

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No.44 of 1994
Date of Decision: 10.05.2019

Dharma (D) thru his LR ... Appellant

VS.

State of Haryana & Ors. ... Respondents

RFA No.305 of 1994
Date of Decision: 10.05.2019

Amar Singh & Ors. ... Appellants

VS.

State of Haryana & Ors. ... Respondents

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

Present: None for the appellant(s)

Mr. Sudeep Mahajan, Addl. AG Haryana
Ms. Vibha Tewari, AAG Haryana

G.S. SANDHAWALIA, J. (Oral)

The above-captioned appeals filed under Section 54 of the Land Acquisition Act, 1894 are directed against the award dated 16.04.1993 of the Reference Court, Panipat whereby petitions under Section 18 of the 1894 Act were dismissed on account of the fact that the appellants had failed to prove that they were owners or tenants of the acquired land. A finding was recorded that the land vested in the Gram Panchayat and the appellants were not in possession as co-sharers being interested persons.

The Reference Court after examining the evidence on record came to the conclusion that there was only a decree-sheet as such dated 25.11.1985 (Ex.A1) in favour of the Dharam Singh s/o Lachhman to show that the suit filed by him against the Gram Panchayat was decided *ex parte* against the order dated 19.12.1980 passed by the Assistant Collector Gr.I,

Panipat. Accordingly a finding was recorded whereby neither the appellants were held to be owner of the land measuring 83 kanals 3 marlas and revenue record (Ex.A2) in the form of jamabandi for the year 1984-85 (Ex.A2) would show that the Gram Panchayat was owner of Khasra No.9/18 and it was in cultivating possession of Sher Singh s/o Ram Gulal as *gair marusi*. Similarly, jamabandi for the year 1984-85 (Ex.A4) would show that the Gram Panchayat was owner of land measuring 19 kanals 11 marlas comprised in Khasra No.7/1(3-4), 9(8-7) and 10(8-0) which was in possession of Ratna son of Phullar as *gair marusi*. Similarly, Ex.AG jamabandi for the year 1984-85 of land measuring 24 kanals would show that the Gram Panchayat was owner of land comprised in Khasra No.15/4(8-0), 7(8-0), 8(8-0). The said land was in possession of Maha Singh. Resultantly, a finding was recorded that Amar Singh etc. were not held to be owners of land measuring 38 kanals 13 marlas but they were simply held to be in possession of the same. Jamabandi for the year 1979-80 (Ex.A11) would show Gram Panchayat to be owner of land measuring 38 kanals 13 marlas as shown in decree-sheet Ex.A10 and was in cultivating possession of Amar Singh, Dharma, Zile Singh as *gair marusi* and they were not paying any *batai*.

The appellants were therefore neither tenants nor owners and therefore the oral contention that they were cultivating the land for 56-57 years was repelled. A finding was further recorded that no claim under Section 30 of the Act by arraying the Gram Panchayat of village Dahar as respondent in the case had been preferred and therefore the claim for compensation was held not to be justified. The application was dismissed

and issue No.2 was held against them that the reference was not maintainable.

A perusal of the record would show that in the petition filed under Section 18, the challenge was more towards acquisition and injunction had been prayed for. Accordingly exclusion from the acquisition proceedings was sought or in the alternative possession of another piece of panchayat land. It is not pleaded in any manner that the petitioners were in possession on the basis of any tenancy and neither Panchayat was made party as such. A perusal of the *ex parte* order dated 25.11.1985 (Ex.A10) would show that the declaration made was that the order of Assistant Collector Gr-I, Panipat dated 19.12.1980 vide which ejectment has been ordered from the agricultural land was subject matter of challenge apart from the compensation which had been awarded. The appellants have failed to place on record the ejectment application vide which they were ejected to show as to what was their status on the basis of which they claim their right on the land. By way of oral evidence they could not have as such put up a new case that they were in cultivating possession of acquired land for the last 56-57 years as proprietors of the village. The shamlat land having been partitioned the land they claim that the same had fallen to their share. The partition was also stated to be oral and no partition deed was exhibited in Court.

RW1 Dharam Pal Patwari had appeared and stated that the acquired land was shamlat land which was mutated in the name of Gram Panchayat in May, 1992. He also stated that the appellant and others were recorded as cultivating the land as *gair marusi* and paying no rent. The share

of *shamlat* land has also not been specified to show that the appellants have any interest in the land in question.

Keeping in view the above cumulative discussion, this Court is of the opinion that the finding recorded by the Court below did not suffer from any infirmity which would require any interference.

The appellants are not the persons interested in the land which was acquired and entitled for claim of enhancement and had failed to file a petition under Section 30 against the Panchayat for apportionment. The amount of compensation was sought to be enhanced and therefore the claim under Section 18 has been rightly declined.

Resultantly, the appeals are dismissed.

10.05.2019

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(G.S. Sandhawalia)
Judge

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

Yes/No
Yes/No