
(2018) 08 P&H CK 0313

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No.21631, 21703, 21712 Of 2018

Lala Ram

APPELLANT

Vs

Government of India and others

RESPONDENT

Date of Decision : 29-08-2018

Acts Referred:

National Highways Act, 1956 — Section 3A, 3G, 3G(5), 34

Citation : (2018) 08 P&H CK 0313

Hon'ble Judges : G.S.SANDHAWALIA, J

Bench : Single Bench

Advocate : Gautam Kaile, Rajiv Sharma

Final Decision : Disposed off

Judgement

This order shall dispose of Civil Writ Petition Nos.21631, 21703 and 21712 of 2018 as common questions of fact and law are involved in these

petitions. However, for dictating this order, the facts have been taken from Civil Writ Petition No.21631 of 2018-Lala RamVs. Government of India

and others.

The petitioner seeks the benefit of solatium and interest while challenging the order dated 5.2.2016 (Annexure P/1) passed by the Arbitrator under the

provisions of National Highways Act, 1956(hereinafter referred to as "the Act") in these three writ petitions.

In similar circumstances, qua the same award writ petitions had been filed for the said benefit in view of the Division Bench judgment in M/s Golden

Iron & Steel Forgings Vs. Union of India and others 2011

(4) RCR 375. The notification under Section 3A had been issued on 2.1.2007 and the award under Section 3G had been passed on 4.3.2008 which had

been challenged before the Arbitrator under Section 3G(5) of the Act. The matter had been taken to the Additional District Judge, Faridabad and

remanded to the Arbitrator for fresh decision. Eventually from Rs. 16 lakhs the amount awarded to the land-owners has been enhanced to Rs.

65,63000/- of various villages and for two villages to the tune of Rs. 68,63000/-. Accordingly, this Court noticed that having got positive results and

having got enhancement, the land-owners could not be permitted to change the track and have relegated them to their remedy under Section 3G

(6) of the Act. The relevant portion in Civil Writ Petition No.29431 of 2017-Phool Singh Vs. National Highway Authority of India & others decided on

12.3.2018 reads 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 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.â??

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.â??

Faced with the above situation, counsel for the petitioner is not in a position to press the present writ petitions.

Accordingly, the present writ petition are disposed of in the same terms as in CWP No.29431 of 2017 and the petitioners are relegated to their alternative remedy as in the case of similarly situated land-owners.