
(2007) 05 J&K CK 0019
In the Jammu And Kashmir High Court

Abdul Majid Dar	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 30-05-2007

Acts Referred:

Land Acquisition Act, 1934 — Section 23, 47

Citation : (2007) 2 JKJ 179

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—Petitioner has pleaded in this petition that he is owner of land measuring 1 kanal and 6 marlas falling under survey

No. 112 situate at Humhama, Budgam but the respondents have acquired only 3/4th of the land out of the said land which is against the mandate

of Section 47 of the Land Acquisition Act, 1934 A.D (for short the Act). He has accordingly prayed that the respondents be directed to either

acquire the entire land or else leave it out of acquisition.

2. Respondents have filed reply in which they have resisted the petition on various counts.

3. Heard learned Counsel for the parties.

4. It is made clear that any finding returned hereinafter shall not be construed to be held that the petitioner is declared owner of the said land.

Whether he is owner or not and entitled to any compensation or not are the questions to be determined by the Collector. However, crux of the

entire controversy is whether the respondents are under a legal obligation to acquire entire land i.e. 1 kanal and 6 marlas or they are at liberty to

acquire only 3/4th of the land. The answer to this question is that the respondents are within their rights and power to acquire only a portion of the same but the Collector has to take into consideration Section 23 of the Act, while determining the compensation, which reads as under:

23. Matters to be considered in determining compensation.-

(1). In determining the amount of compensation to be awarded for land acquired under the act, the Court shall take into consideration:

first...

Secondly,...

Thirdly, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land by reason of serving such

land from his other land;

5. Thus if a portion of land is acquired and that causes damage to the land, it is the duty of the Collector to award compensation while taking in

view the damages, which would be caused by its acquisition.

6. Section 47 of the Act, pressed into service by the petitioner is not applicable to the instant case. It is profitable to reproduce Section 47 of the

Act hereunder:

47. Acquisition of part of houses or building. - (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any

house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired.

Provided that the owner may, at any time before the Collector has made his award u/s II, by notice in writing, withdraw or modify his expressed

desire that the whole of such house, manufactory or building shall be so acquired;

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house,

manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not

take possession of such land until after the question has been determined. In deciding on such a reference, the Court shall have regard to the

question whether the land proposed to be taken is reasonably acquired for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim u/s 23, Sub-section (I) thirdly, by a person

interested on account of the severing of the land to be acquired from his other land, the Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case of last hereinbefore provided for, no fresh declaration or other proceedings under Sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the Government to the person interested and shall thereafter proceed to make his award u/s 11.

7. This provision specifically provides that part of house(s) or building(s) cannot be acquired. The entire house/building is to be acquired. This provision is not applicable to the acquisition of land. It comes into play only when acquisition of building/house is made. The judgement cited by learned Counsel for the petitioner is not applicable to the instant case. In that case property in acquisition was a house and not the land and further question whether the land which was appurtenant to the house was reasonably required for the full and unimpaired use of the house/manufactory or building left out of acquisition. It is profitable to reproduce para 5 of the judgement hereunder:

...A reading of the above section shows that a right has been given to the owner of the land to object to the putting of the Act into force when only a part of nay house, manufactory or other building is ought to be acquired and call upon the State or acquire whole of such house, manufactory or building. Therefore, what has been given is a right to object only to acquisition of part of the building, etc. without acquiring the whole of the house, manufactory building. In determining the question whether the land proposed to be taken was reasonably required for the full and unimpaired use of the house, manufactory or building left out of acquisition all that the court has to examine is whether the objection is sustainable requiring the whole of the property, including the house, manufactory or other building, should be acquired or portion of the property proposed for acquisition, should be left out of acquisition for full and unimpaired use of the house, manufactory or building, of the property proposed for acquisition....

8. Viewed thus the argument of learned Counsel for the petitioner is

misconceived.

No case for admission of the writ petition is made out. Accordingly writ petition is dismissed along with all connected CMPs.