

**HIGH COURT OF JAMMU AND KASHMIR**  
**AT JAMMU**

**OWP No.462/2002**  
**CMP No.262/2008**

**Date of Decision: 31.05.2011**

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Zamindaran of Village Chak Balotrian and ors.  
Vs  
State of J&K & ors.

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**Coram:**

**Mr. Justice J.P.Singh.**

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**Appearing Counsel:**

For the Petitioner(s)	: Mr. Jagjit Rai, Advocate.
For the Respondent(s)	: Mr. A.H.Qazi, AAG for R-1 & 6. Mr. Jatinder Choudhary, CGSC for R-7.

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| i)  | Whether approved for reporting<br>in Press/Media | : <b>Yes.</b> |
| ii) | Whether to be reported<br>in Digest/Journal      | : <b>Yes.</b> |
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The petitioners-Zamindaran of Village Chak Balotrian of Tehsil Samba had approached this Court in the year 1998 by their Writ Petition OWP No.1205/98 seeking compensation for their land, which was taken possession of by the State-respondents in the year 1952-53 for construction of Ramgarh-Khour road. Allowing the Writ Petition, a direction was issued to the respondents to treat the petitioners' Writ Petition a

Representation for taking appropriate decision thereon within a period of three months.

The petitioners' Claim to compensation was rejected on the grounds that their predecessors-in-interest had voluntarily donated the land and in view of the provisions of Rule 24-A of the Rules framed under the State Land Acquisition Act, the land owners were not entitled to compensation.

Aggrieved by the rejection of their Claim by the Executive Engineer PWD (R&B) Construction Division, Jammu, the petitioners have approached this Court again seeking compensation for their land.

During the course of consideration of the Petition, learned Advocate General appearing for the State-respondents stated that the State-respondents may not be averse to Deputy Commissioner's re-examining the petitioners' grievance for recording a finding on facts, after hearing the parties, as to whether the villagers had donated the land to the respondents for construction of the road or it was otherwise taken possession of by the respondents.

Keeping in view the fact that no records were available with the respondents indicating that the villagers had donated the land and the fair statement of the learned Advocate General conveying respondents' willingness to get the petitioners' Claim re-examined, this Court, vide its order of March 10, 2010,

directed the Deputy Commissioner, Samba to hold enquiry as to whether the land owners of Village Chak Balotrian had donated their land or it had been otherwise taken possession of by the State-respondents for construction of the road.

The Deputy Commissioner, Samba, accordingly, filed his Report which was, however, found to have been made without hearing the State-respondents. He was, therefore, directed to re-examine the matter and furnish his report after providing opportunity of hearing to the respondents as well.

The Deputy Commissioner, heard the respondents and thereafter submitted his fresh Report taking into consideration the State-respondents' views and the material, which was placed before him by the Collector, Land Acquisition, PWD (R&B), Jammu, Executive Engineer Construction Division No.I, Jammu, the Tehsildar, Samba's Report, besides the views offered by OC, 69 RCC C/o 56 APO.

The Deputy Commissioner, concluded his Report saying as follows:-

"After hearing the petitioners as well as the respondents and going through the records produced related to the issue, the findings in the matter are as under:-

1. The road was constructed in 1952 by the PWD(R&B). The land of petitioners has been used for construction of road for which no compensation has been paid to them.
2. The petitioners ought to have preferred the claim at the time of construction of road which had not been done till 1998. The petitioners filed the Writ Petition in 1998 for claiming compensation after a lapse of 46 years. Although, petitioners have stated that they have time and again requested for compensation, nevertheless no documentary evidence of preferring such a claim has been found in record nor produced by the petitioners.

In view of the aforementioned facts, U/S has come to the

conclusion that land in question has not been donated by the petitioners or their predecessors in interest. The road has been constructed in the year 1952-53 and it exists as on date. However, the PWD(R&B) has been shown in possession since 1968 as per revenue records. Hence, this report is submitted in terms of Order of Hon'ble High Court passed on 15.09.2010."

I have heard learned counsel for the parties and considered their submissions.

The findings on facts recorded by the Deputy Commissioner, Samba having not been disputed by the learned State counsel, the issues projected at the time of consideration of the Writ Petition, need to be determined proceeding on the basis of the findings recorded by the learned Deputy Commissioner that the petitioners-land owners of Village Chak Balotrian had not donated their land which was used for construction of 6.5 Km long Ramgarh-Khour road covering an area of 74 kanals 10 marlas at Village Chak Balotrian, and taking into consideration the fact that after the issuance of directions by the Court in the petitioners' earlier Writ Petition, the State Government had, vide Executive Engineer, PWD Construction Division No.1's letter No. 4388-91 dated 8.11.1999, placed a formal indent with the Collector PWD for acquisition of the land in question, which however, later appears to have been abandoned on its taking the view that the petitioners' claim was not sustainable under Rule 24-A of the Land Acquisition Rules.

In view of the categorical finding of the learned Deputy

Commissioner, that the land owners of Village Chak Balotrian had not donated their land needed by the State for construction of Ramgarh-Khour road, the star ground that had weighed with the Executive Engineer, PWD (R&B) Construction Division, Jammu, in rejecting the petitioners' Claim to compensation, pursuant to the orders of the Court in the petitioners' earlier Writ Petition, based on Rule 24-A of the Land Acquisition Rules for Public Purposes, is found untenable, in that, Rule 24-A had no application to the facts of the petitioners' case and was attracted only in those cases where the land was found to have been donated to the Departments, referred to in the Rules for construction of roads/Canals or for other public purposes before 1977. Rule 24-A of the Rules is reproduced hereunder for reference :-

**“24-A. Procedure for concluding bargain by private negotiations in respect of land taken possession of without resorting to acquisition proceedings**

Notwithstanding anything contained in these rules, the Committee consisting of –

- (a) Deputy Commissioner of the district concerned;
- (b) District Superintending Engineer concerned;
- (c) District Level Officer of the Department concerned;

Shall be competent to enter into an agreement with the person interested in land to conclude bargain by private negotiation in respect of land possession whereof has been taken by the Government before issuance of Notification SRO-419 dated 19.9.1981 without resorting to acquisition proceedings under the J&K Land Acquisition Act: -

**Provided that the persons, who have donated their lands to the C.D and N.E.S./Public Works Department/Education department agencies for construction of roads/Canals and for other public purposes before 1977 and the possession whereof has**

**been already taken by any Government Department, shall not be entitled to any compensation:**

Provided that the rates as may be agreed upon as selling and buying price of the land, shall not exceed the rates prevalent in the locality where the land is situate."

Coming to the next ground raised by the learned State counsel that the petitioners' Claim being barred by time, the rejection of the claim was justified, suffice would it be to say that the respondents were not right in rejecting the petitioners' Claim to compensation for their immovable property, on the ground of limitation, firstly because a Welfare State, like ours, is obliged to protect the Fundamental, Legal and Statutory rights of its masses rather than denying them these rights pressing in aid the plea of limitation, and secondly because the plea of limitation could be projected as a defence only in proceedings in a Court of law and not by the State which had been called upon by the Court, in exercise of its Extra Ordinary Civil Writ Jurisdiction, to examine the petitioners' Claim to compensation for allowing them relief, if they were otherwise entitled thereto on facts, rather than defeating the Claim on technical grounds.

Even otherwise, the State could not have rejected the petitioners' Claim to compensation on the ground of limitation alone, in that, it had opted not to raise the plea of limitation as its defence to the petitioners' Claim when they initially approached this Court seeking a Command on the State-respondents to pay them compensation for their land and this

Court had found them entitled to seek State's consideration into the matter.

That apart, Article 226 of the Constitution of India gives an aggrieved person a right to seek enforcement of any of his Fundamental rights invoking the Extra Ordinary Writ Jurisdiction of the Court and the jurisdiction being discretionary, the Rules of Limitation cannot curtail or otherwise limit the operation of the Extra Ordinary Jurisdiction of the Court to issue any Writ, Order or Direction to secure the ends of justice protecting the rights of those entitled thereto under the Constitution and the Laws in force in the State.

In the year 1952-53, when the State Government, took possession of the land in question, the Owners of the land of Village Chak Balotrian, like many others in the State, were a uneducated lot and thus unaware of their rights. Their belated approach to the Court, on being made aware about their legitimate rights in the landed property, having not been considered an impediment by the Court to entertain their grievance when they had approached it earlier, and the respondents had been directed to consider their Claim to compensation, cannot be pressed into service by the respondents to deny them the relief of restoration of their fundamental right to property.

The small Land Owners of Village Chak Balotrian have

been deprived of their landed property without paying them compensation therefor and the damage done to them in depriving them of their right to property, therefore, needs to be suitably compensated, in that, no one can be deprived of his right to property, save and except, in accordance with the laws in force in the State.

There being no law in the State permitting deprivation of its subjects of their right to property; the State is under an obligation to either restore the land to the land owners or pay them requisite compensation therefor. In the circumstances, as it may not be possible to restore the land to the land owners when a public road stands constructed thereon since 1950 so the petitioners are entitled to compensation for their land which was used by the State for construction of the road.

For all what has been said above, the rejection of petitioners' Claim to compensation by the Executive Engineer is, therefore, found unwarranted and illegal. The Land Owners of Village Chak Balotrian are entitled to compensation for their land.

This Petition, therefore, succeeds and is, accordingly, allowed issuing a direction to the State-respondents to pay such compensation to the Land Owners of Village Chak Balotrian or their Successors-in-interest whose land had come under Ramgarh-Khour road, as was assessed by the Deputy



Commissioner, Samba.

The Deputy Commissioner shall assess the compensation payable to the Land Owners within a period of four months, taking into consideration the parameters prescribed for determination of compensation under the provisions of the State Land Acquisition Act.

The compensation so assessed shall be paid by the respondents within a period of two months thereafter to the Land Owners.

**(J.P. SINGH)**  
**JUDGE**

**JAMMU**  
31.05.2011  
Pawan Chopra