

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

(1) CWP-523-2019

Chander Pal & othersPetitioners
Versus

National Highway Authority of India & others ...Respondents

(2) CWP-40324-2018

RekhaPetitioner
Versus

National Highway Authority of India & others ...Respondents

Date of decision: 14.01.2019

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

Present: Mr.Vivek Gupta, Advocate, for the petitioners.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present 2 writ petitions has been raised to the compensation awarded by the statutory Arbitrator-cum-Addl.Deputy Commissioner, Faridabad under the National Highways Act, 1956 dated 05.02.2016/18.02.2016. Petitioners, thus, pray for the benefit of solatium and interest, in view of the judgment of the Division Bench in **M/s Golden Iron & Steel Forging Vs. Union of India & others 2011 (4) RCR (Civil) 375**. To dictate orders, facts have been taken from CWP-523-2019 titled *Chander Pal & others Vs. National Highway Authority of India & others*.

A perusal of the award dated 05.02.2016 (Annexure P-1) would go on to show that the competent authority had passed the award on 22.06.2010, at an initial stage and the said amount had been enhanced to Rs.22 lakhs and objections had been filed under the Arbitration & Conciliation Act, 1996 before the Addl.District Judge, Faridabad. The

matters had been remanded and compensation had been enhanced to Rs.28 lakhs, vide judgment dated 30.05.2012. The same landowners again filed objections under Section 34 under the 1996 Act and the Court of Ms.Ritu Y.K.Behl, Addl.District Judge, Faridabad, vide judgment dated 21.10.2013 passed judgment in Arbitration Petition No.25 of 2012 titled *Girraj Singh Vs. Land Acquisition Collector & another* and remanded the matter. Eventually, the Arbitrator has fixed the market value at the following rates, for the different villages:

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.65,63,000/-

In similar circumstances, for the same awards dated 05.02.2016 and 18.02.2016, this Court in **CWP-29431-2017** titled *Phool Singh Vs. National Highway Authority of India & others*, vide judgment dated 12.03.2018, has relegated the petitioners to the alternative remedy before the District Judge. Relevant portions of the judgment read as under:

“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.”

Faced with this situation, counsel is not in a position to press the present writ petitions and prays for liberty to avail his alternative remedy, in accordance with law.

Ordered accordingly.

14.01.2019
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No