

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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(1)

CWP-16675-2007

Gurcharan Singh & others

....Petitioners

Versus

Union of India & others

...Respondents

(2)

CWP-16925-2007

Balwant Singh & others

....Appellants

Versus

Union of India & others

...Respondents

Date of decision: 09.09.2019

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

Present: Mr.Arun Bansal, Advocate, for the petitioners.

Mrs.Ranjana Shahi, Advocate

Mr.Minkal Thetai, Advocate, for

Mr.Arun Gosain, Advocate

Mr.Varun Issar, Advocate

Mr.Varun Vashisht, Advocate, for UOI.

Ms.J.K.Sidhu, AAG, Punjab.

G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 2 writ petitions bearing CWP-16675 & 16925-2007, involving common question of law and the family being related inter se and therefore, the writ petitions are being taken up jointly.

Prayer in both the writ petitions, filed under Articles 226/227 of the Constitution of India, is for appointment of Arbitrator for adjudicating the claim of the petitioners, in view of the acquisition under the Requisitioning & Acquisition of Immovable Property Act, 1952. In CWP-16675-2007, it has been averred that Sada Kaur was the owner-in-possession of the land measuring 94 bighas 4 biswas, situated in Village

Patti Mehna, District Bathinda, which was acquired by the Union of India, for Defence purposes, under the Defence of India Act, in the year 1972. Subsequently, on 20.11.1975, under the Requisition & Acquisition of Immoveable Property Act, 1952, the land was utilized. A meager amount was assessed as compensation, in lieu of the land thus acquired. Sada Kaur had a son and three daughters who succeeded to her share. The petitioners being the sons of Baldev Singh son of Bibi, daughter of Sada Kaur, being owner of 1/4th share had a right. It is their case that Baldev Singh had filed objections against the award but no response was given. He has served notice dated 25.10.2004 through his counsel for referring the matter to the Arbitrator for hearing under Section 8(b) of the 1952 Act (Annexure P-1).

Similarly, in CWP-16925-2007, the claim is that Balbir Singh was son of Sada Kaur who was their predecessor-in-interest. The petitioner being sons, daughters, widows etc of Balbir Singh and therefore, claim the appointment of Arbitrator on the same ground. It has been averred that Gurbachan Singh whose land was also acquired vide the same notification, had applied for appointment of Arbitrator and the same had been done on 25.03.2004 and resultantly, the petitioners have claimed the same relief on the ground that they had been approaching the authorities for appointment of Arbitrator. It is only on 02.05.2007 in CWP-2440-1983 titled Gurbax Singh (through LRs) & others Vs. Union of India & another, directions had been issued for appointment of Arbitrator and thus, parity is sought for on account of the fact that for

similarly situated land, Arbitrator had been appointed.

The said request had been opposed by filing written statement by the respondents on the ground that the land was requisitioned vide notification dated 20.01.1975, for setting up of Military Cantonment at Bathinda and the award was passed on 06.03.1975 whereas the petition was filed after more than 32 years. The petitioners had filed application under Section 28-A of the Land Acquisition Act, 1894, which was challenged by filing the writ petitions and the award was set aside. It is their specific case that appointment of Arbitrator was never sought for which had to be done within 15 days. Resultantly, dismissal of the writ petition was prayed for.

The LAC also clarified that Gurdev Kaur, Nasib Kaur, daughters of Sada Kaur had also claimed themselves to be landowners for their share and sought for appointment of Arbitrator wayback on 14.01.1986 and had received compensation in the said petition. Balwant Singh had never applied for appointment of Arbitrator within the stipulated period and had approached after the lapse of the statutory period. It was admitted that in Gurdev Kaur's case, Arbitrator was appointed but the petitioners had never approached for appointment of Arbitrator.

In CWP-12017-2015 titled *Jugraj Singh Vs. Union of India & others*, decided on 17.08.2019, this Court had dealt in detail with the claim of appointment of Arbitrator, arising out of the same notification. In the said case, it was found that many of the landowners had signed on

Form-K and the landowners had taken advantage of the absence of record, which was 40 years old, at that stage. Resultantly, the writ petition was dismissed. Reference had also been made to the judgment of the Division Bench in **Banto Ram & others Vs. Union of India & others 1989 (2) PLR 401** wherein it was held that on account of delay of over 18 years, the benefit of appointment of Arbitrator, cannot be granted. The said principles would also apply herein. Relevant portion of the judgment read as under:

“4. A landowner whose property is acquired is entitled to compensation which shall be determined in accordance with the principles of this section. If the amount of compensation can be fixed by agreement then landowner is entitled to be paid the same in accordance with such agreement. If no such agreement is arrived at, the Central Government shall appoint an arbitrator who shall determine the compensation which appears to him to be just in making the award, he must have regard to the circumstances of each case and to sub-sections (2) and (3). In the petition it is not stated as to on which date the compensation was offered by the competent authority and when the intimation was given by the landowners that they were not satisfied with the compensation offered and desired that the appropriate Government may appoint an arbitrator as enjoined by clause (b) of Section 8(1) of the Act. There is no explanation for not moving the appropriate authority for the appointment of an arbitrator for such a long period. In the instant case, this Court will be disinclined to exercise its discretionary powers under Article 226/227 of the Constitution of India on the ground of laches. The 6 of 8 authorities under the Act have to appoint an arbitrator if the compensation payable for the acquired land could not be fixed by agreement but if the authorities failed to appoint the

arbitrator within a reasonable time, it was incumbent upon the landowner to approach this Court expeditiously for a direction to the respondents to comply with a statutory duty as enjoined by Clause (b) of Section 8(1) of the Act. It is not explained by the petitioners why they did not move this Court for a long period of 18 years. The inaction and delay on their part disentitles them of the discretionary relief. A party may by his conduct preclude himself from claiming the writ ex debito justitiae, no matter whether the proceedings which he seeks to quash are void or voidable. If they are void, it is true that no conduct of his will validate them, but such considerations do not affect the principle on which the Court acts in granting or refusing the writs. This matter is no more res integra. [In Aflatoon and others v. Lt. Governor of Delhi and others](#), AIR 1974 Supreme Court 207, the writ petitioners challenged the validity of the declaration issued under [Section 6](#) of the Land Acquisition Act in the year 1966 by filing a writ petition in the year 1972. The Apex Court held thus :-

"There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under [Section 4](#) is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under [Section 4](#) and the declaration under [Section 6](#) were valid and then to attack the notification on the grounds which were available to them at the time when 7 of 8 the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the

petitioners (see [Tilockchand Motichand v. H.B. Munshi](#), (1969) 2 SCR 824 and [Rabindranath Bose v. Union of India](#) (1970) 2 SCR 697 : (AIR 1970 Supreme Court 470 (supra).

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9. The learned Judge did not appreciate that in writ jurisdiction we have to examine the conduct of the party approaching this Court and his conduct may, in the circumstances of the given case, disentitle him of the relief. We are not concerned here with the negligence on the part of the respondents. What is to be seen is whether the conduct of the writ petitioners disentitles them from claiming the writ ex debito justitiae.

More-so, no replication as such has been filed to controvert the facts made in the written statement.

Keeping in view the cumulative discussion above and since admittedly the agreement has been entered into in Form K, the petitioner is precluded from raising the issue as such that he is entitled for appointment of an Arbitrator.

Accordingly, there is no merit in the present writ petitions and the same are accordingly dismissed."

In **CWP-13224-2015** titled *Ajaib Singh Vs. Union of India & others*, decided on 30.05.2019, this Court declined the quashing of the order dated 14.07.2014 whereby similar requests for appointment of Arbitrator, for the same set of acquisition which had been declined on the ground that landowners had entered into an agreement of Form-K. It was held that once such an agreement had been entered into, parties were estopped from seeking enhancement of compensation, under the

provisions of the Requisitioning & Acquisition of Immovable Property Act, 1952. The writ petition was also dismissed on the ground of the same suffering from delay and laches and in view of the judgment of the Apex Court in **M/s Prestige Lights Ltd. Vs. State Bank of India (2007) 8 SCC 449** wherein it was held that where there was concealment of fact the petitioners were not entitled to be heard on merits.

Merely because certain other landowners, as such, had got directions from this Court on 02.05.2007 in CWP-2440-1983 whereby directions had been issued for appointment of Arbitrator, would not, as such, give a right to the petitioners. It is to be noticed that the writ petition was of the year 1983 and the landowners had, thus, at the initial stage, chosen to agitate for their grievance. On account of relevant record being not produced, costs had been imposed and directions had been passed for appointment of Arbitrator and the petitioners cannot be said to be similarly situated. It is, thus, apparent that a branch of the family of the petitioners, namely, the daughters of Sada Kaur had applied for appointment of Arbitrator wayback on 14.01.1986 Annexure R-1, which would go on to show that Harbans Kaur wife of Baldev Singh, who is the mother of the petitioners' name also figured. The petitioners, at any stage, had not sought for appointment of Arbitrator from 1975 onwards and even as per notice dated 25.10.2004 (Annexure P-1), it could be noticed that they had sought appointment only after 29 years. Merely because other landowners had got the benefit of appointment of an Arbitrator done, would not give them a right as such, at a belated stage.

It can also be noticed that the petitioners are also sons of Baldev Singh in CWP-16675-2007, who himself expired on 16.10.2006. Nothing has been brought on record that prior to 25.10.2004 also, he had filed any application for appointment of Arbitrator and thus the claim is time-barred. Resultantly, the observations of the Division Bench, as such, would estop the petitioners from claiming the relief at a belated stage, in view of the fact that claim for appointment of Arbitrator is to be raised immediately after the award is passed, under the provisions of the 1952 Act.

Accordingly, in view of the above discussion, this Court is of the opinion that there is no merit in the present writ petitions and the same are dismissed.

09.09.2019
Sailesh

(G.S. SANDHAWALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>