

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

**CWP No.13750 of 2018 and other
connected cases**

Date of Decision:29.05.2018

Ram Charan

...Petitioner

Versus

Union of India and another

...Respondents

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

Present: Mr. Amit Aggarwal, Advocate
for the petitioner(s).

G.S. SANDHAWALIA, J. (ORAL)

The present order shall dispose of CWP Nos.13750, 13759, 13813, 13822, 13824 and 13826 of 2018. The facts have been taken from CWP No.13750 of 2018 as common questions of law and facts are involved.

The writ petitions have been filed under Articles 226/227 of the Constitution of India against the order dated 06.04.2018 whereby the petitioner's claim for grant of solatium and interest in terms of provisions of the Land Acquisition Act, 1894 has been rejected by respondent No.2, on the ground of limitation, and that the amount had not been claimed before the Arbitrator. The order was passed in view of directions passed by this Court in case CWP No.27103 of 2017 titled as Ram Charan Vs. Union of India and others decided on 29.11.2017 wherein the directions were issued to the said authority to examine the claim of the petitioner on merits regarding their entitlement in accordance with law.

The claim is primarily on the strength of judgment of the

Division Bench in **M/s Golden Iron & Steel Forgings Vs. Union of India & others 2011 (4) RCR (Civil) 375** since the award in question was passed under the National Highways Act, 1956 on 26.04.2012 (Annexure P-2). It is not disputed that against the award itself landowners have preferred petitions before the Arbitrator who was appointed by the Central Government under Section 3G(5) of the National Highways Act, 1956.

The Arbitrator passed an award on 11.10.2017 against which the petitioners have filed objections before the District Judge, Palwal under Section 34 of the Arbitration & Conciliation Act, 1996 since the provision of the Act shall apply to every arbitration under the National Highways Act, 1956. The prayers made before the District Judge reads as under:

- a) *determine the market value of the land @ Rs.2,20,000/- as per market rate with interest @ 9% per annum from the date of publication under section 3D of NH Act;*
- b) *May also please direct to assess damage two crore for severing of land from other and changing the business as per section 3G (7) (b);*
- c) *May please direct to assess Rupees Three Crores for loss of business as per section 3G(7) (d);*
- d) *May please direct to award Solatium @ 30% and interest @ 9% per annum for first year and @15% per annum from the date of Award passed by the Competent Authority till the date of payment;*
- e) *May also please to direct Ld. Arbitrator to award easement right @ 10% as per section 3G(2) of the Act.*
- f) *May please direct to Arbitrator to assess the market value and other benefits in terms of RFCTLARR Act because determined compensation of Competent Authority was being paid in the Year 2015 as such the petitioner would be entitled to compensation in terms of RFCTLARR Act.*

g) *And also please to direct pay annuity at least Rs.5 lac per family and/or benefit at least one residence and one commercial plot or any other compensation like the value of the plot so that petitioner may buy the equal land/plot any other surrounding land as per re-settlement and rehabilitation policy;*

h) *Or any other relief in favour of petitioner against the defendants.*

Perusal of above prayer (d) would go on to show that prayer for solatium @ 30%, and interest @9% per annum for first year and @15% per annum from the date of Award passed by the Competent Authority and also to assess the market value as per The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 have been prayed for.

In such circumstances, once the petitioners have already availed an alternative remedy before the District Judge as provided under the Act itself, this Court is of the opinion that a second limb of litigation cannot be permitted to be opened up to seek the same claim by bifurcating the claims under different heads before two different Courts. The market value in question before the District Judge and the award also and the right to claim solatium and interest has also been questioned and therefore, by way of writ petitions part of the same relief cannot be claimed. The arguments raised that these are not statutory rights as such does not cut much ice with this Court. In similar circumstances in CWP No.29431 of 2017 titled as **Phool Singh Vs. National Highway Authority of India and others** decided on 12.03.2018 on the issue of alternative remedy this Court had observed as under:

“As noticed, the petitioners have resorted to challenging the awards before the Arbitrator, firstly and thereafter, to the

District Judge and now, cannot be allowed to come to this Court, directly. The position would lead to a very anomalous situation, in as much as the other landowners would have remedy and would have approached the District Judge also and therefore, it would only lead to orders being passed by this Court, directing a decision, as such, whereas other land-owners would have preferred their statutory remedy.

Once a procedure has been prescribed under the statute, the same has to be followed and merely because the petitioners have approached this Court, the discretionary relief under Article 226 of the Constitution of India, needless to say, is not liable to be invoked. Counsel for the respondents is well justified in holding out that for necessary relief, applications under Section 34 have to be filed within a fixed timeframe, as per the provisions of the Act. If the land-owners have chosen not to file such petitions, they cannot overcome the issue of limitation only on account of the fact that they have approached the Writ Court, to get over this legal impediment.

*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.”

Further, the argument raised that the District Judge would not have jurisdiction, as such, in the absence of the right of solatium under the Act, is also without any basis. Once the Division Bench has held that the land-owners, as such, are entitled for the benefits and has declared the law, as such, the argument raised that the District Judge would not have jurisdiction, is without any basis.

Accordingly, the writ petitions are disposed of, as not maintainable. Needless to say that it is open to the petitioners to avail their alternative remedies, in accordance with law, as observed above.”

In the above said case landowners had on earlier occasion also approached the District Judge, and got the awards passed by the Arbitrator set aside.

Keeping in view the above, this Court is of the opinion that petitioners having opted for their remedy before the District Judge, now cannot be permitted at this stage to change track. Needless to say any observation made in the impugned order shall not as such prejudice the District Judge from deciding the issue on merits independently.

Accordingly, the above said writ petitions are disposed of, as not maintainable, in limine.

(G.S. SANDHAWALIA)

JUDGE

29.05.2018

pvd

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No