

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 05.11.2015

C.W.P.No.23751 of 2015

Shamsher Singh & others

...Petitioners

Versus

The State of Haryana & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present: Mr. H.P.S. Aulakh, Advocate, for the petitioners.

HEMANT GUPTA, J.

The land of the petitioners came to be acquired vide notification dated 05.07.1982 issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act'). The Land Acquisition Collector announced the Award on 07.08.1984. Aggrieved against the said Award, the petitioners raised reference under Section 18 of the Act, which was decided by the Reference Court vide order dated 06.11.1987 (Annexure P-3). Thereafter, the petitioners filed Regular First Appeal bearing RFA No.281 of 1988 before this Court, which was decided on 01.06.1989, whereby the amount of compensation was enhanced.

Subsequently, the amount of compensation was enhanced in the reference sought by the other land-owners by this Court on 05.10.2007 (Annexure P-5). In an appeal against the said order, the matter was remitted back to the Reference Court vide order dated 19.02.2013 (Annexure P-2). Thereafter, the Reference Court passed an Award on 08.07.2013 enhancing the compensation to Rs.76.21 per square yard. The said amount is being

claimed by the writ petitioners as compensation by way of present writ petition.

Having heard learned counsel for the petitioners, we find that the present writ petition is not maintainable. The determination of amount of compensation has attained finality, when this Court passed an order in a reference sought by the petitioners on 01.06.1989. The petitioners did not avail any other remedy against the said order. It is, thereafter, in the case of other land-owners compensation has been enhanced, which is sought in the present writ petition filed after 26 years of the decision of the appeal in proceedings under Section 18 of the Act.

We find that the present writ petition is substantially disputing an order passed by this Court in Regular First Appeal on 01.06.1989. The Letters Patent Appeal against the said order is not maintainable nor the remedy was availed at the relevant stage. Therefore, what could not be directly done, cannot be permitted to be done indirectly. The order passed by the learned Single Judge in an appeal cannot be permitted to be disputed in a writ petition. The order passed by the learned Single Judge is not open to challenge in a writ petition. Reference may be made to Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatraya Bapat AIR 1970 SC 1, wherein it has been held as under:

“6. Now when the aid of the High Court is invoked on the revisional side it is done because it is a superior court and it can interfere for the purpose of rectifying the error of the court below. Section 115 of the Code of Civil Procedure circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior court. It is only one of the modes of exercising power conferred by the Statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider and

larger sense. We do not, therefore, consider that the principle of merger of orders of inferior Courts in those of superior Courts would be affected or would become inapplicable by making a distinction between a petition for revision and an appeal.

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8. Even on the assumption that the order of the appellate court had not merged in the order of the single Judge who had disposed of the revision petition we are of the view that a writ petition ought not to have been entertained by the High Court when the respondent had already chosen the remedy under Section 115 of the Code of Civil Procedure. If there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the subordinate court. The refusal to grant relief in such circumstances would be in consonance with the anxiety of the court to prevent abuse of process as also to respect and accord finality to its own decisions.”

In view of the above, we find that the present writ petition is wholly misconceived and untenable. Consequently, the same is dismissed.

(HEMANT GUPTA)
JUDGE

05.11.2015
Vimal

(RAJ RAHUL GARG)
JUDGE