

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13224 of 2015

Date of Decision: 30.05.2019

Ajaib Singh

... Petitioner

VS.

Union of India & Ors.

... Respondents

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

Present: Mr. Sanjay Kaushal, Sr.Advocate with
Mr. Mandeep Kaushik, Advocate;
Ms. Baani Chhibber, Advocate; and
Mr. Arun Bansal, Advocate;
Mr. Rajan Bhargava, Advocate for
Mr. Vishal Aggarwal, Advocate;
Ms. Mansi Bansal, Advocate;
For the petitioners

Mr. Chetan Mittal, Sr.Advocate with
Mr. Varun Issar, Advocate;
Mr. Arun Gosain, Advocate;
Mr. KK Chahal, Advocate
For Union of India

Ms. Simran Grewal Randhawa, AAG Punjab

G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of CWP Nos.12921, 12827, 12893, 13198, 13219, 13224, 13292, 13301, 13365, 14187, 17775, 19225, 19244, 19279, 19776, 19766, 19825, 21124 of 2015; 24521 of 2017 as common questions of law and facts are involved. For brevity, the facts are being taken from CWP No.13224 of 2015.

In this writ petition filed under Articles 226/227 of the Constitution the petitioner seeks quashing of the order dated 14.07.2014 (P14) vide which petitioner's request for appointment of an Arbitrator has been declined. That apart, relief sought is also for appointment of District and Sessions Judge, Bathinda as an Arbitrator for adjudicating the claim of

the petitioner.

Vide the impugned order dated 14.07.2014 (P14), the Special Land Acquisition Collector, Jalandhar has come to the conclusion that the landowners have received the compensation after executing the agreement in Form 'K' wherein they have agreed that they shall not claim or be entitled to any other compensation whatsoever in connection with the said acquisition. As per Section 8(1)(a) of the Requisitioning and Acquisition of Immovable Property Act, 1952 (in short the 1952 Act), thus the request for appointment of an Arbitrator was declined vide the impugned order.

Respondents No.1 to 3 in their reply have specifically held out that the land measuring 530.01875 acres situated within the revenue estate of village Bibiwala, Tehsil and District Bathinda was requisitioned by the District Magistrate, Bathinda vide order dated 07.10.1972 under the Defence of India Act, 1971 (in short the 1971 Act). The notices under Section 30(2) of the 1971 were issued and served to the interested persons who were directed to communicate their acceptance or otherwise of the offer within 30 days of the receipt of notice. The interested persons included Chatan Singh son of Hazura Singh who is brother of the present petitioner. The Special Land Acquisition Collector prepared and announced the assessment report in respect of the acquired land on 06.03.1975 including the other requisitioned land of other villages of district Bathinda. Hazura Singh s/o Baghel Singh who was the recorded khatedar of the acquired accepted the compensation without any protest and received the compensation in full and final settlement as awarded by respondent No.4 vide receipt voucher/CC form (R1/1) which is dated 31.12.1975. A perusal of the same would show that ₹ 28,116/- was paid to him in cash. Thus it is the case of the respondents that compensation for acquisition had been received without protest.

The agreement in Form 'K' was executed on 09.08.1975 which is appended as Annexure R1/2. Relevant portion reads as under:-

“Form of agreement to be made on behalf of the Central Govt. with owners of immovable property acquired when payment is made in full.

Memorandum of Agreement made this 09.08.1975 day of one thousand nine hundred and fifty Chatan Singh s/o Hazoora Singh, Smt. Bachan Kaur, Harnam Kaur daughter of Baghel Singh by occupation Bathinda at present residing at Bathinda hereinafter referred to as the owner/owners (which expression shall unless excluded by or repugnant to the context be deemed to include his heirs administrators and assigns) of the other part.

President of India (hereinafter referred to as the Govt. (which expression shall/can and include his successors-in-office and assigns) of the other part.

Whereas the immovable property particulars whereof are set out in the Schedule hereunder written (hereinafter called the said property) has been acquired under the D.I. Act 1971 and the rules framed thereunder & on the 31st day of December, 1975 taken possession of by or on behalf of or under the authority of the Govt. and whereas the owner has represented and stated to the Govt.

That the owner/owners alone is/are entitled to all compensation payable in respect of the said property and no other person has any right to such compensation or any part thereof.

And whereas the owners/owners and the Govt. have mutually agreed to settle the amount of compensation payable by the Govt. to the owner/owners in connection with the said requisition in the matter hereinafter appearing.

Now it is hereby agreed by and between the parties as follows:-

The Govt. shall pay and owner/owners shall accept and receive a sum of Rs.21,082.62 in full settlement of the compensation for the structure (omit if the owner had no structure).

2. *The owner/owners shall not claim or be entitled to any other compensation whatsoever in connection with the said acquired.*

3. *If it thereafter transpires that the owner/owners is/are not entitled or exclusively entitled to the compensation payable in respect of the said property if the Govt. has to pay any compensation to any other person the owner/owners shall refund to the Govt. the compensation paid or such part thereof as the owner/owners is/are not entitled to and shall otherwise identify the Govt. against any loss or damage suffered by the Govt. by means or any fault or defect in title as represented by the owner/owners, without prejudice to any other remedies for the enforcement of such refund and indemnity the Govt. may recover any sum payable by way of refund and/or indemnity as arrears of land revenue.*

4. *Should any dispute or difference arise out of or concerning the subject of these presents or any covenant clause or thing herein contained or otherwise arising out of the requisition aforesaid the same shall be referred to an arbitrator to be appointed by the Govt. and the decision of such arbitrator shall be conclusive and binding on the parties hereto. The provisions of the Arbitration Act, 1940 shall apply to such arbitration.”*

Thereafter the petitioner had in the year 2013 i.e. after 38 years filed a writ petition seeking a direction to respondent No.4 to take appropriate decision without disclosing this fact. The directions issued by the Division Bench on 08.11.2013 as such in **CWP No.24347 of 2013 Ajaib Singh vs. Union of India & Ors.** are appended (Annexure P11). A perusal of the said order would go on to show that on what was held out by the counsel the case was disposed of even without taking reply from the respondents on account of the fact that it was covered by an earlier decision of this Court in **CWP No.20821 of 2013 Darshan Singh vs. The Union of India & Ors.** disposed of on 19.09.2013. In the said case, the Special Land

Acquisition Collector was directed to take an appropriate decision but only after taking into consideration the view point of respondent Nos.2&3 to whom advance notice was directed to be issued before making any recommendation to the State Government. The relevant part reads as under:-

“Notice of motion.

On our asking Mr.Hitesh Kaplish, Central Government Standing counsel accepts notice on behalf of respondent Nos.1 to 3 and Mr.P.S.Bajwa, learned Additional Advocate General, Punjab, accepts notice on behalf of respondent No.4.

Three copies of the writ petition be handed-over to learned counsel for respondent Nos.1 to 3 and one copy to learned State counsel during the course of day failing which this order shall be automatically recalled and the writ petition shall be deemed to have been dismissed for non-prosecution.

In view of the nature of order which we propose to pass, there is no need to seek any counter-reply from the respondents at this stage.

The petitioner seeks a mandamus to direct the respondents to appoint the District & Sessions Judge, Bathinda as an Arbitrator to adjudicate his claim regarding determination of compensation for the acquired/utilized land.

During the course of hearing learned counsel for the parties are ad-idem that this case is squarely covered by the decision of this Court rendered in a bunch of writ petitions including CWP No.20821 of 2013 (Darshan Singh versus The Union of India and others) which was disposed of vide order dated 19.09.2013 with a direction to the Special Land Acquisition Collector to take an appropriate decision but only after taking into consideration the view point of respondent Nos.2 & 3 to whom he shall send advance notice before making any recommendation to the State Government.

The instant writ petition is also disposed of in the same terms.

Dasti.”

In pursuance to the said direction the impugned order dated 14.07.2014 (P14) has been passed. The relevant portion reads as under:-

As per the order of Hon'ble High Court this office has directed the Naib Tehsildar Military Land Acquisition, Bathinda and Naib Tehsildar the office of the undersigned to scrutinize the land record in their respective offices and supply the information regarding record of 'K' agreement signed by the petitioners and other related documents. The revenue staff i.e. Kanungo of Naib Tehsildar Military Land Acquisition, Bathinda and Naib Tehsildar/Revenue Staff of undersigned office reported that there is no record regarding the 'K' agreement signed by the petitioners. The photocopies of 'K' agreement signed by the ex-land owners were supplied to this office by Defence Estates Officer, Bathinda along with reply/objections filed.

I have heard the arguments and gone through the pleadings. The contention of the Union of India is that the ex-land owners of the acquired land did not file any objections in response to the compensation offered by the SLAC-cum-Competent Authority and had received the compensation after executing an agreement in Form 'K' wherein they have agreed that they shall not claim or be entitled to any other compensation whatsoever in connection with the said acquisition and as per Section 8(1)(a) of the Requisition and Acquisition of Immoveable Property Act, it is clear that if the land owner has received the payment as per the agreement he/she is not entitled to any further compensation or cannot seek for appointment of arbitrator. In this case the ex-land owners of the acquired land had executed agreements in form 'K' and accepted the compensation and thereafter they did not file any objections/their non-acceptance, hence the ex-land owners/their legal representatives neither are entitled for appointment of arbitrator nor entitled to seek any further compensation.

In view of the above, the claim as well as legal notice served by the applicants has no merits and hereby dismissed.”

Section 8(a) and (b) of the 1952 Act reads as under:-

8. Principles and method of determining compensation. — (1) Where any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say,—

(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(b) where no such agreement can be reached, the Central Government shall appoint as arbitrator a person who is, or has been, or is qualified for appointment as, a Judge of a High Court;

It is thus apparent that in the present set of cases the brother of petitioner accepted the compensation for acquisition and therefore he is debarred from seeking appointment of arbitrator. Under Section 30(2) of the Defence of India Act, when the Government decides to acquire any immovable property, it shall serve on the owner a notice stating that the Government has decided to acquire it in pursuance of Section 30. Section 31(1) provides that the compensation payable for the acquisition of any property under Section 30 shall be the price which the requisitioned property would have fetched in the open market if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition. Sub-section (2) of Section 31 provides that the persons aggrieved by the amount of compensation determined in accordance with sub-section (1), may make an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator appointed in this behalf and the amount of compensation to be paid shall be such as may be determined by the

arbitrator in accordance with sub-section (1). Sections 31(1) & (2) of the Defence of India Act, 1971 read as under:-

“31. Compensation for acquisition of requisitioned property. –

(1) The compensation payable for the acquisition of any property under section 30 shall be the price which the requisitioned property would have fetched in the open market if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition.

(2) Where any person interested is aggrieved by the amount of compensation determined in accordance with sub-section (1), he may make an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator appointed in this behalf by the Central Government or the State Government, and the amount of compensation to be paid shall be such as may be determined by the arbitrator in accordance with sub-section (1).”

Section 33 further provides that any property referred to in sub-section (1) of section 25 of the Requisitioning and Acquisition of Immovable Property Act, 1952, which continued to be subject to requisition under the said Act and has not, immediately before the commencement of this Act, been released from requisitioning shall, notwithstanding anything contained in any other law for the time being in force, be deemed to be the property requisitioned under section 23. Section 33 of the Defence of India Act, 1971 reads as under:-

“33. Certain properties requisitioned under previous law to be deemed to be requisitioned under this Chapter – Any property referred to in sub-section (1) of section 25 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952) which continued to be subject to requisition under the said Act and has not, immediately before the commencement of this Act, been released from requisitioning shall, notwithstanding anything contained in any other

law for time being in force, be deemed to be the property requisitioned under sub-section (1) of section 23 if such property is, in the opinion of the Central Government, now required for any of the purposes specified in that sub-section:

Provided that-

(a) all determinations, agreements or awards for the payment of compensation in respect of any such property for any period of requisition before the commencement of this Act and in force immediately before such commencement, shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period after such commencement;

(b) anything done or deemed to have been done or any action taken or deemed to have been taken (including any orders, notifications or rules made or issued or deemed to have been made or issued) under the Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952), shall, in so far as it is not inconsistent with the provisions of this Chapter or any rules or orders made thereunder, be deemed to have been done or taken under this Chapter.”

A further perusal of Rule 9(5)(i) of the Requisitioning and Acquisition of Immovable Property Rules, 1953 would show that every person interested to whom an offer is made under sub-rule (3) shall, within fifteen days of the receipt of the offer, communicate in writing to the competent authority his acceptance or otherwise of the offer. If he accepts the offer, the competent authority shall enter into an agreement with him on behalf of the Central Government in Form K'. Rule 9(5) reads as under:-

(5) *(i) Every person interested to whom an offer is made under sub-rule (3) shall, within fifteen days of the receipt of the offer, communicate in writing to the competent authority his acceptance or otherwise of the offer. If he accepts the offer, the*

competent authority shall enter into an agreement with him on behalf of the Central Government in Form 'K'.

(ii) In the following circumstances the competent authority may, at his discretion, make, to [all eligible claimants] 'on account' payment up to 80 per cent. of the amount which, in his opinion, is likely to be assessed as compensation or recurring compensation as the case may be—

(a) when there is likely to be delay in assessing compensation;

(b) where the competent authority has made an assessment but there is delay in reaching an agreement though there is a reasonable prospect of agreement being reached; or

(c) where it is clear that an agreement cannot be reached.

(iii) If the competent authority makes an 'on account' payment under clause (ii), he shall enter into an agreement with the person to whom payment is made on behalf of the Central Government, in Form 'L' with such modification as the nature of the case may require.

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.**

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 re-open 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.

30.05.2019

vvishal

(G.S. Sandhawalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No