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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : July 27, 2023

AZAD SINGH AND ORS.

-Petitioners

V/S

STATE OF HARYANA AND ORS.

-Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Sankalp Gehlawat, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. Aashish Chopra, Sr. Advocate with
Mr. Varun A. Sharma, Advocate
for the respondent No.5.

SURESHWAR THAKUR, J. (ORAL)

1. The prayer(s), as made in the instant writ petition, is extracted hereinafter:-

“I. Issuance of the writ of Certiorari for quashing the impugned ‘Clause C Sub Clause (2) “Introduction of Incentive for “No Litigation” of the Revised Policy Resettlement and Rehabilitation Policy bearing No. 3212-R-5-2010/12140 dated 09.11.2010, wherein, new scheme of “No Litigation Incentive” has been executed (Annexure P-2).

II. Issuance of a writ of declaration, to declare the executive and quasi-judicial act of the respondent No.1 by introducing Clause C, Sub Clause (2) “Introduction of Incentive for “No Litigation” of Revised Policy Resettlement and Rehabilitation Policy bearing No. 3212-R-5-2010/12140 dated 09.11.2010 (Annexure P-2) as invalid in law.

III. Issuance of the Writ of Mandamus, directing the respondent No.1 to form a committee under his chairmanship and consider the request of the petitioners.

IV. Issuance of the Writ of Mandamus, directing the respondents to disburse equal compensation of the land acquired vide same notification to the petitioners, i.e. Rs.29,06,670/- instead of Rs.20,00,000/- per acre along with interest.”

2. The learned counsel appearing for the petitioners does not contest the factum, that the petitioners were the beneficiaries of the Clause ‘C’ Sub Clause (2), thus with a coinage “Introduction of Incentive for ‘No Litigation’”, as, became included in the revised policy appertaining to resettlement and rehabilitation, bearing No.3212-R-5-2010/12140 dated 09.11.2010. The said policy is carried in Annexure P-2.

3. Since the present petitioners were the beneficiaries of the policy (supra), therefore they cannot be permitted to raise any permissible ground, in the instant writ petition, that the policy (supra) be quashed and set aside, thus on the ground, that it preempted them to recourse the mandatory statutory provisions relating to theirs seeking an award being made, thus in terms of Section 11 of the Land Acquisition Act, 1894 (hereinafter referred to as the ‘Act of 1894’), hence by the Land Acquisition Collector concerned.

4. The writ petitioners had earlier with similar herein reliefs, thus accessed this Court, through theirs instituting before this Court, CWP-19811-2016. However, on a reading of the verdict (Annexure P-5), as made thereon, it is candidly clear, that this Court had, given several disputed questions of facts arising in the said writ petition, which but could not be undertaken to be dealt into, nor, adjudicated upon in summary proceedings. Therefore, this Court was constrained to dismiss the said writ petition.

5. The consequence of the above verdict being made on an earlier

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litigation, but inter se the contesting litigants now before this Court, and, whereon a verdict of dismissal, on issues but similar to the ones, as raised in the instant writ petition, is that, the same but carries the telling effect, that thereby to the instant subsequent motion, the estopping principle of *constructive res judicata* applies, and thereby, the instant writ petition is completely misconstituted, and, is required to be dismissed as such.

6. Be that as it may, it appears that the present petitioners, though did proceed to make a motion cast under Section 28-A of the Act of 1894, before the learned Collector concerned, thus asking for, in terms thereof, compensation being determined in their favour, so that they become purveyed parity with the award made in respect of other landowner(s) concerned, and, which became announced on 20.10.2015, by the learned Reference Court concerned. However, in paragraph 3 thereof, which becomes extracted hereinafter, there is a mention, that since in terms of the policy, which is challenged before this Court, the petitioners had received the benefit thereof. Consequently, it was declared therein, that the petitioners are not eligible to seek any reference, but anvilled on the provisions of Section 28-A of the Act of 1894.

“3. On notice, the respondent resisted the claim of the applicants/petitioners mainly on the grounds that since the applicants/petitioners have already received the amount under the scheme No Litigation Incentive equal to 20% of the amount of basic rate of the land (awarded amount) as per government policy and executed an agreement to this effect and also furnished the undertaking and that once the applicants/petitioners accepted No Litigation Incentive amount, the applicants/petitioners were not eligible for seeking a reference to the District Court for increase the compensation amount u/s 18 of the Land Acquisition Act, 1894 and they are not entitled to any further enhancement of compensation of land and that the

applications are time barred. As such, the applications of the petitioners/applicants along with the applications for condonation of delay are liable to be dismissed.”

7. Apart from the above, a reading of Annexure P-6 also unfolds, that the learned Collector concerned, declined to forward the said motion to the learned Reference Court concerned, thus on the ground of the said motion being barred by limitation.

8. The consequence of the above, is that, even if the above referred to paragraph 3, as carried in Annexure P-6, may not be a sufficiently valid reason for the learned Collector concerned to thus decline to forward the apposite motion to the learned Reference Court concerned, as thereby the landowner(s) concerned became preempted to recourse the relevant statutory provisions, whereby, they may have received compensation in a quantum higher than the one, which they received in terms of the said policy. Moreover, even if the said motion is also declared in Annexure P-6 to be barred by limitation, yet on the above ground also, a challenge was required to be made to Annexure P-6, through an appropriate motion being cast thereagainst, before the appropriate court or forum concerned.

9. Since Annexure P-6 has remained unchallenged. Therefore when all the grounds raised in the instant writ petition are also dealt with therein, and, leading to a declining order being made thereon, resultantly when the otherwise available recourse to the writ petitioners to cast a challenge to Annexure P-6, has been foregone or has been abandoned, thereby the order as carried in Annexure P-6 carries a conclusive and binding effect.

10. Resultantly, in the face of non-availment of the appropriate remedy, against Annexure P-6, the instant writ petition, which challenges the policy (supra) does not also merit any credit being assigned thereto. In

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consequence, this Court finds no merit in the instant writ petition and the same is accordingly dismissed. However, yet if permissible under law, challenge to Annexure P-6 may be chosen to be made before the appropriate forum or court concerned.

11. All pending application(s), if any, stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

July 27, 2023
devinder

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No