

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 26060 of 2015 (O&M)

Date of Decision: 27.04.2017

Azad Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Sandeep Kotla, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. AG Haryana.

RAJESH BINDAL,J.

1. The petitioner, who claims himself to be the owner of land as detailed in the petition, has filed the present petition, seeking a direction to the respondents to remove the un-authorised encroachment on the land used by the State for construction of a water course. Further prayer has been made for grant of mense profit, compensation for use of land since 1954. Further prayer has also been made directing the State to acquire the land and pay the compensation.

2. The brief case of the petitioner is that the petitioner is the owner of the land in question, which has been inherited by him. The State constructed a water course on the land owned by the predecessor in interest of the petitioner especially forming part of Khasra No. 4974, 4976, 4975 and 4979. The construction was made without acquisition of the land. On a

request made by the petitioner to the Tehsildar for demarcation, it clearly

emerged that illegal possession of the land had been taken for construction of water course. The representation made by the petitioner for payment of compensation was not exceeded to, hence, the writ petition was filed.

3. The stand taken by respondent No.2 in the written statement is that Rewari Khera Minor was constructed by the Irrigation Department of Joint Punjab in the year 1951 on the demand of the residents of the village for providing better irrigational facilities. The petitioner was nowhere in picture at that time. His forefathers were shown to be co-sharers in the land. They never raised the issue as is sought to be raised by the petitioner. The writ petition was filed 65 years after the minor was constructed. The same being highly belated deserves to be dismissed on this ground. There is no record available with the department pertaining to the land in question. In support reliance was placed upon the decision of Hon'ble the Supreme Court in State of Maharashtra 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. Heard learned counsel for the parties and perused the paper book.

5. It is admitted case of the petitioner himself that the land which was owned by his fore-fathers was utilized for the purpose of construction of Rewari Khera Minor way back in the year 1954 though as per the record, it was constructed in the year 1951. The issue regarding utilization of land for the purpose of construction of Rewari Khera Minor and/or payment of compensation was never raised by the fore-fathers of the petitioner who were in picture, when the minor was constructed. The petitioner has sought to raise the same 65 years thereafter by filing the present petition. There is

no explanation forthcoming as to why the issue was not raised immediately when the minor was constructed allegedly without acquisition of the land.

6. 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 para 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 Governmental 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.”

7. Similar issue came up for consideration before the Division Bench of this Court in **Dharambir's case (supra)** wherein the writ petition claiming compensation for alleged utilization 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 for 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.

8. In the case in hand, as has already been noticed above, the fore-fathers of the petitioner during whose life time possession of the land was taken for construction of minor never raised any issue. It has not been stated by the petitioner anywhere as to when the petitioner inherited the land and why he thought of raising the issue more than 65 years after the land was allegedly taken for the purpose of construction of minor. The stand of the State is that it was constructed for the benefit of land owners to overcome scarcity of irrigation facilities. None of the land owners whose land was taken had ever claimed compensation or raised any issue in that regard. It is not that only the land of the predecessor-in-interest of the petitioner was taken, there were other land owners also as the length of the minor is 8,988 meter, which is flowing in three different village namely Rohad, Kharhar and Mattan.

9. For the aforesaid, prima-facie, we do not find any merit in the present petition and the same is hereby dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

27.04.2017
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Whether speaking/reasoned Yes/No

Whether Reportable: √
Yes/No