

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

(1) **CWP No.9397 of 2018**
Date of Decision:19.04.2018

Shanti Devi and others ...Petitioners
Versus
Union of India and others ...Respondents

and

(2) **CWP No.5778 of 2018**
Date of Decision:19.04.2018

Dharam Pal and others ...Petitioners
Versus
Union of India and others ...Respondents

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

Present: Mr. Jasmer Singh Rozera, Advocate
for the petitioners in CWP-9397-2018.

Mr. J.S. Hooda, Advocate
for the petitioners in CWP-5778-2018.

Mr. Shivendra Swaroop, AAG, Haryana
in CWP-5778-2018.

Mr. D.K. Singhal, Advocate
for respondent No.3 in CWP-5778-2018.

G.S. SANDHAWALIA, J. (ORAL)

This order would dispose of two writ petitions being CWP Nos.5778 & 9397 of 2018 and facts are being taken from CWP No.9397 of 2018.

The petitioners seek payment of solatium along with interest in view of the judgment of Division Bench passed in **M/s Golden Iron and Steel Forgings Vs. Union of India and others** reported as 2011(4) RCR (Civil) 375. The perusal of the paper-book would go to show that

proceedings were initiated under the National Highway Act, 1956 for the purpose of construction of Express Highway and a sum of Rs.16 Lakhs per acre was awarded as compensation vide award dated 04.03.2008 and the said award was challenged by the various landowners before the Arbitrator-cum-Additional Deputy Commissioner, Palwal. The said officer vide order dated 19.07.2010 determined the market value of the acquired land @ Rs.22 Lakhs along with 10% compensation. The award further had been challenged before the Additional District Judge, Palwal by various landowners and vide separate orders dated 01.06.2011 and 25.07.2011 the award had been set aside by remanding the proceedings to the Arbitrator. Thereafter, vide award dated 13.01.2012 the market value has been assessed @ Rs.36.50 Lakhs per acre along with 10% compensation which was again challenged. Vide order dated 26.09.2012 the market value has been assessed @ Rs.30 Lakhs per acre. Similarly the market value was fixed @ Rs.28.5 Lakhs per acre for one set of villages and Rs.27 Lakhs for another set of villages which was again challenged before the District Judge, Palwal and was set aside on 01.06.2013 and 14.10.2013.

Resultantly, the award has now been passed on 02.09.2015 (Annexure P-1) by the Arbitrator-cum-Additional Deputy Commissioner, Palwal whereby the value has been fixed @ Rs.62 Lakhs along with 10% compensation. It is, thus prayed that there are other landowners similarly situated who have resorted to the remedy under the provisions of the Act and therefore, there is no bar to approach this Court at this stage.

In CWP No.29431 of 2017 titled as **Phool Singh Vs. National Highway Authority of India and others**, the landowners right

to avail the alternative remedy before the District Judge was rejected and it has been observed 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.”

Accordingly, the present writ petitions are also disposed of with the same liberty in accordance with law to approach the District Judge.

19.04.2018
pvd

(G.S. SANDHAWALIA)
JUDGE

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