

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

204

**RFA No.3369 of 2017 (O&M)
Decided on : 28.01.2020**

Shri Om (now deceased) through his legal heirs

... Appellants

Versus

Gram Panchayat village Phasour (Faizabad) and another

... Respondents

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

Present: Mr. Ajit Sihag, Advocate
for the appellants.

Mr. Chanderhas Yadav, Advocate
for respondent No.1.

G.S. Sandhawalia, J. (Oral)

CM-6488-CI-2019

Application for placing on record copy of the Exs.R-1 to R-10 regarding register of income of revenue from Shamlat Gram Panchayat, Faizabad, Tehsil & District Jhajjar, as Annexure A-1 colly., is allowed, subject to just exceptions. The same are taken on record. Office to append the same at the appropriate place.

CM stands disposed of.

Main appeal

Challenge in the present appeal filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') by the appellants is to the order dated 27.04.2017 passed by the Reference Court, Jhajjar, in a petition filed under Section 30 of the Act.

The claim for compensation was on the strength of land being '*Gair Maursi*' for the land measuring 23 kanals 18 marlas and has been rejected on the ground that the father of the original petitioner Jai Narayan had been recorded in the column of cultivation as '*Gair Maursi*' from the *jamabandi* for the year 1965-66 (Ex.P1) till the *jamabandi* for the years 2005-06 (Ex.P9). That respondent-Gram Panchayat produced on record Ex.R1 to Ex.R10 pertaining to the acquired land which showed that it had been leased out to different persons from time to time.

Resultantly, it was held that there was sufficient evidence to rebut the entries in the *jamabandi* Exs.P1 to P9 regarding the possession of Jai Narayan. The amount of ₹45/- in the *jamabandi* was stated to have continued for the said period from 1965-66 till 2005-06 without any change and it was thus held the said entries were copied by the revenue authorities in successive *jamabandi* records without verification of the authenticity of the same. It was further noticed that Jai Narayan had died in the year 1990 and, therefore, the entries had continued till 2005-06 and mere recording of '*Gair Maursi*' does not mean that the person recorded in the column of cultivation as '*Gair Maursi*' is a tenant and there was no such evidence to support the allegations in this regard.

Counsel for the appellants has vehemently submitted that neither the persons who allegedly took the land on rent were examined and the record was produced by one Mahabir, Ex-Sarpanch who did not have any authority as such to produce the record. Neither the receipts were produced in the Court whereby the alleged persons have paid the

rent and therefore, the findings recorded are based on the surmises and conjectures and not sustainable.

Counsel for the Gram Panchayat has vehemently opposed the said argument on the ground that the Ex-Sarpanch was the best person to depose as such regarding the events which had happened during the period of his tenure.

However, this Court is not in a agreement with the argument raised by the counsel for the Gram Panchayat.

A perusal of the record would go on to show that it was a categorical case of the petitioners that the land was *Banzar* and father of Jai Narayan developed the land by spending a huge amount and converted the same into agriculture land. Jai Narayan expired in the year 1990 and after his death objector had succeeded to the same and was in cultivating possession of the land which was acquired for construction of a 2100 Megawatt Power Plant. There were political differences between objector and respondent No.1 who was the Gram Panchayat and it wanted to get the compensation illegally.

The stand on the other hand of the Gram Panchayat was specific that the land was being leased out by the Gram Panchayat in a open auction every year from the very beginning. The objector had never paid any '*Lagan*' and '*Gair Maursi*' did not apply in the land of Gram Panchayat. The suit land was being leased out from the very beginning to the several persons every year in an open auction to the highest bidder, who had remained in possession of the suit land and, therefore, the

compensation was liable to be paid to the Gram Panchayat.

Thus, it is apparent that the Gram Panchayat had set up a specific case that the land was being leased out as such to several persons. The revenue record as noticed was in favour of the appellant and the onus as such to prove to the contrary that the land was being leased out was upon the Gram Panchayat. Least it could have done was to produce the Sarpanch, who was duly authorized along with the revenue record. In cross-examination of the Ex.-Sarpanch, it has also come on record that certain persons had taken the land from 1996 to 1999 on lease. Neither the said persons were examined as witnesses. It has further come on record that the receipts vide which the land was leased had not been produced and neither the said person had got the complete record nor he was authorized to appear by the Panchayat.

In such circumstances, this Court is of the opinion that once a categorical stand as such had been taken by the Gram Panchayat that should have been proved beyond a reasonable doubt as such. The revenue record admittedly talked about the possession as such of the appellants and predecessor-in-interest. This aspect has totally been lost sight off by the Reference Court. Even in the pleadings it has been specifically mentioned that there is a political bias as such of the Sarpanch and, therefore, it was more necessary as such for the Gram Panchayat to have examined the sitting Sarpanch rather than to rely upon the sole statement of the Ex-Sarpanch Mahabir.

Resultantly, the findings which have been recorded suffer

from an illegality and are liable to be set aside. The award as such cannot be sustained and is accordingly set aside. The appeal is allowed and the matter is remanded to the Reference Court for fresh decision. It will be open to the parties to lead additional evidence in support of their case by filing appropriate applications, accordingly.

Parties shall put in appearance before the District Judge, Jhajjar on 24.02.2020.

JANUARY 28, 2020
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No