

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

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CWP-19801-2019

Date of decision: 20.08.2019

Ram Sanehi

....Petitioner

Versus

Sanjeev & others

...Respondents

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

Present: Mr.R.S.Malik, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India, is to the order dated 19.04.2019 (Annexure P-5), passed by the Reference Court, Sonapat, whereby the claim for apportionment of possession of the land falling in Khasra No.22//10 measuring 5 Kanals 4 Marlas, situated in Village Badh Malik, has been rejected.

The reasoning given to reject the case of the petitioner is on account of the ownership of private-respondent No.1-Sanjeev. The claim for apportionment is on the basis of the order dated 02.04.2008 (Annexure P-3), passed by the District Revenue Officer, whereby petitioner had been found in possession. The Reference Court had noticed that the said order was set aside by the Commissioner, Rohtak on 08.05.2009 and the matter had been remanded to inspect the site in question and pass fresh order. It had also been noticed that thereafter, the District Revenue Officer has passed order dated 03.04.2010 and the appeal filed by the petitioner was dismissed by the Commissioner on 19.08.2011. The revenue record was also referred to and it was noticed that copies of the Jamabandies for the years 1992-93 to 2012-13 and Khasra Girdawari (Exs.R1/13 to R1/25) revealed that private-respondent

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No.1-Sanjeev was owner in self cultivation. Keeping in view the principle that a presumption of truth is attached with the revenue record, especially keeping in view the fact that the Jamabandi records were also not rebutted and apart from the statement of the petitioner there was no documentary evidence to prove his possession over the land, the claim for apportionment, as such, has been denied.

Counsel for the petitioner vehemently submitted that the suit for permanent injunction had been filed by private-respondent No.1-Sanjeev, in the Court of Additional Civil Judge (Sr.Division) Sonapat but he had withdrawn the suit on 12.06.2012 (Annexure P-4) and therefore, the petitioner would be entitled for apportionment.

Merely because the suit for permanent injunction was filed whereby the private-respondent might have felt a threat, as such, regarding his possession and which might not have materialized, could have led to the withdrawal of the same. It would not, as such, make out a case that the petitioner is in possession, on the basis of which, he could claim compensation for the land which was acquired under the provisions of the National Highways Act, 1956, for the construction of the Eastern Peripheral Expressway, vide award dated 28.01.2011. The Reference Court has examined the evidence in detail including the revenue record, as such, to come to a justified finding that the revenue officer, on an earlier occasion, had found the possession with the petitioner but the same had been set aside. Thereafter, rather the Revenue Courts had come to the conclusion that the private-respondent No.1 was in possession. The said finding had further

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been substantiated by the revenue record, as discussed above.

A perusal of the judgment dated 19.04.2019 (Annexure P-5) would go on to show that issue No.1 would show that the petitioner was claiming being a tenant over the land but no evidence, apart from his sole statement, as such, had been brought on record that he was in possession of the land since when and whether the possession was handed over by his predecessor-in-interest. The onus was upon the petitioner, as per issue No.1 and tenancy is a bilateral agreement. Having failed to discharge the said onus, the petitioner, thus, cannot, now turn around and claim that the order of the Reference Court is suffering from any illegality or irregularity which would warrant interference under the discretionary relief of Articles 226 of the Constitution of India.

Resultantly, in view of the above discussion, finding no merit in the present writ petition, the same is hereby dismissed in limine.

20.08.2019
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*