

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR**

OWP 774/2012

MOHAMMAD NASEEM SALMANI

...Petitioner/Appellant(s)

Through: Mr. Zubair Ahmad Mir, Advocate  
**V/s**

STATE OF JK AND OTHERS.

...Respondent(s)

Through: Mr. Illayas Laway, GA for R 1-6  
Mr. M.I. Dar, Advocate with  
Ms. Sana Imam, Advocate for R-7

**CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

**ORDER**  
**30.11.2023**

1. The petitioner in the instant petition filed under Article 226 of the Constitution states that he was a tenant-shopkeeper in the commercial building owned and possessed by respondent 7 herein situated at Khanayar opposite "Shiraz Cinema Srinagar" since 1999 pursuant to a rent agreement and was conducting his business activities in the said shop as a Barber and registered under J&K Shops and Establishment Act 1966 under Registration No. 6304-A-viii Srinagar and was also a registered consumer with J&K Power Development Department under Installation No. 14308 of Sub Division Khanayar.
2. It is being next stated that somewhere in the year 2011 the official respondents intended to widen the road from Dalgate to Zukoora Srinagar, and in the process initiated an exercise for acquiring immovable properties in the stretch of the road coming under said

road widening including the property of respondent 7 herein wherein the petitioner was a tenant of a shop therein.

3. It is being further stated that the official respondents during the aforesaid exercise marked the property of respondent 7 under No. 154/2 AB and after undertaking the negotiation with respondent 7, paid compensation to respondent 7 qua the building including the tenants of the shops existing therein excluding shop under the tenancy of the petitioner, aggrieved whereof the petitioner herein preferred OWP No. 500/2011 before this Court, wherein on 05.05.2011 an interim order came to be passed directing the respondents to proceed in the matter strictly in accordance with the rules and pay due compensation as is admissible under rules to the concerned parties including the petitioner, if found entitled to the same.
4. It is being also stated that respondent 4 in the said petition being Chief Engineer Roads and Building submitted his reply to the petition, stating therein that the petitioner was the tenant of respondent 7 herein whose structure had been acquired by the official respondents and that the case of the petitioner was not recommended for payment of compensation on the recommendations of a High Level Committee for the petitioner being a Non State Subject.
5. It is being next stated that during the pendency of the said petition, the official respondents forcibly evicted the petitioner from the shop in question rendering the aforesaid petition as infructuous and which consequently came to be withdrawn by the petitioner with liberty to file fresh one i.e the instant petition.

6. The instant petition is being filed on the premise that official respondents denied the payment of compensation to the petitioner qua the shop under his tenancy belonging to respondent 7, illegally on a flimsy ground that the petitioner is not entitled to compensation being a Non-State Subject, whereas on the contrary the official respondents awarded compensation to the other similarly situated tenants of the respondent 7.
7. Respondents both official as well as private respondent 7 despite having appeared in the matter have chosen not to file any reply to the petition, thus, under these circumstances an adverse inference is drawn against the respondents qua the pleadings of the petitioner.

**Heard learned counsel for the parties and perused the record.**

8. Perusal of the record reveals that the official respondents admittedly issued a notification dated 01.10.2009 under section 4 of the J&K Land Acquisition Act Svt 1990 for acquiring the structure of respondent no. 7 consisting of the building and shops along with land underneath and appurtenant thereto.

It also emerges from the record that a communication came to be addressed by the Collector to the Superintending Engineer R & B Circle Srinagar on 15.02.2011 providing therein that a verification stands made in respect of Mark No. 154/2-AB situated at Khanyar and reported that the property belongs to the respondent 7 herein under part -A and under Part-B the property has five tenants/shop keepers namely:-

1. Mohammad Sidiq Gadda ( Owner)
2. Rouf Ahmad Khan S/o Mohammad Rafiq ( Tenant)
3. Post Office in Ist Floor (Room)

4. Naseem (petitioner herein) Non-Resident (Tenant)
5. Rouf Ahmad Bhat S/o Ghulam Nabi ( Tenant) (Room second Floor)

A closer perusal and examination of the said report also reveals that a recommendation has also been made therein for providing alternate shops to the aforesaid tenants, however, excluding the petitioner herein on the ground of being a Non State Subject.

A Further perusal of the report would reveal that the official respondents settled with the respondent 7, the amount of compensation payable by the official respondents to the respondent 7 to the tune of Rs. 17 lacs for the structure along with the land underneath and appurtenant thereto @ Rs. 40 lacs per kanal besides working out an amount of Rs. 40 lacs for the four shop @ Rs. 10 lacs per shop being 100 sq ft provided for 25% out of the said amount of 10 lacs to be payable to the respondent 7 herein and 75% to the tenant of the shops excluding the petitioner herein.

9. Before proceeding further in the matter it would be appropriate and advantageous to refer to the following provisions of J&K State Land Acquisition Act Svt 1990, being relevant herein:-

Section 3 (b) of the Act defines the "**expression persons interested**" and reads as follows:-

"Includes all persons claiming an interest in compensation to be made on account of acquisition of land under this Act ; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land".

It is significant to note here that the expression person is not defined in the Act, however, the expression person is defined under section 2 clause 42 of the General Clauses Act as follows:-

" Person shall include any company or association or body of individuals whether incorporated or not.

Section 5 (a) of the Act deals with hearing of objections after a notification under section 4 of the Act is issued and provides that any person interested in any land which has been notified u/s 4 as being needed or likely to be needed for a public purpose may within 15 days object to the acquisition of the land. Thus, a conjoint reading of section 5 and section 3 (b) connotes that same give a valuable right to an interested person who claims an interest in the compensation to be made on account of the acquisition of the land under the Act.

A plain reading of the above provisions makes it abundantly clear that the same does not make any distinction or classification of any kind between a State Subject and a Non State Subject particularly insofar as the expression of “person interested” appearing in section 3(b) and section 5 of the Act is concerned.

10. Perusal of the record manifestly suggest that the official respondents of their own have sought to introduce the expression “Non State Subject” in the provisions of the Act qua the award of compensation and rehabilitation vis-a-vis the petitioner herein. The said exercise and inaction of the respondents seemingly has been done illegally and in breach of the equality clause contained in Article 14 of the Constitution. The respondents in law thus, could not have excluded the petitioner herein from being considered for award of compensation and extending him the benefit of rehabilitation on any basis including policy relied upon by them. The respondents admittedly have subjected the petitioner to hostile discrimination and also in the process violated Article 21 of the Constitution available to the petitioner herein.

11. Viewed thus, what has been observed considered and analyzed hereinabove, the petition succeeds and as a consequence whereof by issuance of a writ of mandamus, the official respondents 1 to 6 are commanded to accord effective consideration to the case of the petitioner for payment of compensation and rehabilitation qua the shop of the petitioner acquired by them on the same and similar lines compensation and rehabilitation has been awarded and extended to the other tenants of respondent 7 herein. In the process of working out the compensation as directed above, the petitioner shall also be entitled to interest @ 7 % per annum from the date the petitioner became entitled for the same till the date of its actual payment, to be paid by the official respondents.

**Disposed of.**

**(JAVED IQBAL WANI)  
JUDGE**

**SRINAGAR**

**30.11.2023**

**“S.Nuzhat”**

