

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

CWP No. 15055 of 2017
Date of decision: 30.01.2018

Mandeep Singh

....Petitioner(s)

Versus

Union of India and others

...Respondent(s)

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

Present: Mr. Satbir Rathore, Advocate,
for the petitioner.

Ms. Sonia Madan, Advocate,
for respondent no. 2.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks direction for payment of compensation under The National Highways Act, 1956 (in short 'the Act') as applicable at the time of issuing the notification alongwith statutory benefits, solatium, interest by passing a fresh award or in the alternative to direct the respondents to take action on the legal notice issued by the petitioner. It is the case of the petitioner that the award was passed on 19.12.2016 but the compensation has not been paid to him.

The stand of respondent no. 2-NHAI is that the amount assessed by the competent authority could not be released in favour of the petitioner unless and until there is a correction made in the revenue records. Reference has been made to letter dated 07.07.2017 (Annexure R-2/1) wherein, the petitioner's grouse regarding his payment not being released has been addressed. A perusal of the said Annexure would go on to show that an amount of Rs.67,43,968/- was calculated by the competent authority

which included a sum of Rs.7,42,500/- as solatium @ 30% plus interest. The matter was adjourned on account of the fact that the petitioner had been called on 13.09.2017 and vide order dated 30.10.2017, it was recorded as under:-

“Learned counsel for respondents No.1 and 2 submits that vide letter dated 28.10.2017, a formal decision to award compensation to the petitioner in lieu of his land holding has since been taken. The matter is referred to the regional office soliciting approval to award a sum of Rs.73,93,198/- to the petitioner. The approval solicited by the respondents, in all probability shall be granted at the earliest.

Though, on the contrary, learned counsel for the petitioner submits that petitioner is entitled to be awarded a much higher compensation than what is sought to be awarded.

Adjourned to 24.11.2017, to await the final outcome in the matter.”

It is not disputed that the petitioner now has received a sum of Rs.73,93,198/- which has been credited in his account. Counsel for the petitioner, however, has submitted that he is entitled for the statutory benefits, solatium, interest as per the provisions of the Act and disputes the amount paid to him.

Keeping in view the above, this Court is of the opinion that in view of provisions of Section 3G(5) of the Act, it is open to the petitioner to approach for appointment of an Arbitrator for determining the compensation payable if it is not acceptable to him. Section 3G(5) of the Act reads thus:-

[3G. Determination of amount payable as compensation.-

(1) to (4) xxx xxx xxx

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.”

Thus, in view of the alternative remedy as such available, it is always open to the petitioner to seek recourse to his alternative remedy for the statutory benefits which are due as it is settled principle that recourse to the writ court cannot be made if there is efficacious and alternative remedy available. The Apex Court in ***United Bank of India Vs. Satyawati Tondon and others, 2010 (8) SCC 110*** has noticed the principles of alternative remedy. It was observed that it was a self imposed restraint and the alternative remedy was a rule of discretion and not one of compulsion. 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.”

The writ petition is disposed of with the aforesaid liberty.

30.01.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No