

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

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CWP-23001-2022
Date of decision: 30.09.2022

DHARMINDER SINGH AND ORS.**..Petitioners**

Versus

STATE OF PUNJAB AND ORS.**..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Hardeep Singh Kasan, Advocate
for the petitioners.

Mr. Sandeep Chopra, DAG, Punjab.

ANIL KSHETARPAL, J(Oral)

This is the second round of writ petition filed by the petitioners for issuance of directions to the respondent in order to pay compensation to the petitioners for their land which has not been acquired in accordance with law. The petitioners claim that though certain portion of their land was acquired and the compensation was paid, however, the State of Punjab has taken over more than the acquired land. Previously, the petitioners filed CWP-21821-2016, which was disposed of by the Division Bench on 21.10.2016 with the following directions:-

“Having heard learned counsel for the parties, it appears to us that the factual averments made by the petitioners are required to be verified by the authorities and if it is found correct that their lands have been utilized for a public purpose without acquiring it in accordance with law, they too are entitled to seek compensation on the parity of the writ-petitioners in CWP No.8459 of 2013 decided on 25.07.2013. The writ petition is thus disposed of without expressing any views on merits, with a direction to the Principal Secretary, Irrigation Department, Punjab, to hold a fact-finding enquiry and if the stand taken by the petitioners is found to be correct, let appropriate proceedings under the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for the acquisition of petitioners' land and to pay them compensation in accordance with law.

The needful shall be done within a period of six months from the date of receiving a certified copy of this order. Ordered accordingly.

Dasti. ”

The Principal Secretary, Department of Water Resources of Punjab, Chandigarh, considered the matter and passed a speaking order on 19.03.2018, and the operative part reads as under:-

“5. In this context, it is pertinent to mention here that as per record the said work was planned and executed under RDF Head during 03/2002. The petitioners willfully donated their land for the safety of their crops and properties and made a commitment that they would not claim any compensation. Now, after the lapse of 14 years the petitioners suddenly raised the issue and are demanding the compensation and filed the petition before Hon'ble High Court without bringing to the notice of Hon'ble High Court fact of submission of affidavits.

6. In view of the above, as per the original affidavits of the petitioners, where it has been recorded that the petitioners shall not claim any compensation for the land used for the construction & extension of bandh, as such the claim of the petitioners is hereby rejected.”

Thus, the petitioners have once again filed a fresh writ petition.

This Bench has heard the learned counsel representing the petitioners at length and with his able assistance perused the paperbook.

The learned counsel representing the petitioners submit that neither the petitioners nor their predecessor in interest never submitted any affidavit or undertook to donate their land for the safety of their crops. He submits that the aforesaid observations made by the Principal Secretary are factually incorrect.

This Court has considered the submissions, the Principal Secretary has positively recorded the observations that the petitioners

wilfully donated their land for the safety of their crops and properties as the bank of Ghaggar river was sought to be developed. Moreover, in para 6, it has been recorded that the original affidavit of the petitioners are available with the Government and they have undertaken not to have claim any compensation.

Faced with the aforesaid situation, the learned counsel representing the petitioners relies upon a judgment passed by Hon'ble Supreme Court in ***Sukh Dutt Ratra and another Vs. State of Himachal Pradesh, S.L.P. (C) Diary No.13202 of 2020, decided on 06.04.2022.***

This Court has carefully read the judgment. The State of Himachal Pradesh had defended their action on the ground that the landowners orally gave their consent for surrendering their land. In that context, the Supreme Court held that the landowners are required to be paid compensation for taking their land for a public purpose. It was in that context, the Court held that the direction of the High Court of Himachal Pradesh to relegate the petitioners in the aforesaid case to the Civil Court, was not appropriate.

However, the facts in this case are totally different. The Principal Secretary on the directions of the Court has already examined the said matter. As already noticed, the Principal Secretary has declined the claim of the petitioners on the ground that they while donating their land have undertaken by way of an affidavit that they will not claim the compensation. Now, the petitioners claim that they have never executed the affidavits. Such situation gives rise to disputed questions of fact which are in fact required to be adjudicated after a regular trial. The parties are required to be given opportunity to prove their respective cases.

In view of the aforesaid, the petitioners are relegated to the appropriate remedy before the Civil Court.

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

September 30th, 2022

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*