

(2001) 04 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 2289 of 1991 (O and M)

Garja Singh

APPELLANT

Vs

Gram Panchayat of Village Majat

RESPONDENT

Date of Decision : 03-04-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Constitution of India, 1950 — Article 227
Land Acquisition Act, 1894 — Section 30

Citation : (2001) 3 RCR(Civil) 420

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. A.K. Chopra, for the Appellant; Mr. Harnek Singh, Mr. Ashok Singla, for the Respondent

Judgement

R.L. Anand, J.—C.M. is allowed and permission is granted to the petitioners to place on record the additional affidavit and copies of jamabandis.

2. This is a civil revision under Article 227 of the Constitution of India vide which challenge has been given to the order dated 12.6.1991 passed by the Additional District Judge, Ropar, wherein it was held as under :-

"2. After hearing the learned counsel for the parties I find that the objectors are none else than the applicants for execution of the order dated 8.4.1989 passed by my learned predecessor Sh. H.S. Maunder, Additional District Judge, Ropar. It was decided therein that the compensation has to be paid according to the shares mentioned in the jamabandi for the year 1983-84. The present court being now the executing court cannot go behind the decree and the decree has to be executed as such. Therefore, the objection petitions are dismissed. The applicants may be paid compensation according to the shares in the jamabandi for the year 1983-84 in accordance with order dated 8.4.1989. File be consigned to the record room."

3. Some facts can be noticed in the following manner:-The petitioners alleged

that they belonged to village Kailar, Tehsil Kharar, District Ambala and the land of the village was acquired by the Punjab Government in order to raise capital of punjab and on account of the acquisition of their land falling in the territorial jurisdiction of village Kailar, the petitioners allegedly became "capital oustees" and they were allotted land in village Majat, Tehsil Kharar, District Ambala. Thereafter the land of village Majat was acquired by the Punjab Government for the construction of S.Y.L. Canal. A dispute arose between the proprietors and the Gram Panchayat Majat and in land reference No. T3 of 1986 the matter was referred to the Court of Additional District Judge, Ropar u/s 30 of the Land Acquisition Act. In para No. 6 of the order dated 8.4.1989 the Court of Additional District Judge, Ropar held that the proprietary body of the village was entitled to receive the compensation in preference to the Gram Panchayat, Majat. In the proceedings u/s 30 of the Land Acquisition Act the dispute was with regard to the land measuring 321 Kanals 13 Marias. The findings of the Court of Additional District Judge. Ropar are as follows:-

"6. The counsel for the claimants/petitioners has drawn my attention to copy of mutation Ex.A1 according to which ownership of the land has been changed from that Gram Panchayat Majat to Shamlat den in column No. 9. In column No. 10, it is shown as Makbuza Malkans. Furthermore, in the Jamabandi for the year 1983-84, placed by the department, land is again shown as Shamlat Deh, Hasab Rasad Jara Khewat. The learned counsel for the petitioners has cited Chajju Ram v. The Joint Director, Panchayats and others 1986 P.L.J. 293 wherein it is held that the land kept apart as Mashtarka Malkans as per revenue record is vested in proprietary body and used for agricultural purposes by proprietors of the village and not for any common purposes of village and it was held that it does not come within the ambit of Shamlat Deh. The evidence of the petitioners remained un rebutted. Otherwise also, from the record, the ownership of the proprietors is clearly made out. Therefore, proprietary body of the village is entitled to receive the compensation. The land reference is decided accordingly. There is no order as to costs. Memo of costs be prepared. File be consigned."

4. The petitioners are not satisfied with the order dated 12.6.1991 on the plea that they are entitled to the entire compensation of the acquired land being the capital oustees.

5. During the course of this revision, two documents have been filed on record i.e. Annexure P7 jamabandi for the year 1983-84 of the land measuring 322 Kanals 17 Marias and Annexure P8, jamabandi for the year 1983-84 of the land measuring 313 Kanals 2 Marias. The case made out by the petitioners is that the compensation of the land measuring 313 Kanals 2 Marias has to be shared by all the propriety body of village Majat and to this extent there is no dispute between the petitioners and the respondents.

6. The grouse of the respondents is that the petitioners are making a new case by putting a claim that they are entitled to the exclusive compensation with regard to the land measuring 322 Kanals 17 Marias shown in Annexure P7. On

the contrary, the learned counsel for the petitioners submits that so far as the land covered by Annexure P7 is concerned, the added respondents represented by Mr. Ashok Singla have no right, title or interest in it.

7. I have gone through the impugned order. A reference to the order dated 8.4.1989 passed by the Additional District Judge, Ropar indicates that in those proceedings the area involved was 321 Kanals 13 Marlas, which is subject matter of Annexure P8. There is no finding in this order with regard to the area covered by Annexure P7.

8. The learned counsel appearing on behalf of added respondents submitted that as per the declaration given vide order dated 8.4.1999 the rights of the petitioners and the added respondents have also been adjudicated and the compensation with regard to the land covered by Annexure P7 has to be shared by the proprietary body of the village. But I am not in a position to subscribe to the argument raised by the learned counsel for the added respondents because there is no specific finding in the order dated 8.4.1989 with regard to the land covered by Annexure P7.

9. The learned counsel for the added respondents then submitted that the executing Court cannot go behind the decree. Since it has already been declared by the Addl. District Judge, Ropar vide order dated 8.4.1989 that the entire proprietary body of the village was entitled to receive the compensation, therefore, the compensation with regard to the land covered by Annexures P7 and P8 has to be shared accordingly. The stand taken up by the learned counsel for the added respondents cannot be accepted for the reason that vide order dated 8.4.1989 the Court of Addl. District Judge, Ropar was only adjudicating the rights of the proprietary body with regard to the area measuring 321 Kanals 13 Marlas, which is now the subject matter of Annexure P8. The rights of the parties with regard to the land covered by Annexure P7 were not adjudicated. The executing Court has the jurisdiction to adjudicate all points relating to the execution, discharge or satisfaction of the decree. The present is a matter which pertains to the execution of the award of the Court.

The learned counsel appearing on behalf of Gram Panchayat, Majat submitted that the land in question belonged to the Gram Panchayat which is entitled to the entire compensation. I am not in a position to accept the stand of the learned counsel for the Gram Panchayat for the simple reason that order dated 8.4.1989, vide which the stand of the Gram Panchayat was rejected, has already become final. It will not be proper either for the High Court or for the executing Court to dislodge this order by accepting any plea contrary to this order. What are the rights of the petitioners as well as the added respondents with regard to the land covered by Annexure P7, have not been adjudicated by the Court of Addl. District Judge, Ropar. Therefore, this revision stands disposed of by giving declaration that the compensation with regard to the land measuring 321 Kanals 13 Marlas covered by Annexure P8 shall go to the proprietary body of village Majat and the compensation of the land measuring 322 Kanals 17 Marlas, covered by Annexure

P7, shall be determined by the exeucting Court whether it should go to the capital oustees or to the local proprietors. The exeucting Court shall frame proper issue in this regard and shall afford opportunity to both the parties to lead evidence and the findings shall be given within six months from the receipt of the copy of the order.

10. Order accordingly.