

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7321 of 2019

Date of Decision: 18.03.2019

Devinder Pal Singh Kang & Ors.

... Petitioners

VS.

Union of India & Ors.

... Respondents

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

Present: Mr. SS Rangi, Advocate for the petitioners

G.S. SANDHAWALIA, J. (Oral)

(1) This writ petition under Articles 226/227 of the Constitution of India has preferred by the petitioners seeking a direction to disburse the amount of compensation as per commercial rates in lieu of the acquired land. It is the case of the petitioners that on an earlier occasion, in a dispute as to whether how much land has been acquired, the petitioners approached this Court in CWP No.11298 of 2017 and in pursuance of the report there was an acknowledgement that the land had been acquired under the National Highways Act, 1956. Resultantly, a direction was issued on 25.04.2018 (P4) that petitioners be paid compensation along with interest within a period of two months. It is the case of the petitioners that the compensation was paid on 07.05.2018 after the said order.

(2) The dispute now herein is that the compensation paid is by treating the land as agricultural land whereas the compensation should be on the basis that the land was commercial in nature. It is further contended that there is also a dispute *qua* the area which is acquired. The pleadings would show that the award was passed on 16.09.2016. Under Section 3G(5) of the Act, if the amount is not acceptable as determined by the Competent Authority, the application can be preferred before the Arbitrator to be

appointed by the Central Government. Sub-Section (5) of Section 3G reads as under:-

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(3) The petitioners apparently have got alternative and efficacious remedy to approach the statutory Arbitrator regarding the amount of compensation not being satisfied.

(4) Thus in view of the law laid down by the Apex Court in **United Bank of India vs. Satyawati Tandon & Ors. (2010) 8 SCC 110** whereby the Apex Court has held that the writ jurisdiction is not to be exercised where the parties have an alternative and efficacious remedy as it is a discretionary power, the writ petition on the face of it is not maintainable. The relevant portion reads as under:-

“30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law."

(5) Faced with this situation, counsel submits that he does not wish to press the writ petition and prays for liberty to the parties to avail their alternative remedy in accordance with law.

(6) Accordingly, the writ petition is disposed of as not pressed with above-said liberty.

18.03.2019

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(G.S. Sandhawalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No