

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

-.-

**C.W.P No. 10057 of 2018(O&M)
Date of decision: 24.04.2018**

Jasbir Singh & Ors.

... Petitioners

Vs.

State of Haryana & Ors.

...Respondents

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

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

G.S.SANDHAWALIA, J. (Oral)

The present petition has been filed under Article 226 of Constitution of India seeks direction to respondents to grant compensation in accordance with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

It is a case of the petitioners that 12 kanals 19 marlas of land is in possession of the respondents whereby a canal as such is running on the land. It is not disputed that in the year 2009 a suit for mandatory injunction was filed for removal of the illegal encroachment of the land falling in Village Joshi by the petitioners. The defence of the State was that Hansi Branch Canal was in existence for the last more than 150 years and the demarcation which has been carried out was not conducted in the presence of the defendants. The plaintiffs had never approached the higher authorities regarding encroachment over the land and neither approached

the consolidation department, if they had any complaint regarding shortage in their land. Issue No.1 and 7 whether the plaintiffs were entitled for a decree for mandatory injunction was declined on the ground that no such representation to the higher authorities had been made and it is settled law that a person has to file the suit within the period of limitation and the law aids the vigilant and not the indolent. The appeal was filed by the plaintiffs before the District Judge Panipat was also dismissed on 22.10.2014 wherein observation was made that the plaintiffs are at liberty to approach the competent authority regarding the claim of compensation if any. The relevant portion reads as under:-

“18. Keeping in view above discussion, it is held that the plaintiffs have slept over their right for a long time. Hence, they are not entitled to get the relief of mandatory injunction as canal has been used for public interest and not for private interest, for the last more than continuously 100 years. Hence, there is no merit in the appeal and the same is dismissed, with no order as to costs. However, the plaintiffs are at liberty to approach the competent authority regarding their claim of compensation, if any, on getting fresh demarcation of the suit land from all corners. Decree sheet be drawn up accordingly. Trial Court's record along with copy of this judgment be sent back and after due compliance appeal file be consigned.”

Bolstered by the said observations and without choosing to pursue their remedies against the said decision the demarcation was got done on 22.12.2014 (Annexure P/5) (colly).

Thereafter, a legal notice dated 16.04.2015 was served upon the respondents which was duly replied on 15.06.2015 taking the same plea as such including the plea of adverse possession. Resultantly, a suit for declaration for entitlement of compensation came to be filed on 23.07.2015 (Annexure P/8). The suit was withdrawn at the point of time when the case was fixed for consideration without taking any liberty to pursue any alternative remedy. The order dated 11.02.2017 reads as under:-

“ Today the case was fixed for consideration. In view of the statement dated 03.02.2017 made by ld. Counsel for the plaintiff, the present suit is hereby dismissed as withdrawn. File be consigned to the record room after due compliance.”

This Court is of the opinion that this is a misconcieved cause of action and a century old dispute is sought to be raised and land which was acquired put to use before independence for the purpose of benefit of the public. The forefathers of the petitioners were beneficiary of the irrigation facilities set up at that point of time and an effort has been made to rake up the issue without any cause of action. Even otherwise once the suit has been dismissed in the first instance in appeal and thereafter the second suit has been withdrawn without seeking permission to reagitate the effort to shift tracks and approach this Court under Article 226, in the facts and circumstances are totally unwarranted for and no relief can be granted

Accordingly, the petition is dismissed in limine.

April 24, 2018
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(G.S. SANDHAWALIA)
JUDGE

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