

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

CWP No. 12796 of 2018
Date of decision: 21.05.2018

Kamal Kishore and others

....Appellant(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. P.R. Yadav, Advocate,
for the petitioners.

G.S.SANDHAWALIA, J. (Oral)

This order shall dispose of two civil writ petitions i.e. CWP Nos. 12796 and 12813 of 2018, since common questions of facts and law are involved in both the writ petitions. Facts are being taken from ***CWP No. 12796 of 2018, Kamal Kishore and others vs. State of Haryana and others.***

The petitioners seek relief of granting the same compensation as has been granted to the co-sharer as per the representation dated 17.01.2018 (Annexure P-4).

The case of the petitioners is that the land falling in village Kankrola, Tehsil and District Gurugram was acquired. The co-sharers had preferred a petition under Section 18 of the Land Acquisition Act, 1894 (in short 'the Act') whereby, the Reference Court has allowed the enhanced compensation on 21.05.2014. The petitioners filed execution petition, in which, objections were raised that they had not filed any reference petitions under Section 18 of the Act and, therefore, were not entitled for the enhanced compensation. The said issue was decided in their favour by the

Executing Court on 15.10.2015 (Annexure P-1) on the ground that the co-sharer is also entitled for the same benefit in view of the principle of eminent domain as it was the case of compulsory acquisition and by placing reliance upon the judgments in ***Parwati vs. State of Haryana, 2009 (5) RCR (Civil) 572*** and ***Parkasho vs. State of Punjab, 2011 (5) RCR Civil 493***. The other co-sharers thereafter had preferred their appeals which were allowed on 10.11.2016 (Annexure P-2) and the market value was further enhanced to Rs.2,24,97,003/- per acre. It is further the case of the petitioners that the appeals of the State of Haryana i.e. ***Civil Appeal Nos. 11913-11945 of 2017, State of Haryana and another vs. Pushpendra Kumar and others*** were allowed and 15% reduction was made on 05.09.2017 (Annexure P-3). Resultantly, the present writ petition has been filed on the ground that the petitioners are also entitled for the benefit of enhancement.

As noticed, on an earlier occasion, the petitioners have already taken the benefit of the enhanced compensation by filing execution petitions on the ground that they were co-sharers. Thus, an alternative and efficacious remedy is available to the petitioners. The Apex Court in ***United Bank of India Vs. Satyawati Tondon and others, 2010 (8) SCC 110*** has held that where efficacious alternative remedy is available, the writ Court is not to exercise its jurisdiction. The relevant observations read as under :-

“44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs

including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. 45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.”

In such circumstances, this Court is of the opinion that the writ jurisdiction cannot be exercised where there is an alternative and efficacious remedy available.

Faced with this situation, counsel submits that he may be permitted to pursue his remedy which is permissible in law.

Accordingly, the present writ petitions are disposed of with the aforesaid liberty.

21.05.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

