

(2008) 01 J&K CK 0008
In the Jammu And Kashmir High Court

Abdul Hamid Wani and Others	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Jammu and Kashmir Land Acquisition Act, 1990 — Section 11B, 4, 46, 6, 7

Citation : (2008) 2 JKJ 308

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—Petitioners have laid this motion for grant of the following reliefs:

(i) Issue writ, direction or order in the nature of certiorari for quashing the letter No. DDF/C/2000/7810-14 dated 15-3-2000 issued by Deputy

Director Fisheries (Central) RTC, Srinagar, respondent No. 5 (annexure P-18) and also the Award issued by respondent No. 4 on 18-11-2002

under No. SDM/LA/Son-29/2002 (annexure P-17) to the extent of area of land showing 100 kanlas instead of 298 kanals and 8 marlas situated

at Rakhe Sultanpora, Tehsil Sonawari District Baramulla. bearing survey Nos. 1488/1,1491 and 1540 of petitioners.

(ii) Issue writ, direction or order in the nature of mandamus commanding the respondents to issue corrigendum to the Award (annexure P-17) by

showing the land having been acquired to the extent of 298 kanals and 8 marlas instead of 100 kanals, in terms of statutory notifications issued u/s

4, 6, 7, 9(a) of J&K Land Acquisition Act and to pay the compensation thereof as per market value and in terms of Award so made by

respondent No. 4.

(iii) Issue writ, direction or order in the nature of prohibition restraining the respondents 3,4 and 5 from resorting to any phased manner acquisition

of the land measuring 298 kanals and 8 marlas situated at Rakhe Sultanpora, Tehsil Sonawari, District Baramulla, bearing survey No.

1488/1,1491 and 1540 as not provided by the provisions of J&K Land Acquisition Act.

2. In order to decide the controversy involved in the writ petition more effectively and completely, brief facts of the case need to be noticed.

3. Petitioners owned and possessed land measuring 300 kanals situated at Rakhe Sultan Tehsil Sonwari. District Baramulla, the description of

which is given in the writ petition. Respondent No. 4 initiated land acquisition proceedings and accordingly Collector concerned issued notification

u/s 4 of the J&K Land Acquisition Act (for short the Act) for acquisition of land measuring 298 kanals and 8 marlas) falling under survey Nos.

1488,1491 and 1540 for establishing a fish farm. In response to the notification issued u/s 4 of the Act, petitioners filed their objections and

resisted the acquisition proceedings. The respondents there-after issued notifications under Sections 6 and 7 of the Act. Interse communications

ensued between the respondents - Fisheries Department for sanctioning of Rs. 45 lacs as compensation to be paid to the land owners. There-after

notification u/s 9 of the Act came to be issued. In terms of letter issued by respondent No. 3 for initiating acquisition proceedings in a phased

manner and in the first phase, only 100 kanals of land have been acquired, for which funds to the tune of Rs. 50.29 lacs stood sanctioned and kept

at the disposal of respondent No. 4 vide letter dated 15-3-2000. Accordingly award came to be passed contained in annexure-P/17 for 100

kanals of land only. The petitioners feeling aggrieved of the award and the said letter, represented before respondent No. 4 with the request to

pass a fresh award in accordance with the notification issued under Sections 4 and 6 entire land measuring 298 kanals and 8 marlas and also for

releasing of full payment of compensation in favour of the owners of the land.

4. The petitioners disputed adequacy of compensation in terms of award contained in annexure P/17 to the writ petition and prayed for making a

reference to the civil court. Petitioner's also submitted representation to the

respondents and served notices to them for readdressal of their grievances, but they failed to redress their grievances, which constrained them to file the petition in hand.

5. The grievance of the petitioners in nutshell is that the respondents were under an obligation to pass final award for entire kind measuring 298.8

marlas for which notification u/s 4 of the Act was issued and to pay them the compensation for the entire land.

6. Respondents have resisted the petition on the ground that the petitioners cannot compel the respondents to acquire entire land and the

department required only 100 kanals of land and accordingly award with respect to 100 kanals of land was passed and the awarded amount came

to be disbursed. The respondents have further specially pleaded that the department took possession of only 100 kanals of land and not the entire

land and they were within their rights to Withdraw the acquisition so far it relates to rest of the land. It is protiable to reproduce para 14 of the

counter affidavit filed by respondents 3 to 5, hereunder:

In reply to the contents of para 24 and the grounds urged in the para. It is submitted that same are legally misconceived, untenable and without any

merit. It is submitted that the Government is fully competent to acquire land as per their requirement and availability of funds and can't be forced to

acquire the land in the excess of the requirement as same would be otherwise of no utility. The answering respondents further submit that they had

already informed respondent No. 4 about the requisition of 100 kanals of land only and it was impressed upon them that the department does not

require the rest of land as such necessary steps may be taken for its de-notification. It was further impressed upon him that no funds are available

with the department of acquiring the land in excess of 100 kanals. The answering respondents place on record the relevant correspondence and

same are placed as annexures R-3, R-4 and R-5 respectively. It is further submitted that till date the answering respondents have neither taken

over the possession of 100 kanals of land for which award has been passed funds have been placed by the answering respondent at the disposal

of respondent No. 4 and the petitioners having received the compensation in full, nor the land has been demarcated.

It is in place to submit here that the department had already acquired about 350

kanals of land al Mansbal falling within the vicinity of suit land, for establishment of National Fish Seed Farm Mansbal. The farm is nearing completion and is the biggest farm in the valley. In view of this also, the department does not require additional land beyond the requirement of 100 kanals as same will be of no utility and if the department is forced to acquire the land in excess of its requirement, public money will go waste.

7. Respondents 2 and 4 here also specially pleaded that respondents had taken possession of only 100 kanals of land as they required only that much of land. It is profitable to reproduce relevant paras of the brief facts given in the counter affidavit of respondents 2 and 4:

....

Accordingly notification under the provisions of Section 9 & 9 (a) of the Act for an area of 298 kanals and 08 marlas has been issued vide this

office No. SDM/LA/Son 29/2000 dated 9-3-2000. Before issuance of award, the Deputy Director (Central), TRC Srinagar, vide his letter No.

DDF(C)/2000/2810-14 dated 15-3-2000 requested this office to initiate acquisition proceedings of 100 kanals only for phase-1 for which funds

have been arranged. Accordingly the award has been issued on 31-3-2000 for land measuring 100 kanals only bearing No. 1491/M(37-03)

dated 1540 (62-17).

8. Heard learned Counsel for the parties and perused the record produced by the respondents. The core question which calls for determination in

this writ petition is whether petitioners can seek a writ commanding respondents to acquire entire land measuring 298 kanals and 08 marlas? The

answer is in negative the following reasons:

9. In of Section 16 of the Act the Government -department can withdraw from any acquisition proceedings. Admittedly award came to be passed

only for 100 kanals of land, despite of the fact that notification under Sections 6, 7 and 9 came to be issued for entire land measuring 298 kanals

and odd marlas. but award came to be passed only for 100 kanals. The petitioners disputed the adequacy of compensation and made an

application u/s 18 of the Act. Respondents have specifically pleaded that the department has taken possession of only 100 kanals of land. Officer

record produced for perusal, also discloses that respondents have taken possession of only 100 kanals of land and not of 298 kanals and 08

marlas. Petitioners have placed on record communication dated 14-8-2002 addressed by Deputy Commissioner, Baramulla, to the Divisional

Commissioner, Kashmir which also discloses that award came to be passed by Collector Land Acquisition for land measuring 100 kanals and

possession whereof stands taken over by the department. While going through the contents of annexure-P/14 annexed with the petition which is

communication addressed by Collector/SDM Sopore to the Deputy Commissioner, Baramulla and therein also reference is made only about 100

kanals of land for which award has been passed and possession taken over and not for the entire land of 298 kanals and 8 marlas, as argued and

projected by learned Counsel for the petitioners. In the said letter, also reference is made of the communication dated 15-3-2000 (annexure-P/18)

whereby Deputy Director fisheries had requested the Collector for initiating Acquisitions proceedings with regard to 100 kanals of land in the last

phase. It is nowhere mentioned in that letter that possession of entire land was taken over. In the given circumstances, it is prima facie established

that the respondents have taken over possession of only 100 kanals of land for which award has been passed and the amount of compensation

paid to the owners.

10. During the course of arguments, learned Counsel for the petitioners argued that respondents cannot withdraw the acquisition proceedings and

are bound to acquire entire land measuring 298 kanals and 08 marlas.

11. Keeping in view provisions of Section 46 of the Act, respondents are within their rights to withdraw the acquisition proceedings of land of

which, the possession has not been taken and writ petitioners cannot compel the respondents to acquire the entire land. I am fortified in my view

by a Division Bench judgement of this Court in case Rajiv Puri and Another Vs. Naranian Mohalla Welfare Ass. and Others, wherein their

lordships have held:

...Section 46 of the Jammu and Kashmir Land Acquisition Act clearly contemplates that the Government can withdraw from the acquisition of land

of which the possession has not been taken. There is nothing in Section 46 which in any manner, limits the power of the State Government to

withdraw from the acquisition of land, except that the possession of the land notified should not have been taken by the Government. This power

having been exercised by the Government in this case bona-fidely cannot be by the When the Government has withdrawn from the acquisition the

sufferers of the acquisition proceedings are the owners of the land in question alone who have a right to redress their grievances and none.

12. In terms of Section 46 of the Act, neither any notice is required to be given to the owner(s) nor the owner is required to be heard before

withdrawing the acquisition proceedings. My this view also fortified by the judgment supra. It is profitable to reproduce para 13 hereunder:

...It is further pointed out that an owner need not be given any notice of the intention of the State Government to withdraw from the acquisition and

the State Government is at liberty to do so. Even it is not required that the government should give reasons for its withdrawal while exercising

power of withdrawal u/s 46 of the Act unilaterally. There is also no necessity of hearing either the owner of the land or any other person interested

before taking decision to withdraw from the acquisition. There is no particular mode or procedure for withdrawing from acquisition and it cannot

be presumed or implied. That apart, the power of the government cannot, in any way, be curtailed even by invoking the doctrine of promissory

estoppel. The Land Acquisition Act itself provides in unequivocal terms as to when it becomes impossible to withdraw u/s 46 of the Act. Similar

view has been taken by the Apex Court in Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, and held that the order

of withdrawal need not be backed by reasons. Opportunity of hearing owner or any interested person is not necessary. Thus, the order of

withdrawal in this case from acquisition, therefore, in our considered view, cannot be rescinded. The piece of land allotted to the appellants cannot

be permitted to be used as park for the purpose other than one it was allotted viz. residential purpose indicated in the lease deeds produced by the

allottees under the circumstances detailed above.

13. Notice u/s 9 came to be issued on 9-3-2000 and final award came to be passed on 18-11-2002. In terms of amendment to Section 11-B,

acquisition proceedings are to be taken to its logical end within two years from the date of publication of the declaration. If the acquisition

proceedings are not taken to its logical end within the period stipulated under the Act, the acquisition proceedings lapse and die of their own death due

to efflux of time. It is apt to reproduce Section 11-B of the Act herein as under:

11-B Period within which an award shall be made. The Collector Shall make an award u/s 11 within a period of two years from the date of

publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of land shall lapse. Provided that

in case where the said declaration has been published before the commencement of the State Land Acquisition (Amendment), Act, 1997, the

award shall be made within a period of two years from such commencement.

Explanation. - In computing the period of two years referred to in this section, the period during which any action or proceedings to be taken in

pursuance of the said declaration is stayed by an order of a court shall be extended

14. Admittedly more than five years have elapsed from the date of issuance of notification till filing of the writ petition and more than eight years

have elapsed till to date. Thus keeping in view the above provision of law, the acquisition proceedings have come to an end. For the above

reasons, the writ petition being without merit is dismissed. However, in the circumstances of the case, parties to bear their own costs.