellant only came to know when he received the notice of attachment on account of the execution petition and therefore, the delay was neither intentional nor wilful.

As has been noticed, the possession of the private-respondents have been noticed in the revenue record, without any interruption for the last 50 years in the jamabandis to which a

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presumption of truth is attached. No action, as such, was taken by the Gram Panchayat, to evict the said persons from the land and once they have continued in possession and have claimed their right of compensation, as such, being tenants. The order passed granting them their share to the extent of 3/4th share, does not warrant any interference, keeping in view the law laid down by the Apex Court in ***Col. Sir Harinder Singh Brar Bans Bahadur Vs. Bihari Lal & others 1994 (4) SCC 523*** and ***Mangat Ram Vs. State of Haryana & others 1996 (8) SCC 664*** and by a three Judges Bench in ***Union of India Vs. A. Ajit Singh 1997 (6) SCC 50***. Relevant portion of the judgment reads as under:

“5. The next question is : to what proportion the landlord and the tenant are entitled to vis-a-vis the compensation? Though the appellant had terminated the tenancy, on appeal, it was restored. Thereafter, they remained in possession as tenant. The appellant initiated the acquisition under the [Land Acquisition Act](#), though the covenant in the lease deed provided the right of dispossession and for taking possession for public purpose. In view of the fact that the order become final and the possession was not taken, pursuant to the termination of the tenancy, and since the acquisition was initiated under the Act, the respondent is entitled- to the payment of the compensation. The right of tenancy is a right under which a tenant is entitled to enjoy the possessory title and enjoyment of the teased land subject to covenants relating to ejection after due determination of tenancy. It is seen that the lease was granted in 1949 and it was terminated in 1960 and the acquisition was initiated in 1967 on which date he continued to be in possession of the property; therefore, this Court has to consider the apportionment of the compensation on that basis. The judgment in [Mangat Ram & Ors. v. State of Haryana & Ors.](#), [1996] 8 SCC 664 relates to the commercial

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premises which was acquired by the Government and the apportionment of the compensation was made at 75% and 25% to the tenant and the landlord respectively. It was challenged by the landlord for full payment. In that perspective, this Court upheld the grant of the apportionment at 75% and 25% to the tenant and the landlord respectively.”

The judgment of this Court in **Gram Panchayat, Kanehi** (supra), followed the above-said view regarding the right of tenants of 75% of compensation.

Counsel for the appellant could not demonstrate any precedent to the contrary. Another factor which is also to be taken into consideration is the inordinate delay and the appeal is time-barred. Only a bald averment has been made that the order impugned was passed during the tenure of the earlier Sarpanch. Nothing has been brought on record as to when the present Sarpanch, namely, Rashu Tyagi had been elected and neither the details have been given as to when the notice of attachment on account of the execution petition was done. The delay of 788 days in filing the appeal, in such circumstances, is not liable to be condoned as no sufficient cause is made out, as such and vested rights have, now, accrued to the private-respondents.

Accordingly, in view of the above discussion, the present appeal along with the application for condonation of delay, are hereby dismissed in limine.

27.02.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*