

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

CWP No. 12271 of 2017
Reserved on: 04.10.2018
Date of decision: 17.10.2018

Kamru and another

....Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

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

Present: Mr. Virender Rana, Advocate,
for the petitioners.

Mr. Sudeep Mahajan, Addl. A.G., Haryana and
Mr. Shivendra Swaroop, AAG, Haryana.

G.S.SANDHAWALIA, J.

The petitioners seek writ in the nature of mandamus directing the respondents to acquire the land of the petitioners comprising in rectangle no. 72, killa no. 2/2, 8, 9, 13/1, 13/2, 18/1, 18/2 situated in the revenue estate of village Sudaka, Tehsil and District Nuh. The claim is on the basis of the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 on the ground that the respondents have constructed road and are utilizing the same without paying any compensation. Reliance has been placed upon the judgment of this Court in ***CWP No. 8326 of 2013, Jahrudeen and others vs. State of Haryana and others*** decided on 08.10.2013 (Annexure P-4).

It is the pleaded case of the petitioners that the metalled/cemented road from Nuh to Hathin via Ebbar measuring approximately 3.25 acres had been acquired without paying any

compensation to the petitioners and other land owners. The request had been made to the Gram Panchayat for claiming compensation on account of their illiteracy as such and they were not aware of the procedure of claiming compensation from the respondent-State.

The State, in its reply, filed by respondent no. 1 has taken the defence that the road was constructed in the year 1971 on demand of the general public including the forefathers of the petitioners for providing better transportation benefits. The record of acquisition could not be located and the petitioners had taken undue benefit of the non-availability of the record of the acquisition. The name of the petitioners was nowhere found mention as owners of land and the forefathers were co-sharers and none of them had ever claimed compensation which might have been paid to them. It is further submitted that a period of 46 years has elapsed and the petitioners themselves are 43 and 65 years old and have chosen to challenge the acquisition for the first time without their being any agitation earlier and, therefore, the claim is time barred.

It has been further pleaded that 66 feet consolidated old path was there and 18 feet wide road was made in the year 1971 and the widening was done in the year 2012 whereby, the constructed area of the road was 18 feet over the road portion and there was 24 feet on both sides which was being used as a berm of the road. The father of the petitioner No. 1 had expired on 29.05.1999 and the succession was entered vide mutation no. 3885 and no issue had ever been raised by him. Similarly, the father of petitioner no. 2 had expired on 08.07.1997 and the mutation no. 3118 had been entered and there was no objection as such.

Reliance has also been placed upon the judgment of the Apex

Court in *State of Maharashtra vs. Digambar, 1995 (4) SCC 683* on the ground of delay and apart from the judgment in *CWP No. 4790 of 2015, Dharambir and others vs. State of Haryana and others* decided on 03.09.2015.

A perusal of the judgment of the Apex Court would go on to show that the issue of delay and laches was duly considered and it was held that a person seeking relief under Article 226 of the Constitution of India cannot get the benefit of the discretionary relief until there is a satisfaction recorded regarding the alleged deprivation of his legal rights. The issue was also similar that 20 years had expired in the said case on the ground that the land had been taken and compensation had not been paid for the relief work for which the acquisition has been done. Resultantly, the judgment of the High Court was set aside which had directed to initiate the proceedings under the Land Acquisition Act, 1894. The relevant portion in *State of Maharashtra's case (supra)* reads thus:-

“23. Therefore, where a High Court in exercise of its power vested under [Article 226](#) of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement for such relief due to his blame-worthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily.

24. Since we have held earlier that the person seeking grant of relief under [Article 226](#) of the Constitution, even if it be against the State, is required to satisfy the High Court that he was not guilty of

laches or undue delay in approaching it for relief, need arises for us to consider whether respondent in the present appeal (writ petitioner in the High Court) who had sought for relief of compensation on the alleged infringement of his legal right, had satisfied the High Court that he was not guilty of undue delay or laches in approaching it for relief. The allegation of the petitioner in the writ petition, as becomes clear from the judgment under appeal, was that although certain extent of his land was taken away in the year 1971-72 by the agency of the State for the scarcity relief road works undertaken by the State Government in the year 1971-72, to find work for small agriculturists and agricultural labourers in the then prevailing severe drought conditions, without his consent, he was not compensated therefor, despite requests made to the State Government and various agencies in that regard ever since till the date of filing of the writ petition by him.

25. *In our view, the above allegation is 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.”

In similar circumstances, the Division Bench in **CWP No. 26060 of 2015, Azad Singh vs. State of Haryana and others**, decided on 27.04.2017 also rejected the prayer to remove the unauthorized encroachment for construction of water course and for grant of mesne profits on the ground that the issue was more than 65 years old regarding the construction of the irrigation facilities and dismissed the case.

The facts are similar in the present case also. As noticed the predecessor-in-interest of the petitioners had never agitated for the claim during their lifetime and, therefore, the right of the petitioners to claim as such after 1971 i.e. almost after a period of 45 years would give no cause of action at this belated stage.

Resultantly, there is no merit in the present writ petition and the same is dismissed.

17.10.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes

Whether reportable

No