

**(2011) 09 J&K CK 0008**

**In the Jammu And Kashmir High Court**

**Case No :** Others Writ Petition (OWP) No. 1239 of 2010, CMP No. 1687 of 2010

Avtar Krishan and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

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**Date of Decision :** 07-09-2011

**Acts Referred:**

Land Acquisition Act, 1894 — Section 17, 4, 4(1), 5A, 5A(2)

**Citation :** (2011) 3 JKJ 98

**Hon'ble Judges :** Mohammad Yaqoob Mir, J

**Bench :** Single Bench

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**Judgement**

Mohammad Yaqoob Mir, J.—For construction of new bus stand and approach road Katra, land measuring 422 kainais and 12 1/2 marlas

situated at village Kundrorian (Katra) has been notified to be acquired in terms of sub-section (1) of Section 4 of the Land Acquisition Act

(hereinafter referred to as "the Act). The petitioners of above referred petitions have filed objections as against the said acquisition. Collector

(respondent No. 2) has prepared the note and submitted to the Government which resulted in issuance of notification No. 22-RD of 2010 dated

23.9.2010 where-under declaration u/s 6 of the Act has been issued to the effect that the land referred is needed for public purposes, Collector

(respondent No. 2 has been directed to take order of acquisition of the said land u/s 7 of the Act. The respondent No. 2, u/s 9 and 9A of the Act,

vide notification dated 29.9.2010, has made it public that notification No. 22-RD of 2010 dated 23.9.2010 and notification No. 23 -RD of 2010

dated 28.9.2010 u/s 17 of the Act have been issued by the Government with direction to the Collector to take possession of the referred land on

urgency bases and has thereby made it clear that he is empowered to take over

possession on expiry of 15 days from the publication of notification

u/s 9 and 9A of the Act. Further it is added that the Collector has assessed the payment of compensation, mention of which is made in the said

notification, which shall be paid to the land owners/interested persons, accordingly has called upon the land owners/interested persons to submit

their objections within 15 days and to state their respective interests in the land, amount and particulars of their claims/compensation and their

objections, if any, regarding measurement of land and kind of soil. In response thereto, the petitioners of all the petitions have filed their objections

wherein they have stated that without any prejudice to their right in the writ petition(s) and without prejudice to their right to compensation claimed

in the writ petitions, the compensation offered is in-sufficient and have also added that the market value of the property is not less than Rs. 1.50

crore per kanal, so reference shall be made to the District Court for determining true and correct value of the property. However, it has been again

reiterated that it shall be without prejudice to their right to challenge the acquisition proceedings itself.

2. The petitioners of all the writ petitions have projected that their objections vis-a-vis acquisition of the land have not been considered which is in

violation of the right guaranteed to them under sub-section (2) of Section 5-A of the Act. It has also been projected that the provisions of the Act

i.e. Section 4, Section 6, Section 7, Section 9 and 9A and Section 17 have not been strictly complied with. It has also been projected that the

acquisition of the land is not for public purposes. If such acquisition for construction of bus stand is permitted, same will disturb ecology and the

environment will be polluted. It is also stated that the right to property in the State of J&K continues to be a fundamental right, such a right cannot

be taken away without observing due process as contemplated by law. Further it is added that the land proposed to be acquired is a green patch

located in the heart of Katra town. Cutting of lot of fruit trees shall be a resultant effect of construction of bus stand.

3. On the other hand, respondents have projected that the land is required for public purpose, most of the land owners/interested persons have

accepted the acquisition without any murmur, it is only a handful of persons (petitioners) who, for their vested business interests, are creating

hurdles. There is a provision for construction of bus stand available in Master Plan of 2021 which has been approved under the J&K Development

Act. Huge rush of pilgrims to Shri Mata Vaishno Devi shrine is taken care of and for the convenience of general public coupled with pilgrims,

construction of bus stand at Katra, which is the base camp for pilgrims, is unavoidable. It is only after due deliberations with all concerned

authorities that the land has been identified for the purpose. The question as to whether land acquired for new bus stand is for public purpose has

already been settled by the Division Bench of this Court in Writ Petition (PIL) No. 878/1999. It is also added that the proceedings for acquisition

of the land for construction of bus stand were initiated in the year 1997 but some vested interested persons filed above referred PIL which finally

came to be decided on 23.5.2002 wherein it has been held that the land is being acquired for public purpose i.e. for the construction of bus stand

and any direction to the State not to construct the bus stand would defeat the public purpose.

4. The village Kundrorian, where bus stand is to be constructed, falls within the limits of Katra Development Authority (KDA) but is outside the

limits of Municipal Committee, Katra. It is also added that the process of acquisition afresh has been completed, in terms of Section 17 of the Act

80% compensation has been paid/deposited. 52 owners of the land have received the compensation amounting to Rs. 2.32 crores whereas for

others who have not received the compensation, rupees one crore stand deposited in the Court of District Judge, Reasi.

5. Heard learned counsel for the parties and perused the entire record as has been made available. It shall be quite relevant to first precisely notice

as to what extent, in each petition, acquisition of the land has been objected to:

(I) OWP No 1239/2010:

In this petition there are five petitioners who claimed interest vis-a-vis land measuring approximately 16 kanals and two residential houses as

detailed in the objections filed by respondent No. 2. These petitioners have sought quashment of notification No. 22-RD of 2010 dated 23.9.2010

i.e. the declaration issued u/s 6 of the Act and the notification dated 14.10.2010 issued by respondent No. 2 u/s 9 and 9A of the Act.

On consideration of the petition interim direction was issued to the effect that the

respondents shall consider the objections and dispose of the same

after hearing the petitioners and furthermore status quo was ordered to be maintained vide order dated 22.10.2010.

(II) OWP 1323/2010:

There are two petitioners in this petition who claim interest in the land measuring 01 kanal 6 marlas and 3 sirsais covered by survey No. 834/

785/200 situated at village Kundrorian. It has been prayed that the respondents may be directed to disclose under what circumstances the land in

question which was not initially included for acquisition has been included for acquisition and it is in this context objections were filed as against the

acquisition but same have not been considered as was required to be considered under sub-section (2) of Section 5A of the Act and it was

accordingly prayed that the acquisition proceedings may be quashed.

In this petition on 15.11.2010 interim direction was issued to the effect that the respondents shall consider the objections of the petitioners before

proceeding ahead in the matter.

(III) OWP No. 1344/2010:

Sole petitioner of this petition claims interest vis-a-vis land measuring 2 kanals covered by survey No. 102, so has challenged the notification dated

14.11.2009 issued u/s 4 of the Act and also the declaration issued u/s 6 of the Act and has also prayed that all the subsequent proceedings shall be

declared void.

In this petition vide order dated 22.11.2010 respondents were directed to consider the objections of the petitioner before proceeding further.

(IV) OWP No. 1367/2010:

Five petitioners of this petition have claimed interest in the land measuring 82 kanals and 8 marlas and have prayed for quashment of notification

issued u/s 4(1) of the Act and notification issued u/s 9 and 9A and it has been added that in case land is not excluded from acquisition, then

adequate

rehabilitation and relief package including compensation at market rate shall be considered in favour of the petitioners.

(V) OWP NO. 176/2010:

Petitioner of this petition is also petitioner in OWP No. 1239/2010. During the

Course of arguments when it surfaced, the petitioner filed CMP

No. 1571/2011 seeking withdrawal of this petition.

In view of the grounds urged in the application same is allowed. So OWP No. 176/2010 shall stand dismissed as withdrawn along with connected

CMPs.

6. Learned counsel appearing for the petitioners highlighted that the modes and methods prescribed by Section 4 of the Act have been observed in

breach, therefore, notification issued u/s 4 is bad in the eye of law.

7. The objection raised has to be rejected because there has been substantial compliance of Section 4, furthermore, no prejudice has been caused

to the petitioners. Admittedly all the petitioners have filed the objections as against the notification issued u/s 4 of the Act and perhaps it is in view

of the same position petitioners of OWP No. 1239/2010 have not challenged the validity of the said notification. The object of having resort to all

methods and modes prescribed u/s 4 of the Act is to apprise the persons who are owners of land/interested in compensation to put forth their view

point vis-a-vis acquisition etc. All the petitioners by their own conduct show that they had complete information and it is only then they have filed

the objections as against the said notification.

8. Next it is contended that neither the objections as were filed by the petitioners have been considered nor the petitioners in support of their

objections have been heard. Same runs contrary to the mandate of sub-section (2) of Section 5-A of the Act.

9. This issue in fact is the nerve point of the case and in case it is concluded that there has been non-compliance of the said provision, then all

further proceedings shall have to fall to the ground. Objections have also been raised against the notification of declaration issued u/s 6 of the Act

and also the notification issued by respondent No. 2 u/s 9 and 9A and also against the notification issued u/s 17 of the Act. Consideration of the

same objections will depend upon result of consideration vis-a-vis objection i.e. non-compliance to sub-section (2) of Section 5-A of the Act.

10. Learned counsel Mr. Qazi, appearing for respondents No. 1 and 2 and Mr. Adarsh Sharma, appearing for respondent No. 3 (KDA),

contended that the petitioners No. 1, 10, 11 and 12 of OWP No. 1239/2010 are having their business establishments near and around old bus

stand. In order to protect their business interests they have filed the objections and in the process other petitioners have also been motivated to file

objections and writ petitions, otherwise maximum land owners have accepted the compensation and they have not raised any objections. It is also

added that all the petitioners in the objections as filed against notification issued u/s 9 and 9-A have claimed that without prejudice to their right to

challenge the acquisition proceedings they shall be entitled to compensation of Rs. 1.50/ crore per kanal and all the petitioners have claimed that

the matter shall be referred to District Judge for determination of actual market price and their such contention/concern can be well taken care of

when reference is made by the Collector to the District Judge. Un-necessarily unfounded objections have been raised so as to forestall the

acquisition proceedings when there is a pressing demand and need for construction of bus stand which is in the larger interests of public, as such,

interest of handful of persons like petitioners shall have to yield to the public interest. All the provisions of the Act have been strictly followed. It is

added that from the records as obtained from the office of Collector, it is quite evident that the objections of the petitioners as against the

acquisition have been considered, same have been found without any merit. It is only then the Collector has prepared the report and submitted the

same to the Government. It is based on such report the notification No. 22-RD of 2010 was issued by the Government in terms of Section 6 of the

Act declaring the land required for public purpose. Learned counsel Mr. Qazi further added that the question of requirement of land for

construction of bus stand is no more required to be looked into in view of the judgment rendered by the Division Bench of this Court in the writ

petition (PIL) as was earlier filed by some vested interested persons as against the acquisition of the said land for construction of bus stand.

11. Now most important and crucial question which emerges for consideration is as to whether respondents have strictly complied with Section 5-

A(2) of the Act or not. For facility of reference Section 5-A(2) of the Act is reproduced here-under:-

5-A (2). Every objections under subsection (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity

of being heard either in person or by pleader or by a person authorized by him and shall, after hearing all such objections and after making such

further inquiry, as he thinks necessary, submit the case for the decision of the Government, together with the recommendations on the objections.

The decision of the Government on the objections shall be final.

12. Plain reading of the provision would suggest that compliance is mandatory i.e. when the Collector has received the objections in writing from

the objectors, they have to be given an opportunity of being heard, either in person or by a pleader or by a person authorized, and it is only after

hearing of such objections and making further enquiries, as may be required, the Collector has to submit the case for the decision to the

Government together with the record of the proceedings held by him and he is required to formulate a report containing his recommendations on

the objections and then whatever shall be the decision of the Government on such objections shall be final. What is required to be done, Collector

in any case has to hear the objectors and while hearing shall also, if need arises, make further enquiries as he may think necessary and then has to

submit the case to the Government. The Collector himself is not competent to take any decision on the objections of the objectors. All that he is

required to do is to prepare the report which shall contain his recommendations on the objections. It is then for the Government to accept or reject

such recommendations and the decision of the Government on the objections so filed by the objectors is final. When the law provides a particular

mode to be adopted, same has to be adopted. There is no question of deviation as same may defeat the purpose.

13. Perusal of the record as maintained by the Collector would indicate that on the date on which petitioners have respectively filed their objections

are shown to have appeared before the Collector. In the proceedings recorded on 27.11.2009, Collector has shown presence of some of the

petitioners and has observed that the objections are of general type and has also recorded that the petitioners were heard on spot. Same does not

carry any sense because on 27.11.2009 petitioners named therein filed objections, on the same date it has been recorded that they were heard on

spot and the said petitioners (objectors) were relieved and were told that all such things will be written to the Government and it is the Government

who has to take the decision. In his report Collector himself has mentioned that majority of the landowners/interested persons who have filed their

representations have expressed that Master Plan has not been re-drafted, no advice has been taken from environmentalists and geologists,

requisition was not made by the authority under the Development Act and they have strongly submitted withdrawal of the notification whereas

some of the owners expressed their unwillingness to part with their lands on manifold pretext and others have demanded handsome compensation

for their land. Then has recorded as under:-

...Accordingly issue raised/expressed by the owners/interested persons were considered in the high level meeting wherein it was decided that

increasing rush of pilgrims every year, land acquisition process should be speeded up and completed before time frame as per Master Plan

approved by the Government.

Accordingly, objections raised by the concerned land owners/interested persons in their representation have been carefully examined and disposed

of taking into consideration all procedural norms..

14. The above referred two paras clearly indicate that the Collector himself has taken the decision on the objections when he was required to

formulate a recommendatory report relatable to the objections as have been raised and then decision was to be taken by the Government. In an

arbitrary manner Collector has recorded that the ""petitioners were heard"". It appears that the Collector while keeping in his mind that the

petitioners are to be heard for the sake of complying with the relevant provision by way of a formality has recorded in his proceedings that the

petitioners were heard. What the Collector was required to do was that he should have recorded serially objections and his recommendations

thereon so as to enable the Government to take appropriate decision, instead he, without formulating his opinion on the objections and without

formulating his recommendations, has taken the decision himself. This is not the compliance in any manner as mandated by Section 5-A(2) of the

Act. When a statute provides personal hearing that shall not become casualty. Hearing means to hear the person and to record what his view point

is and what is the substance of his objections and then the requirement of the statute is to prepare a recommendatory report in favour or against the

objections. Surprisingly the Collector in his proceedings recorded on 27.11.2009 has stated that the objections are of general type and all the

objectors were relieved on spot with an assurance that all such things will be written and send to the Government and it is the Government who has to take the decision but instead has taken the decision himself.

15. From the records it is not discernible as to how the objections of the petitioners have been dealt with because report of the Collector was such where there was no requisite recommendation and the Government has proceeded on the premise that the petitioners have been satisfied by the Collector himself, so the Government has issued notification No. 22-RD of 2010.

16. Both learned counsel appearing for the parties made reference to number of judgments. From the judgment reported in 1983 KLJ 122 captioned Shri Omkar Nath Khashoo v. State of J&K & Ors. Para 5 is relevant to be quoted:

5. The law is thus well settled that Sec. 5-A is mandatory in character and failure on the part of the Land Acquisition Collector to comply with its provisions by not giving a hearing to the owner in support of his objections renders all proceedings taken subsequent thereto, including the notification issued u/s 6, without jurisdiction. I find no substance in Mr. Malik's contention that the only objection that an owner can take to the acquisition is with regard to the existence of the public purpose. Sec. 5-A does not impose any limitation on the right of an owner to raise objection to the intended acquisition. He is entitled to raise any kind of objection and once he has raised it within the time prescribed, he has a statutory right to be heard in support thereof irrespective of its nature or merit. An owner may, for instance, admit the public purpose and at the same time object to the acquisition of his land by pleading that such a public purpose may be more beneficially or economically met by acquiring some other land or by acquiring only a part of the land sought to be acquired.

17. In the judgment captioned Dwarko & ors v. State of J&K & anr (1990 JKJ 2434), while relying on the judgments reported in Shri Mandir

Sita Ramji Vs. Lt. Governor of Delhi and Others, and Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of

Ahmedabad and Another, rendered by the Hon'ble Apex Court respectively in the cases Shri Mandir Sita Ramji v. Governor of Delhi & ors and

Farid Ahmad Abdul Samad v. The Municipal Corporation of the City of Ahmadabad & anr., it has been held that the notification issued u/s 4 is,

however, upheld. The respondent No. 2 shall afford the petitioners an opportunity of being heard and thereafter pass appropriate orders in

accordance with the provisions of law and the observations made hereinabove would not prevent the respondents from taking possession of the

land, if so required u/s 17 of the Act, if any urgency is found to be involved.

18. In the judgment captioned Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, , it has been held that hearing given

to a person must be an effective one and not a mere formality.

19. From the judgment captioned Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and

Another, , para 24 is relevant to be quoted:

24. We are clearly of opinion that Section 5A of the Land Acquisition Act is applicable in the matter of acquisition of land in this case and since

no personal hearing had been given to the appellants by the Commissioner with regard to their written objections the order of acquisition and the

resultant confirmation order of the State Government with respect to the land of the appellants are invalid under the law and the same are quashed.

It should be pointed out, it is not a case of failure of the rules of natural justice as such as appeared to be the only concern of the High Court and

also of the City Civil Court. It is a case of absolute non-compliance with a mandatory provision u/s 5A of the Land Acquisition Act which is clearly

applicable in the matter of acquisition under the Bombay Act.

20. In view of the law as referred above coupled with the position of the case in hand, it has to be concluded that the petitioners have not been

heard in support of their objections effectively, therefore, acquisition proceedings under Sections 6, 9 & 9A and Section 17 of the Land

Acquisition Act vis-a-vis land of the petitioners are held invalid. The notification issued u/s 4 of the Act is held to be valid. The respondent No. 2 in

accordance with Section 5-A(2) of the Act shall hear the petitioners in support of their objections and thereafter shall formulate his report which

shall contain his recommendations vis-a-vis each objection and thereafter such recommendatory report shall be submitted to the Government and it

is then for the Government to take any decision which shall be binding on the petitioners.

21. Learned counsel Mr. Qazi rightly referred to the judgment reported in Delhi

Administration Vs. Gurdip Singh Uban and Others etc., wherein it has been held that the quashment of the proceedings would operate only qua the person who filed objections whereby against the persons who have accepted the compensation and have not filed the objections, proceedings are valid.

22. (A) Viewed thus, as concluded hereinabove, all the proceedings vis-a-vis owners/interested persons who have not filed any objections and have accepted the compensation, shall be final, shall not be open to any question and vis-a-vis that land, respondents shall be at liberty to proceed ahead to utilize the same for the purpose it has been acquired because question of land required for public purpose i.e. construction of bus stand has already been set at rest by the Division Bench of this Court in writ petition (PIL) No. 878/999, so same is not open to question now. The order of status quo vis-a-vis such land shall cease to be in operation.

22. (B) Furthermore, respondents while dealing with the objections of objectors (petitioners) vis-a-vis land regarding which they claim interest as referred to, shall adhere to the mandate of Section 5-A(2) of the Act and then other provisions of the Act. Observations made shall not prevent the respondents in having recourse to urgency provision i.e. Section 17 of the Land Acquisition Act, if so required.

23. All the petitions on aforesaid terms shall stand disposed of.

24. The record as produced by learned Counsel Mr. Qazi be returned to him.