

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3807 of 2017

Date of Decision: 28.02.2017

Shilna K and others

... Petitioners

Versus

Union of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Upender Prasher, Advocate,
for the petitioners.

RAJIV NARAIN RAINA, J.(Oral)

In CWP No.24643 of 2015 titled 'Kewal Krishan & others Vs. State of Punjab & others' decided on 16.03.2016, I passed the following order:

"In this case, a legal notice has been issued and served by the petitioners on the respondents under Section 80 of the Civil Procedure Code as an advance alert for removal of their grievance. When the grouse is not attended to by the department till the expiry of the prescribed period, a civil suit would naturally follow suit for claiming a decree against the State. This means that the petitioners have elected their remedy before the civil court, where they are free to agitate the issues raised in this petition. Instead of filing suit the petitioner has approached the writ side of this Court which is a discretionary remedy provided by Article 226 of the Constitution. The process to remedy wrong once initiated by notice specifically under Section 80 of the Code, then the petitioners should be left to pursue the remedy to its logical end in the civil courts. The rights under Section 80 of the Code are not merely procedural in nature but are substantive rights.

The petitioners are accordingly relegated to their wholesome alternative remedy available before the civil courts. The petitioners were at liberty to approach the High Court directly but preferred to adopt remedy invoking the provisions of the Code. In the circumstances, a direction in the nature of mandamus ought not to issue to the respondents commanding them to act or act in any particular manner or merely to decide upon the legal notice the rights asserted by the petitioners since the mechanism in Section 80 of the Code does not provide for such a direction. Section 80 of the Code only frees the petitioners on the expiration of two months to bring suit.

I would not therefore interfere in writ jurisdiction in the present petition and instead would; by applying the doctrine of election dismiss the petition at the threshold, leaving the petitioners to avail their remedy before the chosen forum, thereby excluding by their own act and option, remedy in this Court, in the first instance.”

In view of the above, the petitioners are relegated to their wholesome alternative remedy available before the Civil Courts for determination of their rights which the petitioner have elected to follow by serving a notice under Section 80 of the CPC. However, no opinion is expressed as to the maintainability of the suit in case filed, which will be decided as per law.

Disposed of accordingly.

(RAJIV NARAIN RAINA)
JUDGE

28.02.2017
manju

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No