

HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR  
WP(C) 3953/2019

Maqsood Ahmad Khan and Ors.

...Petitioner(s)

Through: Mr. Shah Faisal, Advocate.

Vs.

Union Territory of J&K & Others.

...Respondent(s)

Through: Mr. Alla-ud-din Ganai, AAG.  
Mr. Ilyas Nazir Laway, GA.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

JUDGMENT(ORAL)  
30.04.2024

1. A road from Pehlipora to Yarwan ["subject road"] was sanctioned under Phase-VIII, Stage-I of PMGSY to provide connectivity to unconnected habitations in Yarwan. Stage-II of the scheme was sanctioned as per package No. JK03-143 for the construction of road length of three kilometers at the sanctioned cost of Rs. 166.96 lacs.

2. With a view to constructing the subject road and to acquire the private land coming under the alignment of the road, a joint inspection by the representatives of the PMGSY, Revenue and Horticulture Departments was conducted on 1<sup>st</sup> December, 2012, Shajra Khasra as also an inventory of the trees likely to come under the alignment of the subject road was prepared. The Collector Land Acquisition (SDM), Uri, having received an indent from Executive Engineer PMGSY Division, Uri, issued notification under Section 4 of the State Land Acquisition Act Svt. 1990 ["the Act"], which came to be published in the local daily Greater Kashmir on 21<sup>st</sup> February, 2013.

3. Considering the nature of the project and the urgency involved, the Collector decided to settle the rates of the land under acquisition by private negotiations. Accordingly, a meeting of the Private Negotiation Committee was convened in which the interested persons including the petitioners participated. After due deliberation and with the consent of the land owners, compensation @ Rs. 4.25 lacs per kanal was agreed upon. As far as the fruit bearing trees are concerned, spot demarcation was conducted and an inventory of fruit bearing trees standing on the land coming under acquisition was prepared by a team of officers from PMGSY and Revenue Department. This is evident from the communication of the Executive Engineer PMGSY Division Uri bearing No. EE/PMGSY/Uri/3950-52 dated 20<sup>th</sup> March, 2018.

4. Based on the aforesaid inventory, officers from the Horticulture Department determined the actual amount payable for such fruit bearing trees. While the rate of compensation to be paid for the land and the amount of compensation to be paid for the trees stood determined and the Collector Land Acquisition was only to disburse the compensation to the rightful land owners after obtaining a formal apportionment statement, however, this has not been done even after lapse of more than five years.

5. As is fairly submitted by the learned counsel for the petitioners that out of sixty-six interested persons who were found entitled to compensation for fruit bearing trees, twenty-four have been disbursed the due amount. So far as the compensation for the land is concerned, as per the petitioners, not even a single penny has been paid.

6. It is in this backdrop, the petitioners having failed to persuade the respondents to perform their statutory duty of disbursement of compensation to the interested persons deprived of their land, have approached this Court through the medium of instant petition.

7. On being put on notice, the respondent No. 8 who is appearing through Mr. Alla-ud-din Ganai, learned AAG has filed its reply affidavit. The acquisition of land, as well as the damage to the fruit bearing trees standing on such land for construction of the subject road has not been disputed. The rate of compensation agreed to be paid to the petitioners for the land acquired is also not disputed by the Collector. The stand of the Collector, as can be culled out from the reply affidavit filed by it, is that so far as compensation for land acquired for construction of subject road is concerned, only one interested person has been released the compensation to the tune of Rs. 8,92,500/- lacs, whereas the rest of the interested persons are yet to receive their compensation.

8. So far as the fruit bearing trees are concerned, the stand of the Collector Land Acquisition is that pursuant to the assessment report received from the Chief Horticulture Officer vide its communication dated 28<sup>th</sup> July, 2018, an amount of Rs. 36, 07,652 lacs has been disbursed to the rightful land owners, whereas the rest of the interested persons/rightful owners entitled to compensation for fruit bearing trees are yet to be released their compensation. The delay in disbursing the compensation in respect of land as well as the fruit bearing trees is attributed to a complaint filed by some anonymous inhabitants of Pahlipora before the Anti-Corruption Bureau, Jammu and Kashmir, Srinagar, against some officers of the Government with the allegations that the compensation determined for loss of trees was

on the higher side and detrimental to the public exchequer. The complaint was, however, later on closed by the Anti Corruption Bureau vide its communication dated 28<sup>th</sup> June, 2022, having been found without any substance.

9. The Collector Land Acquisition has further submitted that because of pendency of the complaint, he surrendered the balance amount lying with it for the acquisition in question to the Programme Implementing Unit of PMGSY Uri. He, therefore, shows his inability to disburse the compensation in favour of the petitioners and others due to non-availability of the funds. The last line of the reply affidavit clearly states that the matter of compensation of land and fruit bearing trees is being pursued by the Collector and will be paid as and when funds are made available by the PMGSY Department. The communication bearing No. SDM/Uri/22/1497 dated 4<sup>th</sup> November, 2022 issued by the Collector Land Acquisition Uri to the Executive Engineer, PMGSY Uri bears testimony of this fact.

10. So far as PMGSY is concerned, it is argued by Mr. Ilyas Nazir Laway, learned GA that for acquisition in question, the PMGSY had placed the entire amount at the disposal of the Collector for disbursement of Compensation for land acquired as also for the fruit bearing trees in favour of the interested persons in accordance with law. He further submits that it is not forthcoming as to why a big part of the amount placed at the disposal of the Collector was surrendered. Other than this, the PMGSY has no defense to offer. There is nothing stated in the reply affidavit filed by the PMGSY as to why the communication issued by the Collector Land Acquisition dated 4<sup>th</sup> November, 2022 has not been responded to so far and the amount

demand has not been made available to the Collector. The entire effort of the PMGSY and the Collector has been to shift the blame on each other.

11. Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that once the respondents have acquired the land along with the trees standing thereon from the petitioners and other land owners, it is incumbent upon the respondents to release the assessed compensation in their favour. As is rightly contended by learned counsel for the petitioners, that though right to property has ceased to be a fundamental right, yet the same continues to be a constitutional right under Article 300-A. It is a cardinal principle of rule of law that nobody can be deprived of his/her property without due process of law. The legal position in this regard is well settled.

12. The Constitution Bench of the Hon'ble Supreme Court in the case of "*K.T. Platinum (P) Ltd Vs. State of Karnataka*" (2011) 9 SCC 1 has put at rest the controversy, if any, with regard to the interpretation of Article 300-A of the Constitution of India. In the aforesaid case, the Supreme Court *inter alia* considered the following question:-

“5. If Article 300-A of the Constitution is construed as providing for deprivation of property without any compensation at all, or illusory compensation, and hence providing for expropriation and confiscation of property, whether the said Article would violate the rule of law and would be an arbitrary and unconscionable violation of Article 14 of the Constitution, thus violating the basic structure of the Constitution?

13. The Constitution Bench after elaborate discussion, answered the question aforesaid in the following manner:-

(e) Public purpose is a pre-condition for deprivation of a person from his property under Article 300A and the right to claim compensation is also inbuilt in that Article and when a person is deprived of his property the State has to justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors.

14. This legal position enunciated by the Constitutional Bench of the Supreme Court has been followed and reiterated in “*Kalyani and Others Vs. Municipality, Sulthan Bathery and Others*” (2022) (15 SCC) 803:

15. Initially the Constitution of India gave ‘right to property’ the status of a fundamental right by virtue of Article 31 and Article 19(1)(f). Article 19(1)(f) gave freedom to its citizens to acquire, hold and dispose of property within the territories of India. Article 31 which reads as “*No person shall be deprived of his property save by authority of law*”, gave protection to citizens against arbitrary action of State to seize private property for public or private use. In case of violation of this right, aggrieved citizen was entitled to invoke Article 226 as well as Article 32 of the Constitution of India. However, by the Constitution 44<sup>th</sup> Amendment Act 1978, these two Articles were deleted and a new Chapter IV was added to Part XII containing singular Article 300-A. The legal status of ‘right to property’ was changed from fundamental right to constitutional right. This resulted in deprivation of right of citizens to approach Hon’ble Supreme Court directly under Article 32. Article 300-A reads thus:

“No person shall be deprived of his property save by authority of law.”

Plain reading of the Article suggests that State is empowered to deprive a citizen of his property only by the authority of law. The law which is validly enacted and is just, fair and reasonable “*Save by authority of law*”



is to be understood in the same manner in which expression “*Procedure established by law*” used in Article 21 has been interpreted by the Hon’ble Supreme Court in “*Manika Gandhi Vs. Union of India*” AIR 1978 SC 597.

16. After the Constitution Bench Judgment in KT Platinum (P) Ltd, it can be said to be firmly established that to deprive a citizen of his property following pre-requisites must be satisfied:

“(i) There must be a law authorizing the taking of property. The law means validly enacted law which is just, fair and reasonable.

(ii) The property must be taken for public purpose else the law providing for deprivation of citizens’ property for a purpose other than public purpose would not be just, fair and reasonable.

(iii) Just compensation should be paid for such deprivation. The right to compensation for the property taken over compulsorily is inbuilt in Article 300A. Law providing for no compensation to the citizen for depriving them of their private properties shall be unjust, unfair and unreasonable and thus liable to be struck down as “unconstitutional”.

17. In the instant case, there is no dispute that the property of the petitioners i.e., land and the fruit bearing trees standing thereon, have been acquired under the provisions of the Act, but the compensation determined through the process of private negotiations, has not been disbursed to the petitioners. The mandate of law has, therefore, been observed by the respondents in complete breach. Since the respondents have neither disputed the acquisition nor the assessment of compensation payable to the rightful land owners including the petitioners, as such, it is not necessary to go into the other aspects of the matter.

18. Suffice it is to say that all the petitioners have become entitled to the payment of compensation for their land and the trees standing thereon

with effect from the date the possession of the subject land has been taken over by the respondents for construction of the subject road. Since the compensation has been withheld without lawful excuse and justification as such the same has become payable alongwith compensatory interest as provided under Section 35 of the Act. Section 35 of the Act for facility of reference is set out below:-

*“35. Payment of interest. — When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 1[six per centum] per annum from the time of so taking possession until it shall have been so paid or deposited”*

19. As per Section 35, if the compensation payable to the interested persons is not disbursed at the time of taking over the possession, it shall become payable with interest @ 6% per annum from the date of taking over the possession until it has been so paid or deposited. The proviso to Section 35 further provides that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, the interest on the compensation shall be payable @10% per annum from the date of expiry of said period of one year till the same is actually paid or deposited. The payment of interest under the Act is statutory in nature and, therefore, cannot be denied on any excuse whatsoever.

20. In the instant case, the Collector has shown its inability to make the payment in time, earlier due to some misconceived dispute raised by some inhabitants and later on due to surrendering of the amount placed at its disposal to the Department of PMGSY.



21. Be that as it may, the fact remains that the money which should have come in the hands of the rightful land owners including the writ petitioners, has remained with the Union Territory of Jammu & Kashmir and has been presumably put to beneficial use. The respondents cannot run away from their liability to compensate the citizens who have been deprived of their land and the fruit bearing trees standing thereon and have yet not received the compensation there for.

22. For all these reasons, I find merit in this petition and the same is accordingly allowed. The respondent No. 1, 6 and 7 are directed to immediately and forthwith arrange the requisite funds to meet the requirement of compensation payable to the petitioners for their lands and the fruit bearing trees standing thereon that have been acquired for PMGSY for construction of subject road. Let the entire amount including statutory interest be placed at the disposal of the Collector Land Acquisition, Uri, within a period of two months from today. The Collector Land Acquisition, Uri, on the receipt of such amount from the Department of PMGSY, shall disburse the amount to the rightful land owners which may include the writ petitioners, in accordance with law and as per the observations made hereinabove, within a period of one month thereafter.

23. Disposed of along with connected CM(s).

(SANJEEV KUMAR)  
JUDGE

SRINAGAR:  
30.04.2024  
“Mir Arif”

(i) Whether the judgment is reportable? Yes.