

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

**RFA No.413 of 2018 (O&M)
Date of Decision:12.02.2018**

Sat Pal Singh and others

....Appellants

Versus

Amarjit Kaur and others

...Respondents

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

Present: Mr. Hardip Singh, Advocate
for the appellants.

Mr. Sherry K Singla, Advocate
for respondent Nos.7 and 10.

G.S. SANDHAWALIA, J. (ORAL)

The present appeal has been filed against the judgment dated 05.12.2017 whereby the learned Additional District Judge, Patiala decided the Reference under Section 3-H(4) of the National Highways Act, 1956 and held that the compensation amount is to be paid to objectors and other beneficiaries/co-sharers in accordance with their respective share in the joint land.

Resultantly, the present Regular First Appeal has been filed challenging the said finding and seeking that amount of compensation of the acquired land be released in favour of the appellants and not in favour of the respondents as held so. The counsel for the private respondent Nos.7 and 10 has raised the objection regarding the maintainability of the Regular First Appeal. Reliance has been placed upon the judgment passed by this Court in case of **Bhoop Singh and others Vs. Kuria and others, 2015(4) PLR 632** wherein it has been held that appeal is a creation of statute and the National Highways Act, 1956 as such does not provide for an appeal which would be

maintainable under Section 96 of the CPC and therefore, the appeal was dismissed giving liberty to the appellants to avail any other appropriate remedy. The relevant portion reads as under:

*“21. There is no quarrel on the proposition of law that the appeal is a creation of statute. Unless right to appeal is specifically provided and the forum thereof, no one has right to file appeal. Reference can be made to judgment of Hon'ble the Supreme Court in **Khanna Improvement Trust v. Land Acquisition Tribunal, 1995 (2) SCC 557 and Municipal Committee, Hoshiarpur v. Punjab State Electricity Board and others, (2010) 13 SCC 216.***

22. A perusal of the provisions of the Act does not in any way provide that an award passed by the reference court under Section 3-H(4) of the Act is subject to appeal before any court. In the absence thereof, it cannot be opined that such an award is appealable before any court much less, before this Court.

23. The claim of the appellants that the appeal is maintainable under Section 96 CPC is totally misconceived for the reason that the same provides for an appeal from a decree passed by the court. In the case in hand, it has nowhere been provided that the award passed by the reference court under Section 3-H(4) of the Act is a decree, as has been provided for under Section 54 of the Land Acquisition Act, 1894, wherein even the provisions of CPC have been made applicable.

24. For the reasons mentioned above, in my opinion, appeal against the order passed by the learned Reference Court in a reference under Section 3-H(4) of the Act is not maintainable before this Court.

*Accordingly, both the appeals are dismissed. However, dismissal of the appeal shall not debar the appellants to avail any other appropriate remedy against the impugned award in accordance with law.
Appeal dismissed.”*

Counsel for the appellants has mainly tried to distinguish the said judgment on the ground that the present appeal has also been filed under Section 96 of the CPC read with Section 38 of the Punjab Courts Act, 1918 and therefore, an appeal would also lie against the order of the District Judge. Section 38 reads as under:

38. Appeals from District Judges or Additional Judges -
(1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or [Additional District Judge] exercising original jurisdiction shall lie to the High Court.
(2) An appeal shall not lie to the High Court from a decree or order of an [Additional District Judge] in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.

A decree has been defined under Section 2(2) of CPC as formal expression of an adjudication and basically summarizes and puts in concise terms what was the relief granted to the parties whereas the judgment gives out the reason as such for the grant of said relief.

Perusal of the above said Section would also show the jurisdiction of this Court would be subject to the provisions of the enactment for the time being in force which in the present case the rights of the parties have accrued from the National Highways Act, 1956.

That even Section 38 of the Punjab Courts Act, 1918 in such

terms provides the right as provided by any other enactment. Once then an appeal is not provided under the principal Act as such this Court is of the opinion that there is no ground as such made out to differ from the view taken in *Bhoop Singh' case (supra)*. It is not that the appellants rights have been taken away, it is only a matter of filing a petition either under Article 227 or by way of a writ petition, under Article 226 of the Constitution of India.

Resultantly, the present appeal is dismissed as not maintainable with liberty to the appellants to seek remedy in accordance with law.

(G.S. SANDHAWALIA)
JUDGE

12.02.2018
pvd

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