

S. No. 01
Regular Cause List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP No. 92/2009

Shri Pradman Krishan Bhat

...Petitioner(s)

Through: Mr. J. H. Reshi, Adv.

Vs.

State of JK & Ors.

...Respondent(s)

Through: Ms. Asifa Padroo, AAG

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

O R D E R
30.09.2021

1. Heard Mr. J. H. Reshi, learned counsel for the petitioner and Ms. Asifa Padroo, learned AAG for the respondents.
2. The petitioner through its attorney has preferred this petition seeking the following reliefs: -
 - I. By a writ of Mandamus, commanding the respondents to either pay the compensation to the petitioner through his attorney at the present market value or give him in exchange the equal portion of the land acquired by the respondents at the nearer site.
 - II. By a writ of Mandamus, commanding the respondents to pay the adequate compensation to the petitioner through attorney for the loss he has suffered at their hands.

Any other writ, order or direction which this Hon'ble Court may deem just and proper in the circumstances of the case be also passed in favour of the petitioner and against the respondents.
3. A reading of the reliefs claimed by the petitioner discloses that the petitioner wants a direction to the respondents to either pay compensation to him at the market value of the land or to give him in exchange an equal portion of land nearer to his site and to pay adequate compensation for the loss that he has suffered at the hands of the respondents.

4. The petitioner has pleaded that he owns a piece of land measuring 1 kanal and 7 marlas under Khasra No. 196, Khewat No. 3 situate at Chandpora Harwan, Srinagar. The said land was notified for acquisition vide notification dated 10.01.1997 issued under Section 4 (1) of the J&K Land Acquisition Act. He alleges that the respondents assessed the value of the said land @ Rs. 1.40 lacs for Abi Awal, @ Rs. 1.50 lacs for Abi Bagh and @ Rs. 1.30 lacs for Gair Mumkin, which is evident from the letter dated 31st May 1999 of the Revenue Department addressed to the Financial Commissioner. The land of the petitioner is very valuable as it is situate near the famous mughal gardens of Srinagar and its market value is not less than Rs. 25 lacs per kanal. In support of the value of the land, he has given reference of a sale deed dated 17.11.2007.

5. The petitioner alleges that despite the land having been acquired in 1999 (ought to be 1997) he has not been paid any compensation and, therefore, he should be paid fair compensation as per the prevalent rate.

6. Ms. Asifa Padroo, learned AAG appearing for the respondents was directed vide order dated 23rd September 2021 to produce the original record pertaining to the above acquisition. She has produced the record and we have gone through it.

7. The record reveals that in pursuance to the aforesaid notification issued under Section 4 of the Land Acquisition Act, upon completion of intermediate formalities, a final award was pronounced on 1st June 1999 by the Collector, Land Acquisition, Lakes and Waterways Development Authority, Srinagar. According to the said award, compensation @ Rs. 1. 40 per kanal for the Abi Awal, Rs. 1. 50 per kanal for the Abi Bagh and Rs. 1. 30 per kanal for Gair Mumkim was awarded in respect of the entire 505 kanals and 6 marlas of land involved in the acquisition.

8. The copy of the award has also been enclosed as Annexure-A to one of the application CMP No. 1492/2010 filed on behalf of one of the respondents. The petitioner therefore had acquired knowledge of the said award from the aforesaid application which is endorsed to have been served upon the counsel for the petitioner on 15.12.2010. The pleadings in the writ petition do not reveal anything about the above

award or that the petitioner ever took any steps to claim any higher rate of compensation.

9. The Act is complete Code in itself which provides for a complete mechanism for the award of compensation in respect of the acquired land and for its enhancement by seeking a reference under Section 18 of the Act and thereafter by an appeal before the High Court. The petitioner has not taken any steps in accordance with the provisions of the Act for the enhancement of the compensation. In case, he has not been paid any compensation, he is free to approach the Collector concerned for the payment as per the award and obtain the same. Since the petitioner can get the compensation as per the award from the office of the Collector, there is no question of providing him alternative land in exchange of the same. It may also be noted that the Act does not provide for any exchange of the land except for the compensation in terms of money for the acquired land.

10. The record produced before us also reveals that the aforesaid land of the petitioner has been de-notified and has been excluded from acquisition vide order dated 8th September 2016 issued by the Collector, Land Acquisition, J&K Lakes and Waterways Development Authority, Srinagar.

11. The said order is also enclosed as Annexure R-1 to the reply filed on behalf of respondents on 20.11.2018, and, as such, the petitioner is presumed to aware of it. In fact, the petitioner had proceeded to argue the matter as if he is fully aware of the award as well as of the denotification.

12. Thus, in view of the above de-notification, as the land has not been acquired, the petitioner is not entitled to any compensation or alternative land and in case it stands acquired, the petitioner can receive the compensation as per the award from the office of the Collector concerned and may take appropriate steps for its enhancement as may be available to him in law.

13. Learned counsel for the petitioner at this stage argued that the denotification of the land is illegal and bad in law inasmuch as it has not been issued by the competent authority.

14. The argument has no substance as the petitioner has not challenged the aforesaid denotification. It may be noted that the petitioner till date has not parted with the possession of the land and, therefore, despite notification to acquire the said land, it had not vested in the respondents. Section 46 of the Act empowers the Government to withdraw from acquisition of any land of which possession has not been taken. The petitioner accepts that he is in possession of the disputed land and that its possession has not been taken over by the respondents. Accordingly, the respondents have rightly in exercise of their power under Section 46 of the Act have withdrawn from the acquisition of the said land vide notification dated 08.09.2016.

15. Therefore, we do not find any apparent illegality in the denotification more particularly when its validity has not been challenged by the petitioner either independently by means of a separate writ petition or by seeking amendment in the present writ petition. The pleadings do not contain any factual averment with regard to any illegality in the above de-notification or that the same is illegal for any reason.

16. Learned counsel for the petitioner lastly argued that in view of the New Act, the proceedings for acquisition stand lapsed as the physical possession of the land has not been taken and the compensation has not been paid. This argument has been advanced in the light of Section 24 of the New Act, but without any foundation in the petition or any pleadings in that regard. Thus, the petitioner cannot be permitted to argue that which is not pleaded.

17. Section 24 (2) of the New Act provides that in case the land acquisition proceedings were initiated under the Land Acquisition Act 1894 and an award under Section II of the said Act has been made five years or more prior to commencement of the New Act and simultaneously, where the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed and the appropriate government if so chooses shall initiate the proceedings for acquiring the said land afresh in accordance with the New Act.

18. No doubt, in view of the above provisions as the proceedings for acquiring the above land were initiated under the Act (though not the

Land Acquisition Act) 1894, and the award was made 5 years before the commencement/enforcement of the New Act in the Union Territory of JK, and at the same time, neither its possession has been taken over nor the compensation has been paid, the proceedings may stand lapsed, but, that would not make any difference as it work contrary to the interest of the petitioner inasmuch as if the proceedings have lapsed, petitioner would not be entitled to any compensation or alternative land in lieu thereof. It would mean that the land of the petitioner has not been acquired in which case, he would not be entitled to any compensation.

19. In the facts and circumstances of the case as noted above, we do not find any entitlement of the petitioner to any compensation if the land has been de-notified or the acquisition proceedings have lapsed. In case it stands acquired, the appropriate remedy for the petitioner is to claim compensation as per the award and to seek its enhancement. This court in exercise of its extraordinary jurisdiction is at a loss to go into the factual aspect as to the market value of the land and the evidence in connection thereto so as to determine the amount of compensation admissible to the petitioner.

20. Thus, in the overall facts and circumstances of the case, the petition as per the pleadings without reference to the objection/reply of the respondents simply on the basis of the record which contains the award and the denotification referred to above, both of which are well known to the petitioner, we do not find any merit in this petition and the same is dismissed with no order as to costs.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
30.09.2021
Altaf

(PANKAJ MITHAL)
CHIEF JUSTICE

Whether the order is reportable? Yes/No.