

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

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**RFA-2658-2019 (O&M)
Date of decision: 22.07.2019**

Tayyub & othersAppellants
Versus
Khurshid Ahmed & others ...Respondents

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

Present: Mr.Rajesh Lamba, Advocate, for the appellants.

G.S. SANDHAWALIA, J. (Oral)

Present appeal, filed under Section 54 of the Land Acquisition Act, 1894, is directed against the award of the Reference Court, Nuh (Mewat) dated 23.04.2019 whereby the landowners have been held entitled for compensation for the land measuring 4 kanals, which was acquired vide award dated 30.01.2015 for construction of reservoir for irrigation in Kotla depression in Village Akera, Tehsil Nuh District Mewat.

The respondents-landowners filed applications under Section 30 that compensation should not be disbursed to the present appellants/respondents, as they were real owners in cultivating possession. The appellants had taken the plea that they were in possession and entitled to receive compensation for the land acquired.

Reference Court noticed that in the earlier litigation inter se the parties, the applicants claimed to have been in possession of the acquired land, but no mortgage deed had been produced by them and neither any sale deed had been produced that the land had been purchased by them. The earlier judgment inter se the parties (Ex.D-4) was kept into consideration where the appellants had claimed to be mortgages in possession and had filed suit for permanent injunction that they should not be dispossessed forcefully,

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which had been decreed in their favour to the extent that they could not be dispossessed except in due course of law. Resultantly, taking into account the contention of the counsels that similarly situated land had been mortgaged for Rs.1000/-, the mortgage value, as such, was taken to be the said sum, while relying upon the judgment of Full Bench of this Court in **Ram Kishan & others Vs. Sheo Ram & others 2008 (1) Civil Court Cases 414 (P&H)**. The same has been upheld by the Apex Court in **Singh Ram Vs. Sheo Ram (2014) 9 SCC 185**, that once a mortgagee would always remain mortgagee. Thus, the respondent/appellants could have no such right in the property and they have been held entitled only for the amount of the mortgage in equal shares. It is, in such circumstances, the present appeal has been filed.

Once the matter under Section 30 had been referred to the Reference Court and the claim, as such, was made to the compensation, in defence, it was always open to the respondents to show the exact amount of the mortgage, as it is now contended that the amount has been fixed at an arbitrary basis. The onus, as such, was also upon the present appellants, which they have failed to do so and therefore, now, they cannot clamour for higher amount of mortgage of the compensation than what has been granted by the Reference Court.

Accordingly, in view of the above discussion, finding no merit in the present appeal, the same is dismissed in limine.

22.07.2019
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No