

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

CWP-15100-2021 (O&M)

Date of decision: 10.08.2021

Shamsher Singh and another

....Petitioners

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Dev Kaushik, Advocate for the petitioners

Mr. Samarth Sagar, Addl. AG, Haryana

ANIL KSHETARPAL, J (Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The petitioners have invoked the extraordinary jurisdiction of the Court under Article 226/227 of the Constitution of India, for issuance of a writ in the nature of Mandamus, directing the respondents to make the payment of the enhanced amount of compensation to them on the ground of parity. The petitioners claim that a piece of land owned by them was acquired by the respondents- State of Haryana vide an award dated 20.01.2004 passed under Section 11 of the Land Acquisition Act, 1894 (hereinafter referred to as the '1894 Act'). The Land Acquisition Collector assessed the market value of the land at Rs.5,50,000/- per acre.

The petitioners did not apply for a reference under Section 18 of the 1894 Act. They also did not file an application under Section

28-A of the 1894 Act for re-determination whereas the other identically situated owners not only sought reference under Section 18 of the 1894 Act but also filed Regular First Appeals before the High Court. Their Regular First Appeals were decided on 06.11.2015. The petitioners claim that they had filed a representation on 22.03.2021 to pay them the same amount as has been paid to the other land owners as per the orders passed by the High Court in the Regular First Appeals.

Learned counsel representing the petitioners contends that a writ is required to be issued directing the State to pay the amount of compensation on parity. He further contends that the petitioners being illiterate persons did not have the knowledge of their legal remedies.

The 1894 Act is a complete Code. It grants two opportunities to the land owners to apply for re-determination of the market value of the acquired land after determination by the Land Acquisition Collector. Once the statute makes adequate provisions, the persons who have slept over their rights, cannot be permitted to avail the extraordinary writ remedy. Furthermore, the application under Section 18 can only be filed if the land owners have not accepted the award. In the present case, it is not clear as to whether the petitioners accepted the award of the Land Acquisition Collector or not. The writ remedy is not for the persons who are not vigilant. It is well settled that ignorance of law is no excuse. Besides, the writ petition suffers from colossal unexplained delay and latches. The acquisition was completed in January, 2004. The Regular First Appeals were decided by the High Court on 06.11.2015, whereas the writ petition has been filed in July,

2021. Thus, there is delay of 17 years.

It may be noted here that in the context of the entitlement of the co-sharer, to the enhanced compensation, without seeking reference, either under Section 18 or 28A of the Act 1894, the Supreme Court has repelled the claim after examining the matter in the context of Article 14 of the Constitution of India in '**Ramesh Singh (dead) and others vs. State of Haryana and others**' (1996) 4 SCC 469. Para 5 of the judgment reads as under:-

“5. It is argued by Shri Rohtagi that the petitioners being co-owners, they are entitled to compensation on a parity with other co-owners and the denial thereof is violative of Article 14. We find no force in the contention. Having laid independent claims and sought reference under Section 18, the right and remedy are only as provided under Section 18 or on an appeal under Section 54 but not by way of getting impleaded on the premise of a co-owner. Merely because one of the claimants had got higher compensation, others do not automatically get the same compensation unless the remedies, as provided under the Act, are availed of. One of the remedies under the Act is Section 28-A; if it is available according to law. Determination of higher compensation in favour of some claimants or so-called co-owners and denial thereof to other claimants is not violative of Article 14 of the Constitution. The subject-matter having been regulated under the provisions of the Act, the right and remedy for higher compensation should be sought and had only under the Act. The principle of equality of Article 14 cannot be extended in that behalf.”

Similarly, in '**Irshad Ali and others vs. Hazi Abdul Sukhur Mozumdar and others**', (1997) 7 SCC 88, a co-sharer sought reference under Section 18 which was decided but he never filed an appeal, whereas the other co-owners filed an appeal and got enhancement. Hon'ble Supreme Court held that such co-owner, who did not file an appeal, has waived his claim and hence, not entitled to the enhanced compensation. Similarly, in '**Ambey Devi vs. State of Bihar and another**' (1996) 9 SCC 84 a co-sharer in the land, without filing reference under Section 18, filed an appeal before the High Court. In that context, the Supreme Court held that his appeal was not maintainable unless he has sought reference under Section 18. Similarly, in **State of Haryana vs. Jai Dev**, CR 2811 of 2000 decided on 24.08.2010, the Court after examining the various judgments held that enhanced compensation, without seeking reference under Section 18 or 28A, cannot be paid.

It may be noted here that there is one judgment of Supreme Court in **A. Viswanatha Pillai And Ors vs Special Tahsildar For Land** 1991 AIR SC 1966. In this case, some co-sharers have sought reference on behalf of all the other co-sharers. In that context, the Supreme Court held that since some of the co-sharers can file a claim on behalf of others, therefore, the Court awarded the enhanced compensation. However, in this writ petition, the petitioners are claiming the enhanced compensation only on the basis of determination of other land owners. The petitioners claims that such action of the State is in violation of Article 14 of the Constitution of India. In the considered

view of this Court, Article 14 cannot be invoked in such circumstances.

Hence, no ground to issue the writ, as prayed for, is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

10.08.2021

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE