

**CM-906-C-2015 with
XOBS-27-C-2015 in/and RSA-334-2015 and
RSA-392-2016 (O&M)**

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

Date of Decision : 9.8.2018

**101 CM-906-C-2015 with
XOBS-27-C-2015 in/and
RSA-334-2015 and**

State of Haryana through Collector, Jind District Jind and another

....Appellants

vs.

Kamla and others

...Respondents

**101-a CM-1165-C-2016 in/and
RSA-392-2016 (O&M)**

The State of Haryana through Collector Jind District Jind and another

..... Appellants

Versus

Bhim Singh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Amar Vivek, Addl. Advocate General, Haryana.

**Mr. Sajjan Singh, Advocate
for respondents-caveators in RSA-392-2016.**

**Mr. Dharam Singh Lochab, Advocate and
Ms. Sarita Dhanda, Advocate
for the respondents in RSA-334-2015.**

AJAY TEWARI, J. (Oral)

These are two appeals. The basic dispute in both the cases is

same and therefore are being decided by this common order.

The respondents filed a suit claiming that in the year 1965 their land was taken over by the State for construction of the Jind Distributary No.3. At that time they were assured that not only they were benefitted by the irrigation facilities which the distributary would result in but also they would be given compensation after finalization of the acquisition process. However, no acquisition process took place and the land continued to be in the ownership of the appellants as per the revenue record. Ultimately, the respondents filed suits claiming that the possession was handed over back to them or in the alternative the State be directed to acquire the land as per law.

The case of the State on the other hand was that actually 40-50 years ago the farmers of the area had themselves come forward and offered their land for the expansion of irrigation facilities. During the trial, they further pleaded that their investigation had revealed that the entire record of that settlement was lost in some flood. Since the construction was done when there was unified State of Punjab therefore, the State of Haryana was not able to locate the record. Ultimately, the decrees were passed directing the State to acquire the land. Hence, the present appeals.

Learned Additional Advocate General has argued that at least predecessor of the plaintiffs knew about the real position and that is why they chose to remain silent for 40-50 years and it would be highly unfair to demand that the State should be able to prove the record of such a long time ago.

As per the learned Additional Advocate General even though the

strict plea of limitation may not be invoked (because this is a suit for possession based upon title) yet in the facts and circumstances of the case, the suit should have been dismissed. He has relied upon the judgment of the Supreme Court in the matter of “***Mahavir and others vs. Union of India and another reported as 2017 (4) RCR (Civil) 567.***” In that case the admitted facts was that land of Raisena was acquired by the then British Government in the year 1911-12. The Awards were also on the record. Certain persons filed writ petitions in the Delhi High Court claiming that their ancestors were gair marusi tenants and in that capacity were entitled to get a proportionate share of the compensation for that acquisition but that compensation was not paid. The Supreme Court held as follows :-

“19. The court is duty bound to prevent the abuse of the process of law in the cases which have been concluded several decades before, in our considered opinion, the provisions of Section 24(2) of the 2013 Act cannot be invoked in such cases of dead claims or stale claims. There are several numbers of cases coming to this court in which matters had been contested up to this court questioning the acquisition and the petitions have been dismissed by this court, and acquisition has attained finality, possession was taken, the award passed. Notice had been issued under Section 12(2) of the Act tendering the awarded amount but it has not been collected by the claimants/land owners deliberately or they had refused to collect it and are not ready and willing to accept it and, thereafter, it has been deposited in the name and account of the owners in the treasury which is also deposited as per the State Government’s instructions issued time to time relating to how Government money is to be dealt with. The act of failure to deposit money under section 31 after possession is taken only imposes liability to pay higher interest under section 34. The acquisition would not lapse under the Act.

20. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they do not want to receive it, section 24(2) of the 2013 Act does not come to their rescue as provisions are to help those persons who are deprived of compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to receive compensation by willful act. The failure to deposit in court under section 31(1) in such cases would attract only interest as envisaged under section 34 of the Act and the provisions of section 24 cannot be so invoked in such cases.

21. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches.

22. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.”

He has further relied upon **CWP-4790-2015** titled as **Dharambir and others vs. State of Haryana and others** decided on 3.9.2015. There a

writ petition was filed directing the respondents to award compensation for land measuring 3 Kanals and 19 Marlas which were utilized for construction of irrigation channel since 1953 (similar to the present case). The Division Bench held as follows :-

“The present writ petition has been filed after the death of Gugan Singh on 26.02.2015. Admittedly, the land is being utilized for the canal since the year 1953. The petitioners or their predecessors were very well aware of the fact that their land is being utilized for the canal. Since no objection was raised for all these years, the plea raised by the respondents in the written statement that it was by consent of the petitioners is believable. Therefore, the petitioners cannot be permitted to dispute the utilization of the land for the purpose of canal after more than 60 years.

Since the options to irrigate the land was limited soon after independence, therefore, the inhabitants of the village were more than willing to give their land free of cost to the State for providing means of irrigation. The source of irrigation was more valuable than the value of land. It provided source of livelihood to the villagers.

Therefore, in view of the fact that the petitioners have not raised any objection for more than 60 years, we find that the petitioners are estopped to dispute the use of land for the irrigation purpose since the year 1953 in the present writ petition filed in the year 2015.”

On the other hand, counsel for the respondents have pointed out that in respect of the same distributary another person namely Satbir Singh from a different village had filed a similar civil suit. That suit also decreed was and ultimately, the matter came up before this Court as **RSA-3076-2009** decided on 21.8.2009 titled as **State of Haryana through Collector Jind and another vs. Satbir Singh** this Court has held as follows :-

“Plaintiff is a farmer and as per the revenue record, owner of the land in dispute. Admittedly, Rajbaha (Canal minor) is running in the land in dispute. The defendants had failed to establish that the villageer and offered their land free of costs for constructions of Rajbaha No.3 for better irrigation facilities. Defendants have also failed to establish that the Rajbaha had been constructed after the acquisition of the land. In these circumstances, both the courts below have rightly held that the defendants should pay compensation with regard to the suit land to the plaintiffs after acquiring the same as per provisions of Land Acquisition Act, 1894.”

It is also admitted that against this judgment SLP was filed which was dismissed on merits.

The contention of the counsel is that the judgments relied upon by the learned Additional Advocate General arise from writ petitions which were filed in different Courts. The Writ Court would normally be loathe to entertain disputed facts. However, in the present case a regular civil suit was filed. They have also argued that the stand of the State that the file related to the alleged settlement was destroyed in the flood cannot be a complete answer because Government never functions on a single file system. Multiple files are created for multiple offices and even if some part of the record was destroyed, other evidence is bound to exist because such a long Rajbaha could not have been constructed without obtaining sanctions from the higher authorities.

In my considered opinion, the argument of the counsel for the respondents have to prevail.

The two judgments relied upon by the learned Additional Advocate General arise out of writ petitions where jurisdiction is different

than in civil suits. It is also difficult to believe that there was only one file relating to the construction of this Rajbaha. Either the State is not telling the truth or it has not thoroughly searched out its own records.

It must also be noticed that these appeals have been filed after delays of four years and two years respectively. Even during this time the State did not bother to try and search for any other alternate file.

In the totality of the circumstances, I am not persuaded to hold that the findings of the Courts below are either based on no evidence or on such perverse misreading of the evidence so as to justify the interference of this Court in second appeal.

Both the appeals stand dismissed.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

9.8.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No