

(2013) 12 J&K CK 0018
In the Jammu And Kashmir High Court
Case No : LPAC No. 10 of 2006

Administrator, Auqaf Committee

APPELLANT

Vs

Balwant Singh and Others

RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:

Citation : (2014) 1 JKJ 401

Hon'ble Judges : M.M. Kumar, C.J; Hasnain Massodi, J

Bench : Division Bench

Advocate : P.N. Raina and Mr. J.A. Hamal, for the Appellant; V. Bhushan Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Hasnain Massodi, J.—The State Government in the year 1984, acquired a plot of land measuring 101 kanals 13 marlas comprising Khasra

Nos. 253, 254, 256, 257, 258, 259, 260, 254 min situated at Village Deeli, Tehsil Jammu in connection with construction of project Sampark. A

Notification in this regard u/s 4 J & K Land Acquisition Act (hereinafter The Act) was issued on 14.03.1984. This was followed by Notification

u/s 6 dated 25.04.1984. The parties to the present appeal in response to notice u/s 9 of the Act laid their claims over the acquired land and to the

compensation assessed by the Collector. The Collector held the appellant entitled to 20% and the respondents to 80% of the compensation

assessed. However, the parties disputed the apportionment made by the Collector. The Collector because of rival claims of the parties, felt

persuaded to make a reference in terms of Section 31 J & K Land Acquisition Act to the District Judge, Jammu.

2. Learned District Judge, Jammu on perusal of the claims projected by the parties, settled following issues for determination:

1. Whether the Auqaf Committee Jammu is the owner of the land in question OPR 1;

2. If issue No. 1 is proved in affirmative whether the Auqaf Committee Jammu is entitled to compensation and to what extent? OPR 1;

3. Whether Bulla and others have been in possession of the land in question as allottees? OPP

4. If issue No. 1 is proved in negative and issue No. 3 is proved in the affirmative whether the allottees Bulla and others have been the owners of

the land in question and thus they are entitled to full amount of compensation? OP parties.

5. If issue No. 1 & 3 are proved in affirmative to what extent are the parties entitled to compensation? OP parties.

The issues framed, on appreciation of evidence adduced by the parties, were decided in favour of the appellant. The appellant was held to be

entitled to receive whole of the compensation amount determined by the Collector, to the exclusion of respondents.

3. The judgment of learned District Judge, Jammu dated 20.05.1998 was questioned in Civil First Appeal being CIA No. 35/1998 before the

High Court. The Appellate Court learned Single Judge held the land in question to have been allotted by Maharaja Bahadur in Svt. 1979-1980

(1922-1923 A.D.) to Khankah Peer Kanju Sahib and the Khankah recorded as its occupancy tenant. The record available to the first Appellate

Court revealed that Late Mohd. Bakhsh was shown in the revenue record to be in possession of the land as Mohtimim of the Khankah and the

Khankah to have been in Kharif Svt. 1999 and Rabi Svt. 2000 recorded as owner of the land in question.

4. The State, as per record, Government vide SRO 325 of 1.12.1980 issued in exercise of powers under Sections 4 and 5 J & K Wakaf Act,

1978, declared the land as Wakaf Property. The record further revealed that the respondents after their migration from Bhimbar (POK) settled on

the land in question and continued to be in cultivating possession of the land till the land was acquired. Their possession was recorded as Gair

Mourisi Nakdi Hasb Parta Deh in 1958 and they were recorded as non occupancy tenants in 1971.

5. The Appellate Court did not find any merit in the respondents claim that they were allottees of the land. It was held that as the land in question

was neither State Land nor Evacuee Property, it could not have been allotted to them in terms of Government Order No. 578 C of 1954.

However, the Appellate Court held the respondents to have been in cultivating possession of the land for more than 50 years and their possession

to have been duly reflected in the revenue record. The Appellate Court in the attending circumstances held the respondents to be protected tenant

in terms of Section 15A J & K Tenancy Act Svt. 1980 (1923 A.D.) introduced by J & K Tenancy (Amendment) Act, 1965. In terms of the

aforesaid provision all the tenants other than occupancy tenants and such fixed term tenants has held Maliari land are to be deemed to be protected

tenants and recorded as such in respect of land held by them in their cultivating possession at the time of commencement of J & K Tenancy

(Amendment) Act, 1965. The Court proceeded to hold that in terms of Rule 45 under Council Order 939-C of 1936 dated 8.12.1936,

respondents as protected tenants were entitled to compensation on account of acquisition of land in their possession to the extent of 80% and the

owner of the land appellant in the present case entitled to 20% of the compensation. The learned Single Judge allowed the appeal, set aside the

judgment of District Judge, Jammu dated 20.05.1998, restoring the award made by Collector Land Acquisition as regards apportionment of

compensation between the parties.

6. The Letters Patent Appeal (Civil), on hand, is directed against the First Appellate Court judgment 08.02.2006 on the grounds set out in the

memo of appeal. The judgment is primarily questioned on the ground that the First Appellate Court of its own carved out a case in favour of the

respondents that was not pleaded at any stage before the Collector, learned District Judge, Jammu or Appellate Court. It is pointed out that the

respondents case all along has been that they are allottees of the land in question and entitled to whole compensation payable on account of

acquisition of the land and once the Appellate Court did not find any merit in their claim the only course open to the Appellate Court was to

dismiss the appeal. The respondents are said to have neither urged before the Reference Court nor before the Appellate Court that they in terms of

Section 15A J & K Tenancy Act, Svt. 1980 were protected tenants of the land in question and it was not, therefore, open to the Appellate Court

to hold them so in absence of pleadings to said effect.

7. We have gone through the memo of appeal, the judgment dated 08.02.2006 and also the record available on the file. We have heard learned

counsel for the parties.

8. It is admitted position of the parties that the respondents have been in cultivating possession of the land in question for more than 50 years and

were in such possession on the date the land was acquired by the State Government for public purpose. It is also not in dispute that the

respondents are displaced persons from Pakistan Occupied Kashmir (POK) and on migration settled on the land in question.

9. The State Government to provide relief and rehabilitation to the migrants from POK in wake of partition of the country, decided to allot

State/Evacuee Land to such displaced persons. To give effect to the decision the State Government issued Order No. 578-C of 1954 enabling

allotment of State/Evacuee Land in favour of the migrants from POK. The disputed land could not be allotted to the respondents as it was neither

State land nor Evacuee land. The respondents nonetheless got an impression that the land was allotted in their favour. This is borne out from the

revenue record wherein the respondents are reflected to be in cultivating possession of the disputed land Bhawaja Tassawur-e allotment i.e. in

possession because of assumption of allotment. The respondents, therefore, cannot be blamed for laying foundation of their claim for compensation

on the basis of allotment in their favour. It must have appeared reasonable to them to presume that the land on which they settled and were having

cultivating possession for 50 long years was like other displaced persons from POK, allotted in their favour. The Revenue Authorities likewise

worked on same presumption and made entries in the revenue record, indicating respondents to be in possession on assumption of allotment. The

respondents only because the Court held that the land because of its character could not have been allotted in their favour, cannot be deprived of

right to get compensation on account of acquisition of the land.

10. There is no substance in the ground set up in the memo of appeal as regards omission on part of the respondents to plead tenancy and the

conclusion drawn by the Appellate Court on a ground, not pleaded by the respondents. It may be recalled that the main plank of the appellant's

case is that the Appellate Court after rejecting the plea of allotment set up by the respondents still allowed the appeal on the ground that the

respondents were protected tenants in terms of 15 AJ & K Tenancy Act, Svt. 1980 though such a plea was never raised by the respondents. The

respondents as would be evident from the order of the Collector dated 25.01.1986, set up tenancy as an alternative plea in support of their claim.

They even made an attempt to invoke J & K Agrarian Reforms Act, 1976 to reinforce their claim. The following excerpts from the aforesaid order

make it abundantly clear that such a plea was expressly raised by the respondents:-

He further stressed that for arguments sake if it is agreed to but never admitted, that this land belongs to Muslim Wakaf Jammu, even then the

various provisions of Agrarian Reforms Act would still come into Play and would deserve the attention of the Collector under which even the

Institution of Wakaf stands covered. He further continued that the maximum optimum area retainable by any individual family or any such place of

worship or Wakafs u/s. 14 of the Agrarian Reforms Act should in no case exceed the ceiling area. The Advocate appearing on behalf of allottees

have vehemently led his case to establish that the allottees have now become occupancy tenant over the land and they cannot be terms out as

unauthorised occupants over the Wakaf land as has been made out by the Administrator Wakaf Jammu.

In the series of the arguments put forth by the Advocate of the allottees he has tried to establish that even if the land under allottees is treated as

belonging to Muslim Wakaf, the Character of Shri Bhalla and others allottees will have to be treated as that of occupancy tenants and according to

the rules and guidelines governing apportionment of compensation they nevertheless entitled to 80% of the total amount u/s. 3a and 4 of the

Agrarian Reforms Act. In the last, the Advocate has pleaded that Shri Bhalla and others should be given the full amount minus the 20 times of the

land revenue of the land under their occupation. The parties, therefore, were alive to the controversy involved and failure on part of the learned

District Judge, Jammu to frame an issue reflecting to the controversy is not to have any fatal consequences for the order impugned herein. There is

no scope for any disagreement with the conclusion drawn by the learned Appellate Court that the respondents because of their admitted

possession of the land dispute in 1965 i.e. the date amendment was incorporated in J & K Tenancy Act, Svt. 1980 (1923 A.D.) introducing

Section 15A, had acquired the status of protected tenants and, therefore, Rule 45 under Council Order 939-C of 1936 dated 8.12.1936 was

attracted and the respondents entitled to 80% of the compensation amount assessed by the Collector on account of acquisition of land in question.

11. The scheme envisaged under J & K Land Acquisition Act Svt. 1990 provides mechanism for assessment and release of compensation not only

to the owner of the land acquired but to all persons having an interest in compensation payable on account of acquisition. Section 3(b) defines

person interested as under:-

the expression person interested includes all persons claiming an interest in compensation to be made on account of the 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.

12. Section 9 of the Act requires the Collector to issue notice to persons interested once a declaration is made in terms of Section 6, so that the

claims to compensation from all interest in such land may be made to him. The persons interested in the land are required to appear before the

Collector and submit and substantiate their claims. The Collector in terms of Section 9(3) is also to serve notice on the occupier (if any) of such

land, so that everyone has an opportunity to put forth his claim and compensation is assessed and apportionment is made in an objective manner.

13. The respondents before the Court in possession of the land proposed to be acquired for more than 50 years obviously would be a person

interested within the meaning of Section 3(b) and entitled to compensation. Rule 45 under Council Order No. 939-C of 1936 dated 8.12.1936 is,

therefore, in tune with the provisions of Jammu and Kashmir Land Acquisition Act, Svt. 1990.

14. The Appellate Court, in the circumstances, was right in concluding that the respondents were entitled to receive compensation in terms of Rule

45 under Council Order 939-C of 1936 dated 8.12.1936 read with Section 15A J & K Tenancy Act Svt. 1980 (1923 A.D.) and the provisions

of land Acquisition Act.

15. The Letters Patent Appeal for the reasons discussed is meritless. Dismissed.