

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

CWP No.10466 of 2019

Date of Decision: 16.07.2019

Ishwar Chand and others

....Petitioners

Versus

State of Haryana and others

....Respondents

***CORAM :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL***

Present:- Mr. Akshay Kumar Jindal, Advocate
for the petitioners.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of *certiorari* quashing the entire action of the respondents, invoking Sections 4 and 6 of the Land Acquisition Act for alleged public purpose by depriving the petitioners from their valuable land under the threat of acquisition to the private builders i.e respondent No.4 and thereafter issuance of notification under Section 6 as well as proceedings initiated under Section 9 were withdrawn in a fraudulent manner just to give benefit to the colonizers/builders in active connivance with State Functionaries.

Learned counsel for the petitioners submits that the petitioners have filed the present petition as liberty was given while withdrawing the earlier writ petition filed by them. Learned counsel also submits that the action of the respondent-State in initiating the acquisition proceedings and thereafter withdrawing the same is totally illegal and arbitrary. The sale deeds executed by the petitioners in favour of private respondent was a

result of total fraud by the State Government functionaries with mala fide intention and are liable to be set aside as it is a case of fraud played upon the petitioners. Learned counsel also submits that the act of the respondents-State is against the basic principles of Land Acquisition Act and the State has not performed its duty as cast upon by the Constitution of India. At the end, learned counsel for the petitioners submits that the whole proceedings of acquisition are liable to be quashed or the same may be enquired/investigated by an independent agency by considering the peculiar facts and circumstances of the case.

We have heard the arguments of learned counsel for the petitioners and have also perused the documents available on the file.

Admittedly, **CWP No.13083 of 2012** was filed by petitioner Babu Ram and others, which came up for hearing before this Court on 16.07.2012. Said petition was dismissed as withdrawn with liberty to avail alternate remedy available under law. Earlier CWP No.5038 of 2006 was filed which was decided vide order dated 14.12.2016. Thereafter, C.M No.7832-CWP of 2018 was filed. One C.M No.5046 of 2014 was also with the main petition which remained pending, whereas, the main case was already decided. Said C.M No.5046 of 2014 was disposed of with liberty to the applicants to initiate independent proceedings for establishing their claim in accordance with law.

Petitioners herein have approached this Court by way of filing the present petition, whereas, earlier petition i.e CWP No.13083 of 2012 was dismissed as withdrawn with liberty to avail the alternate remedy and C.M. No.5046 of 2014 in CWP No.5038 of 2006 was also disposed of with liberty to the applicants to initiate independent proceedings in support of

their claim in accordance with law.

The query has been put by the Bench to learned counsel for the petitioners as to how this petition is maintainable when earlier petition was dismissed as withdrawn in order to avail the appropriate alternate remedy.

Now the question which is to be decided by this Court is as to whether the second writ petition on the same cause of action is maintainable if earlier petition was dismissed as withdrawn with liberty to avail the appropriate alternate remedy.

When earlier petition has been dismissed as withdrawn with liberty to avail the alternate remedy in accordance with law, the subsequent writ petition on the same cause of action and that too without availing the appropriate remedy, is not maintainable.

The same issue was there before Hon'ble the Apex Court in case ***Avinash Nagra vs Navodaya Vidyalaya Samiti etc. 1997(1) S.C.T. 852***. In that case also, the earlier petition was dismissed as withdrawn but without seeking permission of the Court again filed writ petition on the same cause of action. The subsequent writ petition on the same cause of action was found to be not maintainable. Hon'ble the Apex Court in that case held that the High Court was right in its conclusion that the second writ petition is not maintainable as the principle of constructive *res judicata* would apply. The writ petition was filed in first instance but it was withdrawn without seeking permission of the Court to file the second writ petition which was dismissed. Thereafter, the second petition was found to be not maintainable as held by the High Court. Said order was challenged before the Hon'ble Apex Court. The order passed by the High Court was upheld.

Same issue was there before Hon'ble the Apex Court in case ***Sarguja Transport Service vs State Transport Appellate Tribunal, Gwalior and others 1987(1) SCC 5***. In that case, the earlier petition was dismissed without seeking permission to file afresh. Thereafter, the fresh petition on the same cause of action was filed and it was found to be not maintainable. It was held that the rule of public policy as contained in Order 23, Rule 1 of Civil Procedure Code applies. Exception was stated to be only the habeas corpus petition.

In another judgment of Allahabad High Court in case ***Awadhesh Narian Pandey vs District Inspector of Schools, Varanasi and others 2006(16) RCR (Civil) 80***, it was found to be a case of *res judicata* that filing of second petition on the same cause of action is not maintainable. Principles of Order 2 Rule 2 C.P.C are applicable to writ petitions also.

In Full Bench judgment of Allahabad High Court in case ***Surya Deo Mishra vs State of U.P and others***, it was held that second petition is not maintainable on the same cause of action and on identical issue. The relevant observations have been made in paras No.12 and 13, which are reproduced as under :-

*“12. The principle of res judicata is a principle based on public policy. It is a species of the principle of estoppel and even though it is incorporated in Section 12 of the Civil Procedure Code, 1908. It is applicable to proceedings under Article 226 of the Constitution. In ***Ishwar Dutt v. Land Acquisition Collector, (2005) 7 SCC 190 : AIR 2005 SC 3165***, after considering large number of decision the Apex Court held that the principle of res judicata are fully applicable to writ proceedings and it has gone to hold that where an issue or cause of action*

between same set of parties is identical and that issue has been earlier decided, it cannot be re-opened in the same or other proceedings even though a new point may have been raised but which could have been raised earlier also.

13. In the present case, though, conveniently the petitioner has not quoted the reliefs claimed in the earlier writ petition, but from a perusal of the judgment dated 29.1.1994 it is apparent that the reliefs claimed in the earlier writ petition was for payment of salary from 24.11.1990 for the post of L.T. Grade teacher. Even assuming that the amended relief which is now sought to be added, after more than 12 years of its pendency, even then the second writ petition could not be maintainable because it was open to the petitioner to have claimed the relief for declaring paragraph 5 of the Removal of Difficulties Orders as ultra virus Article 14 of the Constitution of India. He cannot be allowed a second innings even on this new ground. Thus, in my opinion, this second writ petition on the same cause of action was not maintainable.”

Same view was held in judgment of this Court in case ***Satnam Singh vs Union of India 2018(1) S.C.T. 739*** and judgments of Allahabad High Court in cases ***Jaibir Singh Nagar vs Yamuna Expressway Industrial Development Authority 2016(4) ALL. LJ 50, Ram Prakash Rastogi vs Bhagirath Gramin Bank and others (Service Single No.1942 of 1983, decided on 11.01.2019)***.

In the present case also, the earlier petition was dismissed as withdrawn with liberty to avail the alternate remedy but instead of availing the alternative remedy, the second petition has been filed on the same cause of action, which is not maintainable.

We find no force in the arguments raised by learned counsel for

the petitioners. Accordingly, in view of facts as well as ratio of judgments as mentioned above, the present petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

16.07.2019
gurpreet

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