

(2009) 06 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 526 Of 2007

Abdul Hamid Sheikh

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

Date of Decision : 03-06-2009

Acts Referred:

Constitution of India, 1950 — Article 300A, 31
Land Acquisition Act, 1990 — Section 16, 17, 4, 9

Citation : (2009) JKJ 36 Supp : (2009) 1 SriLJ 286

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Advocate : N.H.Shah, M.M.Iqbal, Advocates appearing for the Parties

Judgement

1. Heard.

2. Admit.

3. Learned counsel for the petitioner accepts notice on behalf of respondent and submits that the objection already filed be treated as counter

affidavit. Petitioner submits that he does not want to file any rejoinder affidavit.

4. With the consent of the learned counsel for the parties, this petition is taken up for final disposal.

5. Case of the petitioner is that respondent no. 1 has undertaken construction of alternative national highway to link Kashmir valley to Poonch area

and then to Jammu, the road more popularly known as ""Mughal Road"". Petitioner's further case is that the said road passes through small town of

Hirpora and petitioner owns land under Survey no. 463 and 464 in village Hirpora Shopian. Petitioner has also constructed a two storeyed

residential house with attics in the said village. The construction raised is concrete and classified as Aclass construction. To substantiate his

contention, petitioner has placed some documents also on writ petition. Petitioner further submits that the respondent no. 4 issued notification u/s 4

of Land Acquisition Act no. 158/ 77/SDM/LAS/2005 dated 26th September 2005 and the land of the petitioner with construction standing on it is

also notified for acquisition purposes. Further case of the petitioner is that the respondent no. 1 did not issue any notice u/s 9 of the Land

Acquisition Act. It is further case of the petitioner that he has submitted representation to respondent no. 2 & 4, that in the event of compulsory

acquisition of the house of the petitioner, his case for determination of compensation may be referred to the district court and petitioner may not be

dispossessed till then. Petitioner, however, was given to understand that matter being of great urgency, authorities cannot wait. Petitioner submits

that without following the procedure as established by law, he cannot be deprived of his immovable property.

6. Respondent no. 5 has filed his objections on 1st September 2007. Other respondent have not filed their objection. In the objection filed by

respondent no. 5, he has taken a stand that after issuance of notification u/s 4 of the Land Acquisition Act request was made by the intending

department to respondent no. 4 to acquire the land by adopting private negotiation method. Respondent no. 5 further submits that in the

objections, that in the meeting of private negotiation committee, compensation at the rate of Rs. 2.00 lacs per Kanal was approved by the revenue

authorities. It is further projected in the objection that almost all the landlords were present in the meeting and almost all the landlord except the

petitioner have received their payments and have surrendered the possession of the land. Respondent no. 5 has further admitted that no notice u/s

9 and 9A has been issued as those notifications are issued only when the authorities follow the compulsory method of acquisition.

7. This court vide its order dated 19th July 2007 had also appointed Commissioner for making assessment regarding market value of the house in

question. The Commissioner has submitted its report and in the valuation report has assessed the value of the petitioner property amounting to Rs.

28.68 lacs.

8. Right to hold property continues to be a fundamental right in the State of J&K under Article 19 of the Constitution of India. An owner can be

deprived of his property only by following the mandate of law as contained in Article 31 and 300A of the Constitution of India. Article 300A

provides that no person shall be deprived of his property save by authority of law. Article 300A has the flavor of those of the provisions of the

constitution which fall in para III of the Constitution of India.

9. In view of the constitutional mandate, the state is under constitutional obligation not to deprive a person of his property save by authority of law.

In the State of J&K, the relevant law is J&K Land Acquisition Act which authorizes the competent authority to deprive a person of his property.

The provisions of Land Acquisition Act; in the aforesaid legal background are to be construed strictly and to be followed faithfully by the

authorities.

10. In the present case, the admitted position as on date is that except petitioner all the land owners have settled the matter with the respondents

through private negotiations, as claimed by respondent no. 5 in his objection and have also been paid the compensation. The respondent visavis

petitioner have to proceed ahead in accordance with the provisions of Land Acquisition Act. Admittedly, notification u/s 4 has been issued by the

Collector and in case respondent still intend to acquire the property of the petitioner then they have to proceed ahead in accordance with the

provisions of Land Acquisition Act and have to follow the mandate of section 5,5A, 6,7, 8,9A and thereafter pass an award. The respondent

cannot deprive the petitioner of his possession unless the award is passed. However, if any urgency would be involved, then respondents can have

recourse to section 17 of the Land Acquisition Act. As and when the award is passed, petitioner shall be informed about the same, so that, the

petitioner could seek reference u/s 18, in case he is not satisfied with the award.

11. Disposed of.