

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 19818 of 2015 (O&M)

Date of Decision: 10.05.2017

Bijender KumarPetitioner

versus

State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. S.S.Khurana, Advocate, for the petitioner

Ms. Palika Monga, Deputy Advocate General, Haryana

RAMENDRA JAIN, J.

1. In the year 1977, i.e., 40 years ago, the Irrigation Department of the Haryana Government, vide notification dated 26.2.1977 (Annexure P-1) under Section 4 and clause (c) of sub-section (2) of section 17 of the Land Acquisition Act, 1894 (hereinafter referred to as the '1894 Act') acquired land 02K-08M belonging to the grand-father of the petitioner, namely, Poliya, for the construction of Resoli Distributory. According to the petitioner, though additional land, comprising Rectangle No.2, Killa Nos.19 and 20/1 was also taken by the respondents for the construction of Resoli Distributory, but no payment of compensation was made to his fore-fathers despite their repeated requests. The aforesaid land was inherited by the petitioner as per jamabandi for the year 2002-03 (Annexure P-4). Upon his application dated 08.09.2011 (Annexure P-6) to the respondent-authorities,

seeking information under Right to Information Act, 2005, he was informed that no compensation for aforesaid Rectangle No.2, Killa Nos.19 and 20/1, under Award no.100 dated 30.01.1978, was even paid to them.

2. Hence, by way of the instant writ petition, the petitioner has sought issuance of a writ of mandamus directing the respondents either to vacate or return his aforesaid land or to grant him compensation in accordance with the provisions of the 1894 Act with exemplary damages and mesne profits on account of their illegal possession over it for the last 40 years. Alternative prayer has been made to quash the notification dated 26.2.1977 (Annexure P-1) along with all acquisition proceedings arising therefrom and reply dated 07.05.2010 (Annexure P-5) to the legal notice under section 80 CPC.

3. Per contra, the respondents, in their written statement, admitting the case of the petitioner, alleged that the reason for not granting the compensation of the aforesaid land to the petitioner was on account of dispute as adjoining the acquired land of the petitioner, there was a road on some portion, which was also acquired by the PWD (B&R), Haryana. Therefore, at that relevant point of time, the respondent-department could not get the correct measurement of the land already acquired by the said department and as such, the award could not be passed for the remaining acquired land of the petitioner. Even otherwise, the grand-father, the father, or even the petitioner never asked for any compensation prior to the filing of the instant writ petition. Since a long period of 38 years had elapsed, therefore, the respondents were under bona fide belief that the grand-father of the petitioner was satisfied with the compensation paid to him for the substantial portion of his land and only a meagre portion of the acquired

land was left without awarding him the compensation. Now the respondents have got actual measurement from the PWD (B&R), Haryana and initiated the process of awarding compensation to the petitioner for the left over portion of his land by passing a supplementary award. In support of his arguments, reliance was placed upon the decision of Hon'ble the Supreme Court in State of Maharastra Vs. Digambar, AIR 1995 SC 1991 and Division Bench judgment of this Court in CWP No.4790 of 2015, Dharambir and others Versus State of Haryana and others, decided on 3.9.2015.

4. After giving our thoughtful considerations to the submissions made by the learned counsel for the parties, we find that the writ petition is completely devoid of any merit and thus, the same deserves to be dismissed for the following reasons:

5. Issue regarding delay in filing petition for similar relief came up for consideration before Hon'ble the Supreme Court in **Digambar's case (supra)** where the allegation was that some land owned by the parties there was utilized in the year 1971-72 without acquisition, but the writ petition was filed claiming compensation in the year 1991. The same was dismissed on account of delay and laches as the land owners therein had failed to explain the delay of 20 years in filing the petition. The judgment of Bombay High Court was reversed where it had directed for grant of compensation. The relevant part thereof is extracted below:

“25. In our view, the above allegation in no way sufficient to hold that the writ petitioner (respondent here) has explained properly and satisfactorily the undue delay of 20 years which had occurred between the alleged taking of possession of his

land and the date of filing of writ petition in the High court.

We cannot overlook the fact that it is easy to make such kind of allegations against anybody that too against the State. When such general allegation is made against a State in relation to an event said to have occurred 20 years earlier, and the State's non-compliance with petitioners demands, State may not at all be in a position to dispute such allegation, having regard to the manner in which it is required to carry on its governmental functions. Undue delay of 20 years on the part of the writ petitioner, in invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution for grant of compensation to his land alleged to have been taken by the Government agencies, would suggest that his land was not taken at all, or if it had been taken it could not have been taken without his consent or if it was taken against his consent he had acquiesced in such taking and waived his right to take compensation for it.

....emphasis supplied.”

6. Similar issue came up for consideration before the Division Bench of this Court in **Dharambir's case (supra)** wherein the writ petitioner claiming compensation for alleged utilisation of land for construction of irrigation channel in the year 1953, filed in the year 2015 after 60 years was dismissed. It was observed therein that post independence there being few options form irrigation available, the inhabitants of the villages used to offer land to the State free of cost for providing infrastructural facilities such as construction of minor or road.

Source of irrigation was more valuable than the value of land at that time, as it provided source of livelihood. Similar view was expressed in CWP No.26060 of 2015 titled as Azad Singh versus State of Haryana and others decided on 27.04.2017.

7. In the instant writ petition, as has already been noticed above, the grand-father or the father, of the petitioner, during their life time, never raised any issue with respect to alleged taking over of possession of the land by the respondents for the construction of Resoli Distributory. The petitioner has not stated anywhere in his petition as to why he thought of raising the issue 38/40 years after the land was, allegedly, taken for the purpose of construction of Resoli Distributory. The stand taken by the respondents is that the dispute with respect to actual measurement of a road which was acquired by the PWD (B&R), Haryana, has now been resolved and the process of awarding compensation for left over portion of the land of the petitioner has been initiated.

8. It was also pointed out by learned counsel for the State that a demand draft of ₹ 15,973/- was handed over to the petitioner, but he did not encash the same and thus, its validity period had expired. Learned State counsel has also pointed out that the amount shown in the demand draft includes up-to-date interest and therefore, the grievance of the petitioner stands fully redressed. Faced with this situation, learned counsel for the petitioner did not make any opposition to the submission made by the learned State counsel.

9. Learned counsel for the petitioner has handed over the aforesaid demand draft to the learned State counsel for its renewal, which, after doing the needful, shall be returned to the petitioner so as to enable

him to encash the same.

10. For the reasons mentioned above, we do not find any merit in the present petition. The same is, accordingly, dismissed.

(RAMENDRA JAIN)
JUDGE

(RAJESH BINDAL)
JUDGE

10.05.2017
VK

Whether reasoned/speaking Yes/No

Whether reportable: Yes/No