

(2011) 12 J&K CK 0039

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 963 of 2011 and CMP No. 1528 of 2011

Bansi Lal Bhat and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 3(g), 4, 5A, 6

Citation : (2011) 12 J&K CK 0039

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon'ble Mr. Mohammad Yaqoob Mir, Judge

1. For development of Village Inder Pulwama as heritage site, near Mausoleum of Poet ""Souch Kral"", initially land measuring 17 kanals and 13

marlas was identified for acquisition, for which Director Tourism, Kashmir had issued indent. The Collector Land Acquisition (Assistant

Commissioner Revenue), Pulwama had issued notification u/s 4 of the Land Acquisition Act (hereinafter referred to as the Act) on 28th of January,

2008 notifying particulars of the land for being acquired for public purpose.

2. Petitioners who are migrant Pandits had strongly objected to the acquisition proceedings. In addition to the filing of objections, had also met

various authorities as is discernible from the records as produced by the learned counsel for the respondents. Finally instead of 17 kanals 13

marlas, only 8 kanals and 1 sirsai of land was decided to be acquired, accordingly fresh notification No.05 of 2011 dated 24.5.2011 was issued

by the Collector Land Acquisition inviting objections regarding said land,

particulars of which are detailed in the notification.

3. The petitioners still not being satisfied have again objected to the acquisition but same have not prevailed, as a result thereof declaration u/s 6 of

the Act has been issued by the Deputy Commissioner, Pulwama on 29.6.2011 to the effect that the land is required for public purpose.

Consequent thereupon, the Collector Land Acquisition, within the purview of Section 7 of the Act, has taken the orders for acquisition of the said

land and it has been notified vide notification No.12 dated 14.07.2011 that interested persons and the indenting department have been served

notice in terms of Section 9 and 9-A of the Act to file objections with regard to measurement or title.

4. Petitioners dissatisfied with the said acquisition proceedings have filed the instant petition which on admission stage is taken up for final disposal.

5. Admit.

6. Considered the rival submissions.

7. The first contention of the learned counsel for the petitioners is that the land, which belongs to the petitioners who are migrants, should not have

been proposed for acquisition because the Government has come up with a policy so as to ensure return of the migrants back to Valley and in this

connection referred to a circular dated 14.7.2009 issued by the Secretary to Government Revenue Department wherein, amongst other things, it is

recorded as under:-

In case the migrant properties are acquired, this will be contradictory to the commitment of the State Government and will upset the process of

return and rehabilitation of Kashmir Pandit Migrants to the valley. It is as such emphasized upon all the concerned to avoid acquiring of migrant

properties for any purpose and should be acquired only as a last resort"".

8. The property which belongs to the migrant Pandits can be acquired, same is not barred by any provision of the Land Acquisition Act. The

circular as referred to also does not bar such acquisition but only provides that as a last resort shall be acquired.

9. In the instant case near the Mausoleum of Souch Kral the said area/land is available. From the records as have been produced for perusal it is

quite clear that there is no other alternate land available for the purpose. That apart, the land is not being taken without compensation. As per

records Rs.50/ lacs (fifty lacs) have already been deposited by the Indenting Department with the Collector for payment to the interested

persons/owners of the land. The individual interest has to yield to the public interest. The acquisition which is meant for public purpose in any

manner will not defeat any rehabilitative process for dignified return of the migrant Pandits, moreso in view of the implementation of the process of

the rehabilitative measures.

10. The next contention as raised by the learned counsel for the petitioners is that the land is not being acquired for public purpose as the land is

being acquired for the purposes of developing the Mausoleum of Poet Souch Kral.

11. ""Public Purpose"" is defined in the Land Acquisition Act u/s 3(g). The position as given in the provision begins with the words the expression

Public Purpose"" includes the situations as contained therein. It was rightly pointed out by the learned counsel for the interveners that the situations

as incorporated in the provisions are only inclusive, so the instances are not exhaustive. There is scope for taking into its sweep all other cases

which can be termed to be of public importance, resultantly for public purpose.

12. It is because of the Mausoleum of Poet Souch Kral, the land for the development of village Inder as a heritage site has been identified. The

Tourism Department has to spend public money on it. While doing so, public money has to be spend for public purpose only. Therefore,

contention of the learned counsel that it is not public purpose, is imaginary.

13. Next contention of the learned counsel for the petitioners is that modes and methods prescribed u/s 4 of the act have not been adhered to but

this argument pales into insignificance because purpose of adhering to modes and methods as provided u/s 4 of the Act has to apprise all interested

parties about the acquisition for public purpose so as to enable them to file their objections. Petitioners admittedly have filed detailed objections

wherein firstly they have opposed the acquisition but finally have claimed compensation to the tune of Rs.20/ lacs per kanal as is clear from the

objections dated 29.7.2011 available on the records as produced for perusal.

14. The objections as were earlier filed were considered and in the backdrop of those objections acquisition of 17 kanals and 13 marlas was

reduced to 08 kanals and 1 sirsai and after notifying the said 08 kanals 01 sirsai for acquisition, the objections dated 29.7.2011 have been filed

which have also been seriously considered by the Deputy Commissioner and then Deputy Commissioner has issued declaration u/s 6 of the Act

vide notification No.11 of 2011 dated 29.6.2011.

15. Here the question again arises as to whether Deputy Commissioner was competent to consider the objections and then to issue declaration. In

this connection learned counsel for the respondents referred to SRO 235 notified vide notification dated 11th of August, 2009 which reads as

under:-

.....SRO 235:- In exercise of the powers conferred by Section 6 & 7 of the Jammu and Kashmir Land Acquisition Act, Samvat 1990, (X of

1990) and in supersession of Notification SRO 689 dated 20th December, 1984, the Government hereby authorize Financial Commissioner

(Revenue), Divisional Commissioners and Deputy Commissioners within their pecuniary jurisdiction for purpose of the said sections. By order of

the Government of Jammu and Kashmir.

16. Plain reading would indicate that the Deputy Commissioner has been authorized to take action required for the purposes of Section 6 & 7 of

the Act. This notification has not been challenged till date. The requirement of Section 5-A is that the Collector (Assistant Commissioner Revenue)

on receipt of the objections u/s 5-A has to formulate the report and to submit the same to the Government for consideration. On consideration, if

the Government is satisfied that the land is needed for public purpose, a declaration has to be issued but now since the powers have been

conferred to Deputy Commissioner and has been authorized to deal with the matters for the purposes of Section 6 and 7 and it is in that

background Deputy Commissioner has considered the matter and was satisfied that the land is required for public purpose, so has come out with

the declaration in terms of Section 6 of the Act.

17. The next contention of the learned counsel for the petitioners is that in terms of Section 5-A, the Collector (Assistant Commissioner Revenue)

while receiving the objections was required to give personal hearing to the petitioners, same has not been done but from the records it appears that

the petitioners have been representing all along and whatever grievances they had have been projected in various applications as are available on

record. They have also represented before the higher authorities and it is only

after hectic considerations the matter has been settled. The object of hearing the petitioners in support of their objections has been achieved. After all acquisition is for public purpose. The petitioners by one pretext or the other pretext cannot be permitted to upset the whole proceedings by saying that they have not been heard. In effect they have been heard. Lot of representations and objections have been made to various authorities from time to time which are available on the records as have been produced which would amply substantiate that the object of hearing has been accomplished.

18. The petitioners have claimed in their objections compensation to the tune of Rs.20/ lacs per kanal. This is an issue which cannot be gone into by this Court because it is for the petitioners to accept the amount as has been awarded under protest and to file objections for reference of the matter to the Court u/s 18 of the act for proper determination of the value of the land per kanal which the petitioners shall be at liberty to do.

19. The possession of the land is shown to have been taken over, the amount of compensation is also shown to have been deposited with the Collectorate. From the year 2008 the proposed development of the heritage site has been forestalled, to protract it further more shall be purely at the cost of exchequer in view of the escalation of price of the material and the cost of labour. The respondents shall be at liberty to accomplish the required development which is in the public interest.

20. Viewed thus, the petition is found to be without any merit, as such, dismissed along with connected CMP. In the peculiar facts no order as to costs. The interim direction dated 06.08.2011 is vacated.

21. The records as have been produced by learned counsel Mr. N. H. Shah, Dy. AG be returned to him.