

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

(1) **CWP No.28965 of 2017**
Date of Decision:17.04.2018

Mahender KalraPetitioner

Versus

Union of India and others ...Respondents

and

(2) **CWP No.29162 of 2017**
Date of Decision:17.04.2018

Lok Nath Kalra and anotherPetitioners

Versus

Union of India and others ...Respondents

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

Present: Mr. Sudhanshu Makkar, Advocate
for the petitioner.

Mr. Satish Singla, Advocate
for respondent No.1-Union of India.

Mr. D.K. Prajapati, Advocate
for respondent No.3-NHAI.

Mr. Shivendra Swaroop, AAG, Haryana.

G.S. SANDHAWALIA, J. (ORAL)

The present writ petitions have been filed under Article 226/227 of the Constitution of India for issuance of direction to respondent Nos.1 and 2 to pay the solatium and interest from the date of notification in view of the judgment of Division Bench passed in **M/s Golden Iron & Steel Forging Vs. Union of India and others** reported as 2011(4) RCR (Civil) 375 and **Sunita Mehra and another Vs. Union of India and others**, 2016(8) Scale 582. The facts are being taken from

CWP No.28965 of 2017 as common law and facts are involved in both the petitions.

On 12.03.2018 directions were issued for filing appropriate affidavit, as to whether any proceedings are pending/decided before the Arbitrator, in pursuance of the award which in the present cases are dated 31.12.2014 and 26.02.2015. Petitioner has filed affidavits admitting the factum that they had already approached the Arbitrator for redetermining the market value and the same are pending for consideration. However, it has been averred that their pendency would not make the ground to deny solatium and interest as granted in terms of Golden Iron & Steel Forgings case (supra).

This Court in CWP No.29431 of 2017 titled **Phool Singh Vs. National Highway Authority of India and others**, decided on 12.03.2018 has discussed the issue of the alternative remedy available to the landowners. It is settled principle that once there is an alternative and efficacious remedy available, the writ Court would not be liable to be approached at the first instance. In the present case specially the award in question, is already a subject matter before the Arbitrator and the Arbitrator is equally bound by the decision of the Division Bench and the Apex Court and therefore, it does not lie in the mouth of the petitioners to seek their remedy before this Court once the said award is already being questioned as per the procedure prescribed under the statute.

The observation in Phool Singh's case reads as under:

“As noticed, the land-owners successfully approached the Addl. District Judge, twice, under Section 34 of the 1996 Act, in view of the provisions of Section 3H(6), which provides that the 1996 Act shall

apply to every arbitration under the 1956 Act. Having got positive results to the extent that the value of the land had been enhanced initially from Rs.60 lacs to the tune of ranging from Rs.65.62 lacs to Rs.1.5 crores etc., for various revenue estates, the land-owners have now approached this Court, asking for the solatium benefits qua the award which in principle, would flow initially from the award dated 04.03.2008, which has been passed by the competent authority, under the Act.

As noticed, the remedy would be under Section 3G(5), to the Arbitrator, firstly and thereafter, if not satisfied, to the District Judge, in view of the provisions of the 1956 Act. Once having done so, the landowners, as such, cannot be permitted to shift the track and approach this Court now claiming that solatium and interest have not been paid. It is to be noticed that the argument, as such, was also raised before the Arbitrator regarding the said claim, which would be clear from para 13 of the award of the Arbitrator. If the amount has not been awarded, as such, the land-owners have always an opportunity of impugning the award, in accordance with law. The Writ Court, as such, cannot be approached, in view of the fact that there is a specific statutory remedy available. It is settled principle that once there is an alternative and efficacious remedy available, the Writ Court cannot be approached, at the first instance.

The argument that the matter is covered by the judgment of the Division Bench rendered in CWP-25006-2016 titled Sadhna & another Vs. National Highway Authority of India & others, dated 03.12.2016 (Annexure P-2), does not help the petitioners, as the award was passed in the year 2016 and the land-owners had approached this Court

*immediately thereafter, claiming the benefits as granted by the Division Bench in **Golden Iron & Steel Forging's case** (supra) and in such circumstances, the directions had been issued, that the petitioners could apply to the competent authority-cum-Land Acquisition Collector, who was to further determine and pass a supplementary award.*

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.”

Resultantly, the present writ petition is disposed of as not maintainable and with liberty to the petitioners to approach for the said relief before the Arbitrator.

The writ petition is accordingly, dismissed.

(G.S. SANDHAWALIA)
JUDGE

17.04.2018
pvd

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No