

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

OWP No.572/2010

CMP Nos. 788/2010 & 499/2011

Date of Decision: 28.10.2011

Zakir Hussain & Ors. Vs State J&K and anr.

Coram:

Mr. Justice J.P.Singh.

Appearing Counsel:

For the Petitioner(s) : Mr. A.V.Gupta, Sr. Advocate with
Mr. Munish Sharma, Advocate.

For the Respondent(s) : Mr. A.H.Qazi, AAG.
Mr. Gagan Basotra, AAG.

i) Whether approved for reporting
in Press/Media : **Yes**

ii) Whether to be reported
in Digest/Journal : **Yes**

The petitioners have approached this Court questioning Deputy Commissioner, Rajouri's Order acquiring their land measuring 27 Kanals 10 Marlas comprised in Khasra Nos. 714 pt, 717 pt, 723 pt and 724 pt situated at Village Fatehpur of Tehsil Rajouri under the State Land Acquisition Act.

Learned Senior Counsel appearing for the petitioners contends that the learned Deputy Commissioner's Order was unsustainable, in that, satisfaction recorded by him that the land was needed for public purpose was no satisfaction in the eyes of law, in that, the satisfaction contemplated by the provisions of Section 6 of the Act was required to be recorded by the Government. He further submitted that the petitioners were not allowed opportunity to file Objections to the proposed acquisition in terms of Section 5-A of the Act and omission of the respondents to comply with the provisions of the State Land Acquisition Act, before directing acquisition of land, renders the acquisition of petitioner's land unsustainable.

Per contra, Mr. A.H.Qazi, learned Additional Advocate General submitted that the power and authority vested in the State Government, having been delegated, *inter alia*, to the Deputy Commissioners vide SROs 235 & 236 of August 11, 2009, the declaration made by Deputy Commissioner, Rajouri that the

property was needed for Public purpose, cannot be faulted.

Considered the submissions of learned counsel for the parties and perused the provisions of the State Land Acquisition Act, 1990 (1934 A.D) and SROs 235 & 236 of August 11, 2009.

Perusal of the provisions of Section 6 and 52-A of the State Land Acquisition Act reveals that the legislature, in its wisdom, had vested authority in the State Government and, if delegated by the Government, in the Revenue Minister alone, to record satisfaction as to whether or not any property was needed for public purpose and such satisfaction could be recorded by the Government or by the Revenue Minister after considering Report, if any, made under Section 5-A (2) of the Act. It is only after such satisfaction was recorded either by the Government or by a Revenue Minister that a declaration could be made to that effect under the Signatures of the Revenue Minister or some Officer duly authorized in this behalf.

It is, therefore, explicit that satisfaction about any particular land being needed for Public Purpose, is contemplated by the State Land Acquisition Act, to be recorded by the Government or by the Revenue Minister, if he is delegated such power by the Government and not by any other Authority. It is only after such satisfaction was recorded by the Government or by its delegatee that a declaration to that effect may be made under the Signatures of the Revenue Minister or some other Officer duly authorized in this behalf.

The authorization made by the Government by SRO 235 empowering Financial Commissioner (Revenue), Divisional Commissioners and Deputy Commissioners to exercise power under Section 6 of the Jammu and Kashmir Land Acquisition Act, can be construed to be delegation only to the making of declaration and not to the recording of satisfaction contemplated by First part of Section 6 (1) of the Land Acquisition Act. This is so because delegation of power to record satisfaction which the Legislature had vested

in the Government, is contemplated only, in the Revenue Minister and to none else.

The satisfaction recorded by the Deputy Commissioner, Rajouri that the land was needed for Public purpose is, therefore, 'No Satisfaction' in the eyes of law.

The Government or the Revenue Minister having neither considered the Report made under Section 5-A (2) of the Act, nor recorded satisfaction that the land was needed for public purpose, the acquisition of petitioners' land by Deputy Commissioner, a *Coram non judice*, recording his satisfaction that the land was needed for public purpose, is thus without jurisdiction, hence illegal.

Notification No. 113 DCR of 2010, issued by the Deputy Commissioner, Rajouri for acquisition of petitioners' land is, therefore, quashed along with Notices issued under Sections 9 and 9-A of the Act.

Assistant Commissioner (R), Collector Land Acquisition, Rajouri is, however, left free to act pursuant to Notification issued by him under Section

4(1) of the Land Acquisition Act but before taking further action under Section 5-A of the Act, he is required to hear the petitioners for their objections, if any, to the acquisition of land and thereafter refer the case to the Government with his recommendations seeking its consideration for acquisition of land.

(J.P. SINGH)
JUDGE

JAMMU:
28.10.2011
Pawan Chopra