

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

**Civil Writ Petition No.5175 of 2008
Decided on : 13.08.2019**

Surjit Kaur

... Petitioner

Versus

The Union of India and others

... Respondents

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

Present : None.

G.S. Sandhawalia, J. (Oral)

The present writ petition under Article 226/227 of the Constitution of India has been filed for directing the respondents to appoint District & Sessions Judge, Bathinda as an Arbitrator for adjudicating the claim of the petitioner.

The same is based on the ground that the petitioner is owner of land measuring 82 bighas 10 biswas, which was acquired by the Union of India for defence purposes under Defence of India Act on 07.10.1972. A meagre sum of money was assessed in lieu of the land acquired, on account of which the petitioner has filed the writ petition after the death of Gurdial Singh, as the petitioner as such has become owner of half share of the above said land.

Respondents in their written statement have taken the plea that the amount of ₹1,24,578.12 was paid to the petitioner way back in the year 1975 and Form 'K' had also been executed at the time of payment. Communication dated 30.04.2008 (Annexure R-1) was appended to show that Gurdial Singh son of Kehar Singh had received the amount and executed the Form 'K'. He had also filed application under Section 28-A of

the Land Acquisition Act, 1894, which had been allowed vide order dated 30.05.1988 and the compensation has been enhanced. The said order had been challenged and this Court had set aside the same in CWP No.172 of 1994, which was also part of the bunch in CWP No.150 of 1994.

Application has also been filed for placing on record Form 'K', wherein the said amount as such has been received by Gurdial Singh son of Kehar Singh. Thus, the petitioner's predecessor-in-interest has already received the amount, as she has described herself as daughter of Gurbax Singh son of Kehar Singh.

No replication has been filed to rebut the said defence.

In similar circumstances, this Court in **CWP No.13224 of 2015 'Ajaib Singh Vs. Union of India and others'** decided on 30.05.2019 dismissed the writ petitions on account of concealment of facts and also on the issue of delay and the fact that the right to claim appointment was contingent on the fact that Form 'K' was not entered into. The relevant portion of the said judgment reads as under:-

“Thus from the above reading of the provision, it would be apparently clear that an Arbitrator can only be appointed where a person has not accepted/entered into an agreement and thus can agitate under Section 8(b) for appointment of an Arbitrator. A person who has accepted the compensation and received the amount, therefore cannot agitate for higher amount of compensation. Similarly, it is only on account of the fact that certain other landowners as such had agitated for their legal right and got appointed the Arbitrator would not entitle the petitioners to agitate for their grievance in law having accepted the compensation.

*A three-Judge Bench of the Apex Court in **Dayal Singh & Ors. vs. Union of India & Ors. (2003) 2 SCC 593** held that the 1952 Act is a self-contained code and the provision of the 1894 Act cannot be applied to it. It is further held that once parties entered into an agreement in terms of clause (a) of sub-section (1) of Section 8, thus, the same would fall within the realm of a contract, and parties thereto would ordinarily be bound thereby unless the same is vitiated by fraud, misrepresentation etc. Merely because by subsequent award the enhanced compensation has been paid for similar class of land would not as such give a right to the landowners to reopen the proceedings. The relevant portion of the said judgment reads as under:-*

“31. The parties herein entered into agreements in terms of clause (a) of sub-section (1) of [Section 8](#) and, thus, the same falls within the realm of a contract, and parties thereto would ordinarily be bound thereby unless the same is vitiated by fraud, misrepresentation etc.

32. Once the matter is concluded by a contract, a novation of contract would also fall within the realm of contract only. If the contention of Mr. Narasimha is accepted, a contract can be reopened only with the agreement of both the parties. The parties must be ad-idem therefor.

33. The person whose lands were acquired, thus, having entered into an agreement cannot be said to have any legal right which can be enforced in a court of law so as to enable him to obtain an order from the Court directing the Union of India to reopen the agreement; only because by reason of a subsequent award an enhanced amount of compensation has been paid for similar class of lands. If a right to get the amount of compensation re-determined is held to be implicit in the Act, the same for all intent and purport would amount to invoking the provisions of [Section 28A](#) of the Land Acquisition Act indirectly which cannot be done directly. It is a well-settled principle of law that what cannot be done directly cannot be done indirectly.

34. The enforceable right to re-open a proceeding, which

has attained finality, must exist in the Statute itself.

35. The right to get the amount of compensation re-determined must expressly be provided by the statute. Such a right being a substantive one cannot be sought to be found out by implication nor can the same be read therewith.

36. The appellants, thus, cannot invoke a right by reading the same into a statute although admittedly there exists none.”

*The present writ petitions are also suffering from delay and laches as such as noticed the agreement was entered into on 09.08.1975 after receiving the compensation on 31.08.1975. A stale claim was thus got revived by filing a writ petition and getting directions for fresh decision in 2013 without disclosing the true facts to this Court. It is settled principle that the writ Court will not exercise its jurisdiction where the party does not come to the Court with clean hands. Reference can be made to the **M/s Prestige Lights Ltd. vs. State Bank of India (2007) 8 SCC 449** wherein it has been held that a party is not to be heard on the merits of the case where there is concealment of facts. The relevant portion reads as under:-*

“34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

35. In the case on hand, several facts had been

suppressed by the appellant-Company. Collusive action has been taken with a view to deprive the respondent-Bank from realizing legal and legitimate dues to which it was otherwise entitled. The Company had never disclosed that it had created third party's interests in the property mortgaged with the Bank. It had also shifted machinery and materials without informing the respondent-Bank prejudicially affecting the interest of the Bank. It has created tenancy or third party's right over the property mortgaged with the Bank. All these allegations are relevant when such petitioner comes before the Court and prays for discretionary and equitable relief. In our judgment, the submission of the respondent-Bank is well-founded that appellant is not entitled to ask for an extraordinary remedy under [Article 226](#) of the Constitution from the High Court as also equitable remedy from this Court under [Article 136](#) of the Constitution. A party, whose hands are soiled, cannot hold the writ of the Court. We, therefore, hold that the High Court was not in error in refusing relief to the appellant-Company.

36. For the foregoing reasons, we hold that by dismissing the petition in limine, the High Court has neither committed an error of law nor of jurisdiction. The appellant-Company is not entitled to any relief. Though the respondent-Bank is right in submitting that the appellant has suppressed material facts from this Court as also that it has not complied with interim order passed by the Court and it has, therefore, no right to claim hearing on merits, we have considered the merits of the matter also and we are of the considered view that no case has been made out for interference with the action taken by the respondent-Bank or the order passed by the High Court.

37. The appeal, therefore, deserves to be dismissed and is accordingly dismissed with costs.”

It is a classic case where costs are liable to be

imposed however, this Court refrains itself from imposing such costs on account of the fact that the petitioners are land losers under the principle of eminent domain.

*Even otherwise the matter is squarely covered in view of the Division Bench judgment in **Banto Ram & Ors. vs. Union of India & Ors. 1989(2) PLR 401**. In the said case also, there was a delay of 18 years and it was held that 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. In the said case, similar relief was also sought under Section 8(1) of the 1952 Act. The relevant observations 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

*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

*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.”

The present writ petition is also covered by the said observations. Accordingly, the present writ petition is also dismissed, in view of the abovesaid reasons.

AUGUST 13, 2019
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No