
(2001) 12 J&K CK 0027
In the Jammu And Kashmir High Court
Case No : O.W.P. No. 691 Of 2000

Ashok Kumar and Ors.

APPELLANT

Vs

State and Ors.

RESPONDENT

Date of Decision : 04-12-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) KashLJ 121 : (2002) SriLJ 212

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : P.N.Raina, B.S.Manhas, Advocates appearing for the Parties

Judgement

1. For the families which had suffered in the IndoPak war of 1971, package of relief was provided for. Petitioners submit that their mother Smt.

Ram Rakhi was the head of the family. She was a resident of village Mankotian, Tehsil Akhnoor, District Jammu. The family was agriculturist. The

family had shifted from Chamb area. It first settled in Krishanpur Manwai area and was provided with temporary relief. This is adverted to in paras

3 and 4 of the petition. Petitioners' mother represented for rehabilitation. As per the petitioners, a package of relief came to be formulated at the

instance of the Government of India. As this was being denied to the mother of the petitioners, she approached this court time and again. The writ

petitions were being disposed of with directions to the respondent authorities to settle her claims. Now, an order has been passed, which is

annexure F on the record. In this, it has been mentioned that as Ram Rakhi i.e. the mother of the petitioners was paid Rs. 1.50 lakhs as

compensation @ Rs. 5000/ per kanal in lieu of land, therefore, no more relief is required to be given. It is this aspect of the matter which is the

subject matter of challenge in this petition.

Counter has not been filed.

2. In para 4 of the order annexure F, it has been observed that the Government of India, Ministry of Home Affairs directed that a displaced family be allotted 32 kanals or abbi i.e. irrigated or 48 kanals of Khushki i.e. unirrigated land. The case as projected in the order is that as land was not available therefore, the government thought it apt to grant Rs. 5000 per kanal to the displaced family. As indicated above, this aspect of the matter has been challenged.

3. The petitioners submit that Ram Rakhi, mother of the petitioners was entitled to agricultural land in the manner indicated above. If this was not done then, the case compensation should have been such which represents the market value and for determining such a value, the principles as applicable in the Land Acquisition Act should have been applied.

4. Before going into the controversy, it would be apt to notice the clauses 1 to 8 of the order dated 17th Nov. 99. These read as under :

i. Whereas D.P.'s of 1971 displaced from the Chamb Sector including village Mankotian were kept in Krishanpur/Manwal refugee camps till 1978.

ii. Whereas after disposal of said camps DPs were sent to different basties set up by the Government for their permanent rehabilitation,

iii. Whereas Smt. Ram Rakhi (Petitioner) being one of the DP family of 1971 was sent to village Jhang Tehsil Samba.

iv. Whereas as per the scheme approved by the Government of India, Ministry of Home Affairs the agriculture DP families were entitled to 32

kanals of Abbi or 48 kanals of Khushki land, v. Whereas, the land was not available with the Government, compensation @ Rs. 5000 per

irrigated kanal was sanctioned in lieu of deficiency of land.

vi. Whereas Smt. Ram Rakhi being an agriculturist family was declared eligible for allotment of agriculture land only.

vii. Whereas Smt. Ram Rakhi was entitled for 32 kanals of Abbi land or 48 kanals of Khushki land,

viii. Whereas Smt. Ram Rakhi was paid Rs. 1.50 lacs as cash compensation @ Rs. 5000/ per Kanal in lieu of deficiency of land as applicable to

all similar situated cases in a uniform manner".

5. From the perusal of the above, it becomes apparent that Ram Rakhi was treated as a displaced person. She was treated as agriculturist and was

held entitled to 32 kanals of irrigated or 48 kanals of unirrigated land. Up to this, there is no dispute. This only implements the scheme formulated

by the Government of India. If the aforementioned clauses are taken note of then strictly speaking, Ram Rakhi was entitled to agricultural land and

if this was not available, then, she should have been paid cash compensation and this compensation would represent the market value as payable

under the Land Acquisition Act. Somewhat similar situation arose in the case of Hoshnak Singh vs. Union of India, AIR 1979 SC 1328. The

Government of India in the above case had formulated a policy that where a displaced person was to be allotted a piece of land and that piece of

land was less than 2 acres, then, instead of allotting the land, cash compensation should be paid. The cash compensation was not paid for quite

sometime. Ultimately Hoshnak Singh was successful in the Supreme Court of India. Directions were given to pay him cash compensation and in

doing so, further directions were given that he should be paid interest also. What has been stated above would apply to the facts of this case also.

This is one aspect of the matter. The other aspect of the matter is that statement of fact contained in para 5 of order impugned is that agriculture

land is not available. This statement cannot be accepted at this face value. To say that 32 kanals of land is not available in the State of Jammu and

Kashmir particularly in Jammu province or in the district of Jammu, would be an argument which, as indicated above, cannot be accepted.

However, as the petitioners have already accepted the cash compensation, therefore, a limited direction is given to respondents to assess the

market value of 32 kanals of agriculture land as it was on the date, the cash compensation was received by the petitioners or their mother, and pay

the difference amount to the petitioner alongwith interest at the rate which would accrue on the enhanced price during the intervening years. This

would settle one issue.

6. Petitioners further submit that they were entitled to a residential plot also. For this, reliance is being placed on annexure H. This is a letter written

to the Tehsildar, Samba, which appears to be an interdepartmental

correspondence. This does show that some Government order was infected, issued for allotting residential plots to displaced persons of Chamb area.

7. The respondents would accordingly take notice of the above aspect of the matter also and the issue regarding allotment of a residential plot in

favour of the petitioners being the displaced family would be considered in terms of the Government order which is reflected to in annexure H.

Petitioners would also be at liberty to bring to the notice of respondents any such Government order for allotment of residential plots in favour of

displaced persons from Chamb area. The respondents would accordingly take notice of the observations made above and would release the

difference in amount in favour of petitioners alongwith interest as indicated above, within a period of four months from the date, a copy of this

order is made available to the concerned authorities by the petitioners. The issue regarding allotment of a plot in favour of the petitioners as per the

policy of the Government would also be considered within a period of four months from the date of receipt of a copy of this order.

8. Disposed of accordingly.