

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.29431 of 2017

Decided on: 12.03.2018

Phool Singh

....Petitioner

Versus

National Highway Authority of India & others

...Respondents

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

Present: Mr.Ahbishek Goyal, Advocate, for the petitioners
in CWP-29431, 29959-2017.

Mr.Ravi Malik, Advocate, for
Mr.S.K.Panwar, Advocate, for the petitioners
in CWP-29675, 29703-2017, 27, 56, 80, 85, 92 & 2288-2018.

Mr.M.K.Palwal, Advocate, for the petitioner in CWP-2266-2018.

Mr.D.K.Singal, Advocate,
Mr.R.S.Madan, Advocate, for NHAI.

Ms.Safia Gupta, AAG, Haryana.

G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of CWP-29431, 29675, 29703, 29959-2017, CWP-27, CWP-56, 80, 85, 92, 2266 & 2288-2018, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP-29431-2017 titled *Phool Singh Vs. National Highway Authority of India & others*.

In essence, the petitioners in these set of cases, challenged the award dated 05.02.2016 passed by the Arbitrator and seek directions against the respondents, to release solatium and interest, primarily on the strength of the judgment of the Division Bench in *M/s Golden Iron & Steel Forgings Vs. Union of India & others 2011 (4) RCR (Civil) 375*. The impugned award has been passed by the Arbitrator under the National

Highways Act, 1956, before whom, the contention had already been raised that the land-owners shall be entitled to the amount of solatium and interest.

The writ petition has been opposed by filing reply on behalf of respondents No.1 & 2, whereby, it has been averred that the land was acquired for the construction of Express-Way. The plea has been taken that the concerned respondent, as such, has not been impleaded and the Project Director, Noida should have been arrayed as party. Further plea has been taken that the petitioners have a statutory remedy under Section 34 of the Arbitration & Conciliation Act, 1996 and therefore, the present writ petition is not maintainable and without availing the alternative remedy, the Writ Court cannot be approached.

The first contention of the respondents that the necessary party has not been impleaded, is without any basis. Once the Chairman has been impleaded as respondent No.1, it is for the authority to take appropriate steps to file the reply on behalf of the concerned Director and the landowners/litigants cannot be forced to locate the relevant and the competent authority, once in principle the main authority has been impleaded.

However, a perusal of the award of the Arbitrator, which is under challenge, would go on to show that initially the notification under Section 3A was issued on 02.01.2007, whereby the intention to acquire the land had been declared. Thereafter, under Section 3D, the requisite notification had been issued and eventually on 04.03.2008, the award had

been passed, under Section 3G, whereby the competent authority had assessed compensation to the tune of Rs.16 lacs.

The land-owners not being satisfied, had approached the Arbitrator under Section 3G(5), which was to be appointed by the Central Government and the amount was enhanced to Rs.22 lacs, vide order dated 22.06.2010. The land-owners not being satisfied, had filed objections before the Addl.District Judge, Faridabad, which were allowed and the matter was remanded to the Arbitrator, for fresh decision. The Arbitrator, thereafter, had fixed the market value @ Rs.28 lacs, vide award dated 30.05.2012 and 03.10.2012. Not being satisfied, fresh objections were filed by the land-owners before the Addl.District Judge, which were allowed on 21.10.2013 in Arbitration Petition No.25 of 2012 titled *Girraj Singh Vs. Land Acquisition Collector & another*. Resultantly, fresh awards had been passed on various dates, i.e., on 02.09.2015, 05.02.2016, 18.02.2016 and 06.04.2016, by the Arbitrator and compensation for various villages had been assessed at different rates.

A perusal of the award dated 05.02.2016 (Annexure P-1) would go on to show the rate assessed by the Arbitrator-cum-Addl.Deputy Commissioner, Faridabad for the land falling in different revenue estates, which is the order which is being sought to be challenged. The relevant portion reads as under:

“29. Thus, keeping in view the facts and circumstances discussed above all the petitioners are awarded compensation at the rate mentioned below:

Sl.No.	Village	Rate awarded Per acre
1	Shahjahanpur	Rs.65,63,000/-
2	Sahupura Khadar	Rs.65,63,000/-
3	Arua	Rs.65,63,000/-
4	Atali	Rs.65,63,000/-
5	Maujpur	Rs.65,63,000/-
6	Mothuka	Rs.65,63,000/-
7	Fajjupur Khadar	Rs.65,63,000/-
8	Chhainsa	Rs.68,63,000/-
9	Mohna	Rs.68,63,000/-

Besides the compensation mentioned aforesaid, all the petitioners are also awarded compensation at the rate of 10% towards easmentary rights as applicable under Section 3G(2) of the Act.

Files be consigned to the records.”

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 land-owners, 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 land-owners 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 time-frame, 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.

12.03.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*