

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.767 of 1990 (O&M)

Date of Decision: 30.01.2019

Kashmir Singh (since deceased) through his LRs ... Appellants

VS.

State of Punjab & Ors. ... Respondents

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

Present: Mr. SS Rana, Advocate for the appellant

Ms. Simran Grewal Randhawa, AAG Punjab

Mr. Karan Padam, Advocate for respondent No.4

G.S. SANDHAWALIA, J. (Oral)

(1) The present appeal filed under Section 54 of the Land Acquisition Act, 1894 is directed against the award dated 01.06.1989 of Reference Court, Patiala whereby the claim of the petitioner under Section 30 for apportionment of the compensation along with other landowners claiming himself to be tenant, has been rejected.

(2) The reasoning given for denying the benefit to the appellant is that the entries in the revenue record did not support his case since there was mention of Dalip Singh and other as owners in the jamabandi for the year 1963-64 (A3). The ownership was recorded in favour of the Dalip Singh father of respondent No.4 Tej Parkash. Respondents No.5&6 respectively, are children of Tej Parkash. The ownership was depicted in the jamabandi for the year 1979-80 (A4). It was also noticed that the jamabandi for the year 1979-80 mentions the acquired land to be under the ownership of the Punjab Government and the name of cultivator was mentioned as Kashmir Singh s/o Rasel Singh as "*Gair Marasi*" but in the column of payment or rent, it was recorded as "*Bila Lagan Bawaja Kabza*" which showed that his

possession was recorded as that of a trespasser as he was not shown to be paying any rent to the owners. Appellant's claim of being in continuous possession for the last 30 years as tenant was negated on account of being trespasser from 1979-80 and on not having paid any share of crop to the landowners, his claim was rejected.

(3) Counsel for the appellant submitted that other tenants have got the benefit of apportionment for other portion of land owned by Dalip Singh and family. Merely because the other tenants have been successful in showing their possession for different portions of land thus would not entitle the appellant for the same benefit. A perusal of the record would show that the claim as such under Section 30 was based for the land measuring 19 bighas 17 biswas in village Rasulpur Saidan which was acquired for setting up of Diesel Locomotive Components Workshop and its residential colony (DCW). The claim was based on the fact that Sajjan Singh his uncle was the cultivator and therefore the appellant thereafter was cultivating the land in dispute.

(4) The defence of the respondents was that the application of Kashmir Singh for acquiring proprietary rights was rejected by the Assistant Collector and thereafter by the Collector and then by learned Commissioner, Patiala Division and therefore he is not entitled to any compensation.

(5) In the replication, the appellant then claimed that his brother was cultivating and he died unmarried 10-12 years and therefore he had been cultivating the land till the possession was taken by the Government. It is pertinent to mention that apart from the sole statement of the appellant who appeared as PW1 no other evidence has been produced. In cross-examination, it was stated that the disputed land in fact was surplus land in

the hands of the owner and it was allotted to the him by the Government on the basis of their tenancy. He could not say if the landlord filed appeal and the land was held not to be surplus land. He has acknowledged Dalip Singh died about 15 years back and after his death, he did not pay any share of crop to any of LRs of Dalip Singh. The said entry is thus supported by the revenue record which also showed at one stage the land was as such shown to be under the ownership of Punjab State and the entry as such of possession was recorded as a trespasser in respect of the present appellant.

(6) Recently, the Apex Court in **Haryana Wakf Board vs. State of Haryana (2018) 1 RCR (Civil) 150**, has held that until the right of possession accrues into the ownership or title, the tenant would not be entitled for compensation only on account of long possession. The relevant portion read 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.

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.

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.”

(7) Nothing could be shown that the appellant had acquired any statutory right on account of which he would be entitled for ownership account of his possession even if so argued. In such circumstances, this Court is of the opinion that the findings recorded by the Reference Court on the basis of close scrutiny of the relevant revenue record does not require any interference by this Court. It is settled principle that onus is always on the person who puts forward the said fact and the absence of any corroborative evidence brought on record to show that the appellant's possession as such was permissive on account of the tenancy which is contractual in nature, the finding recorded by the Reference Court cannot be said to be unjustified.

(8) Resultantly, the appeal is dismissed.

30.01.2019

vvishal

(G.S. Sandhawalia)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
No