

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

**C.M. No. 14034-CWP of 2019 in/and**

**CWP No. 7282 of 2004**

**Date of decision: 18.02.2020**

Gurnam Singh (D) through L.Rs. and others

....Petitioner(s)

Versus

U.T., Chandigarh and another

...Respondent(s)

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

Present: Mr. Sumit Mahajan, Sr. Advocate,  
with Mr. Amit Kohar, Advocate,  
for the applicant-petitioners.

None for the respondents.

**G.S.SANDHAWALIA, J. (Oral)**

**C.M. No. 14034-CWP of 2019**

The present application has been filed for early hearing of the main writ petition.

Application is allowed, in view of averments made in the application duly supported by affidavit.

The main case is taken on Board for hearing today itself.

**CWP No. 7282 of 2004**

The present writ petition has been filed under Articles 226 and 227 of the Constitution of India praying for appointment of an Arbitrator and for determining the amount of compensation left out under Section 8 of the Requisitioning and Acquisition of Immovable Property Act, 1953. The compensation in terms of the award to be passed by the said Arbitrator which has not been settled is accordingly also prayed for.

The case of the petitioners herein, who are as many as 73 in

number, is that the land was falling in village Saini Majra, Hadbast No. 203, which was subject matter of requisition under the East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948 on 09.05.1951 (Annexure P-1) The same was for the purpose of development of capital site of Chandigarh at that point of time. Subsequently, vide notification dated 19.11.1951 (Annexure P-2), the State Government had decided to acquire the said property in pursuance of Section 3 of the said Act.

It is the case of the petitioners that the amount of compensation having not been paid, no agreement having been arrived at under Section 8(1)(b), they had met the Advisor to the Administrator, U.T., Chandigarh on 25.11.1988 and thereafter approached the Deputy Commissioner on 31.07.1999 for redressal of the grievances. No record as such of the proceedings or any representation has been placed on record. However, representations dated 14.05.1991, 15.06.1992 and 07.09.1992 (Annexures P-3 to P-5) have been placed on record wherein, the claim as such for compensation in the shape of money or award was sought.

Apparently, having not received the same, petitioners no. 2 and 3 alongwith others had filed CWP No. 14670 of 1992, Waryam Singh and another vs. U.T. Chandigarh and another and CWP No. 15630 of 1992, Sarwan Singh and others vs. U.T., Chandigarh and another. The claim in the writ petitions as such was also only to give compensation for the land acquired for the construction of the Capital Project, Chandigarh, which would be clear from the prayer clause in CWP No. 15630 of 1992. Thereafter, the two writ petitions were disposed of by the Lok Adalat on 10.01.2002 (Annexure P-6) that they would approach the Collector for grant

of compensation and the payment of the un-disbursed amount would be made. The relevant portion reads thus:-

*“Both parties agree that these two writ petitions be disposed of by directing the petitioners to approach the Collector for grant of compensation of their land or their predecessor's land, which was acquired under the notifications and compensation was not disbursed and is lying in the Treasury. The Collector will verify the genuineness of claimants being owners or legal heirs of the original owner and then make the payment of un-disbursed amount and disposed of such claims, if compensation had already not been paid. The petitioners may approach the Collector within one month.*

*The writ petitions are disposed of with the above observations.*

*Copies of the orders be supplied to the counsel/parties.”*

Applications thereafter (Annexures P-7 and P-8), as such, were filed seeking the payment of the compensation which was left out. The present writ petition was thereafter filed in the year 2004 seeking a new relief altogether and claiming for appointment of the Arbitrator, as noticed above, who would, thus, adjudicate the claim for enhancement of market value.

The said prayer has been opposed in the written statement that award dated 11.02.1956 was passed and the compensation was disbursed to the claimants. The unclaimed amount was deposited in the Ambala Treasury. The same had been accepted by the ascendants of the petitioners upto 1991 and there was not even a single document on record to support the present stand of the petitioners that either they or their forefathers had

disagreed with the award. One Pohlu Ram had received the amount of Rs.12,763.19/- vide receipt dated 23.09.1959 and thereafter in 48 years, at any point of time, the petitioners had not disagreed with the compensation. For the first time, they are invoking provisions of Section 8(2) for appointment of an Arbitrator.

Senior counsel for the petitioners has accordingly argued that the land has been acquired under the principle of eminent domain and, therefore, the land owners are entitled for their rightful dues and the Arbitrator would assess the market value as such and, therefore, the stand taken by the respondents is not justified.

A perusal of Annexure R-1 dated 24.11.2003 would also go on to show that the Land Acquisition Collector passed an order after the decision by the Lok Adalat of this Court on 10.01.2002 wherein, he came to the conclusion that there was no representation for 18 years, as alleged. No claim was pending except the amounts deposited in the Treasury, Ambala and firstly it was filed in 1992 after 42 years. The record had also been checked and the petitioners had also been called and that the unclaimed and un-disbursed amount had been sent to the Treasury office and no further compensation was payable.

Replication has also been filed to the stand taken that there was neither any agreement between the land owners and the State and, therefore, the petitioners were entitled, as such, for the claim of compensation and for appointment of the Arbitrator.

The said argument is not liable to be accepted on account of various reasons. Primarily, it is to be noticed that on an earlier occasion when writ petitions were filed in the year 1992, no such issue was raked up

regarding the appointment of the Arbitrator by petitioners no. 2 and 3 alongwith other similarly situated persons. Having consented in the Lok Adalat regarding the claim for amount of compensation only and having not claimed appointment of Arbitrator in the first round of litigation, the petitioners are, as such, estopped from taking recourse to such a demand. Even otherwise, a judgment of the Division Bench of this Court squarely covers the said issue that parties as such are not at liberty to approach the Court after such a long period of delay. Reliance can be placed upon judgment of the Division Bench of this Court in ***Banto Ram and others vs. UOI and others, 1989 (2) PLR 401*** in which case the delay was of 18 years. The relevant portion reads thus:-

*“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).*

xxxx                      xxxx                      xxxx

*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.”*

The above said observations of the Division Bench as such squarely covers the matter against the petitioners. The reliance upon the provisions of Section 8 were duly discussed by the Division Bench and it has accordingly been held that if there is an inordinate delay as such, the Arbitrator is not liable to be appointed. Even otherwise, in the present case, as noticed above, some of the petitioners have already opted not to claim the said relief on an earlier occasion and, therefore, the principles of Order 2 Rule 2 CPC also would be applicable.

Resultantly, no case is made out for issuing directions to the

respondents after a period of 50 years and the present writ petition is accordingly dismissed.

18.02.2020  
shivani

(G.S. SANDHAWALIA)  
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No