

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

SWP No. 1100/2015

IA No. 01/2015

Date of Order: 31st of July, 2018.

Mushtaq Ahmad Reshi

Vs.

State of JK & Ors.

Coram:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge.

Appearance:

For the Petitioner(s): Mr Arshad Ahmad, Advocate.

For the Respondent(s): Mr Asif Maqbool, Government Advocate.

01. The petitioner claims to be the owner of land measuring 1.75 Kanals covered under Khasra No. 717 situate at Buderkoot, Tangmarg. The respondents have utilized the said land for the construction of a Community Hall for the use of the general public. The petitioner had surrendered the said land on the assurance extended to him by the respondents to the effect that in lieu of the same they will provide employment to the petitioner commensurate to his academic qualification. On the failure of the respondents to fulfil the assurance extended to the petitioner, the petitioner, in an earlier round of litigation, had approached this Court through the medium of writ petition, being SWP No. 1600/2001. This Court, on consideration of the matter, after going through the pleadings on record, disposed of the said writ petition in terms of judgment

dated 9th of June, 2011, with a direction to the respondents to accord consideration to the case of the petitioner for appointment against the suitable post, having regard to the assurance extended to the petitioner and, of course, in accordance with the rules. In pursuance of the aforesaid directions of the Court, the respondents have passed an order bearing No. 471 DRDK of 23rd of May, 2015, whereby the claim of the petitioner, as aforesaid, has been rejected. This order of rejection of the claimed of the petitioner dated 23rd of May, 2015, is impugned herein this petition.

02. A perusal of the impugned order would reveal that the claim of the petitioner has been rejected on the ground that he has himself donated the land in question to the respondents. There is no material on record produced by the respondents to demonstrate that the petitioner has surrendered the land in favour of the respondents for utilization, without there being any commitment of providing employment.

03. ‘Right to Property’ is a fundamental right guaranteed under the Constitution of India and deprivation thereof cannot be allowed without following due procedure of law. Admittedly, the respondents have taken possession of the land in question in the year 2007, thereby depriving the petitioner to utilize the same as per his wish and will.

04. The respondents, being the functionaries of the State, are expected to adopt a fair approach while dealing with its subject, however, in the instant case, the approach adopted by the respondents is unbecoming of a State functionary as they have deprived the petitioner from his constitutional right, i.e. the Right to Property.

05. True that there is no provision as regards the providing of employment to the petitioner in lieu of land donated, as the said provision was in vogue only till the year 1999 in the shape of SRO 181 of 1988 and the same has been, subsequently, repealed vide SRO No. 214 dated 11th of July, 1991, but, at the same time, the respondents cannot be allowed to acquire and utilize the land belonging to the petitioner without paying any compensation in respect of the same. In such view of the matter, the claim regarding providing employment in lieu of land surrendered to the petitioner is rejected.

06. The next, and the only, issue which needs to be adjudicated herein this petition is regarding payment of compensation to the petitioner in respect of the land acquired by the respondents for the purpose of utilization of the same for a Community Hall, which, in terms of well settled principles of law governing the filed, the petitioner is entitled to. However, the question which now arises is how much compensation the petitioner will be entitled to. The Court has no expertise to assess the compensation with regard to any kind of land, but the same can be got assessed by the competent authorities in the Revenue Department, i.e. the District Collector, in the present case.

07. In the above factual background, the instant writ petition shall stand disposed of in the following terms:

- I. The Deputy Commissioner/ District Collector, concerned, shall assess and pay the compensation payable to the petitioner at the market value prevalent at the relevant point of time, i.e. the year 2007, alongwith 6% interest and 15% Jaabirana;*

II. Before proceeding ahead, the Collector shall afford an opportunity of hearing to both the parties and take into consideration their rival contentions in arriving at any decision, as directed hereinabove; and

III. The aforesaid exercise be completed within a period of two months from the date the certified copy of this order is made available before the District Collector by the petitioner.

08. Writ petition, alongwith connected MP(s), **disposed** of as above.

SRINAGAR

July 31st, 2018

"TAHIR"



(Ali Mohammad Magrey)
Judge