

(2022) 11 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 113 Of 2014, IA No. 1, 151 Of 2014

Bashir Ahmad Bhat

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 10-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Jammu And Kashmir Land Acquisition Act, Svt. 1990 — Section 4, 4(1), 6, 7, 9, 9A, 17

Citation : (2022) 11 J&K CK 0022

Hon'ble Judges : Rajnesh Oswal, J;Rahul Bharti, J

Bench : Division Bench

Advocate : Ateeb Kanth, Ilyas Laway, Rabinder Singh

Final Decision : Dismissed

Judgement

Rahul Bharti, J

1) Heard learned counsel for the parties, and perused the material on record.

2) The facts of the present case invites on all fours the doctrine of acquiescence that when a party having a right stands by and sees another dealing in a manner inconsistent with that right while the act is in progress and after violation is completed then that conduct reflects his assent or accord which cannot allow him afterwards to complain. In this case, the petitioner being fully conscious of land acquisition award dated 15.01.2014 qua his land specific comes forward with the present writ petition filed on 05.02.2014 opting to challenge only section 4 original notification dated 30th March, 2010 bearing with the presence of the final award but still opts not to amend his writ petition all along is bound to suffer the application of acquiescence against him.

3) If the petitioner's plea for grant of the reliefs sought in the present writ petition is to be accepted, then the same would be at the cost of putting the clock back to the year 2005 and by undoing the entire process for acquisition of the land for four laning of the National Highway IA from Banihal to Srinagar

which came to be put into exercise and even the four laning has come to be carried out at the time when this matter got heard by this Court for final adjudication. Thus, this Court may not be in a position to serve the said wish of the petitioner, particularly, when the petitioner himself has been privy by design and default to the course of events relating to acquisition of his 1.9 Kanals of land falling in Khasra No. 752 min village Chursoo, Tehsil Awantipora, district Pulwama, and has acquiesced, both by commission and omission, with the course of events without ever bothering to question the same at the appropriate point of time, even if the same were seeming to be so offending to his rights qua the property in reference.

4) The facts in essential are that on 14th June, 2005, the respondent No. 6-Director National Highway Authority of India (NHAI) Project Implementation Unit Jammu, had come to place an Indent No. PD/JMU/15011-16011/1715 to the respondent No. 4-Collector Land Acquisition, National Highway Authority of India four-laning (Additional Deputy Commissioner, Pulwama) for acquisition of the land for the stretch of National Highway proposed to be widened from Kilometer 256-280 on Banihal Srinagar Road route and in this route village Chursoo, Tehsil Awantipora, District Pulwama also fell.

5) Pursuant to the above said indent, a notification No. DCP/LA/A-05/1094/06 dated 19.01.2006 under Section 4 of the J&K Land Acquisition Act, Svt. 1990, was issued by the respondent No. 4- Collector Land Acquisition National Highway Authority of India four-laning (Additional Deputy Commissioner, Pulwama). The proposed area of land required for acquisition was 272.19 Kanals.

6) On account of the realignment of the route, the respondent No. 2-Divisional Commissioner, Kashmir, Srinagar, had come to issue fresh directions for fresh acquisition proceedings and consequently a notification No. 05 of 2007 dated 27.06.2007 with respect to 272.19 Kanals of land acquisition had come to be issued followed by notification No. 149/FC of 2007 dated 09.08.2007 under Section 6 and 7 of the J&K Land Acquisition Act, Svt. 1990, by the Financial Commissioner Revenue , J&K, Jammu, and a notification no. 18 of 2007 dated 29.08.2007 under Section 9 and 9-A by the respondent no. 4-Collector Land Acquisition National Highway Authority of India four-laning (Additional Deputy Commissioner, Pulwama). Considering the urgency attending the acquisition, the respondent No. 1-the Government of the then State of J&K vide its notification No. 150 RD of 2007 dated 13.09.2007, had even exercised its powers under Section 17 of the J&K Land Acquisition Act, Svt. 1990, for the lands falling under intended acquisition. The aforesaid exercise had resulted in preparation of a draft award No. DCP/LAS-NHW/C-1/819- 21 dated 22.01.2009 proposing the rate of Rs 4 lacs per kanal along with 15% Jabarana to the land owners whose land were sought to be expropriated by the intended acquisition.

7) As the petitioner's land measuring 1.9 kanals in khasra no. 752, which was obtaining in purported ownership of the petitioner by virtue of a mutation No. 1360, was found falling in the course of realignment of the National Highway

under widening, so the Naib Teshildar Awantipora vide his letter No. 1462QQ/TA dated 07.01.2010, read with the Tehsildar Awantipora's letter No. 1478QQ/TA dated 09.01.2010, had declared the status of the petitioner's said 1.9 Kanals under survey No. 752 min to be included in the acquisition process to be put on record for further course of action relating thereto. It is the petitioner himself who knowing that his land was to fall for the acquisition, had submitted an application to the respondent No. 2-Divisional Commissioner Kashmir, Srinagar whereupon the said respondent No. 2, vide his communication No. Divcom/LAS-Acq/1151/898 dated 15.03.2010, had come to direct the respondent no. 2-Deputy Commissioner Pulwama, to issue supplementary award with respect to the said land of the petitioner for the acquisition purpose or to settle matter by private negotiation.

8) Acting upon the said direction of the respondent No. 2, the respondent no. 4-Collector Land Acquisition National Highway Authority of India four-laning (Additional Deputy Commissioner, Pulwama)had come to issue a Notification no. DCP/LAS-NHW/C-3/1740-43 dated 30th March, 2010, thereby notifying said land of the petitioner to be subject to acquisition process under Section 4(1) of the J&K Land Acquisition Act, Svt. 1990. It is apt to mention here that it is this notification which is the subject matter of the challenge in the present writ petition but the timing of filing of the writ petition is very relevant which would be dealt with herein next . This notification was published in a local daily newspaper Kashmir Uzma dated 05.04.2010.

9) Knowing well that his land was to fall for the acquisition underway, the petitioner had made an application to the respondent No. 4-Collector Land Acquisition National Highway Authority of India four-laning (Additional Deputy Commissioner, Pulwama) for private negotiation exercise.

10) For the acquisition exercise with respect to the petitioner's land, a corrigendum no. DCP/LAS-NHW/84-90/Pul dated 15.05.2012, was issued after re-measurement under Section 4(1) of the J&K Land Acquisition Act, Svt. 1990, which came to be followed by issuance of Notification no. FC-LS/LA/2511/NH/Pul/07 dated 30.7.2012 under Section 6 and 7 of the J&K Land Acquisition Act, Svt. 1990. A Corrigendum Notice no. DCP/LAS-NHW/361-168 dated 04.08.2012 under Section 9 and 9-A of the J&K Land Acquisition Act, Svt. 1990, was also issued with respect to the petitioner's land. It is pertinent to observe here that the issuance of corrigendum notices was required on account of the fact that the main land acquisition exercise for major chunk of required land by issuance of appropriate notifications had taken place earlier in which the mention of the petitioner's land was not there but for the purpose of aligning the acquisition of the petitioner's land along with acquisition process for the rest of large chunk of 272.19 Kanals of land, the exercise was taken with respect to the petitioner's land.

11) The entire exercise had resulted in publication of final land acquisition award number DCP/LAS-NHW/643-47/Pul dated 15.01.2014, with respect to the

petitioner's land of 1.9 Kanals in Khasra No. 752 village Chursoo district Pulwama. In terms of this award, the petitioner was offered land compensation of Rs. 6,67,000/.

12) After coming into the picture of the final award, and perhaps sensing and seeing the fact that the rate of compensation so offered in terms of the above said award was not palatable to him, the petitioner chose to act as if being unaware of the coming into existence of said award and ventured to file the present writ petition on 05.02.2014, before this Court bearing a tone and tenor as if from the date of issuance of impugned notification No. DCP/LAS-NHW/C-3/1740-43 dated 30.03.2010 the things had remained static for the petitioner and at the end of the respondents. It cannot be a coincidence that the final award with respect to the petitioner's land is dated 15.01.2014, and the timing of filing of the writ petition is 05.02.2014.

13) A bare perusal of the entire writ petition without giving a miss to a single line would reveal that the petitioner has not referred to any event post issuance of impugned notification number DCP/LAS-NHW/C-3/1740-43 dated 30.03.2010. The petitioner in his present writ petition is sounding a cry as if the said land has been acquired without any compensation awarded in his favor and that the process of acquisition was matured least to his notice at his back whereas the fact is that in the process of acquisition, the possession of petitioner's land measuring 1.9 kanals in Kharasa no 752 was taken over by demolition of super structures existing there upon which had resulted in payment of compensation in favor of the petitioner duly received by him. The fact which seems to have prompted the petitioner to wriggle himself out of the scenario of issuance of award dated 15.01.2014 is that to the other land owners, whose lands too came to be acquired for which the payment of compensation was purported to have been matured by private negotiations, had fetched them compensation at the rate of Rs 12.50 lacs per kanal, and thus, for the petitioner to accept the compensation of amount of Rs. 6.67 lacs was appearing to be a matter of pecuniary loss but in order to avoid recourse to challenge the said award dated 15.01.2014 under the provisions of the J&K Land Acquisition Act, Svt. 1990, the petitioner hit the game plan of filing the present writ petition so as to show as if he has been robbed of his land at the hands of the respondents without adopting full course of land acquisition proceedings required in terms of the J&K Land Acquisition Act, Svt. 1990.

14) This Court is not going to fall trap to the said guile of petitioner and the reasons for this Court in doing so is on account of the fact that writ petition under Article 226 of the Constitution of India is not a legal remedy, in the facts and circumstances of the present case, for the petitioner to get rid of the effects of the award dated 15.01.2014 by just throwing a challenge to the Section 4 notification dated 30.03.2010. This Court is not convinced that the petitioner was caught unaware of the contemporary proceedings being undertaken at the end of the respondents with respect to the acquisition of the petitioner's land post

issuance of impugned notification no. DCP/LAS-NHW/ C-3/1740-43 dated 30.03.2010 because if that would have been the case then the petitioner would not have allowed the passage of 4 long years without asking for a direction on to the respondents to expedite land acquisition process with respect to the petitioner's 1.9 kanal piece of land, wherefrom even the structures existing there at had come to be demolished to pave way for the widening of the National Highway. So much so, the petitioner in the present writ petition came to be posted with the stand of the respondents in terms of counter affidavit filed by respondent No 4 on 23.12.2015, disclosing and divulging all the relevant state of facts relating to the acquisition of the petitioner's land including the fact of passing of the award, but still the petitioner choose not to seek any amendment of his writ petition all along, and expected this Court to deal with the legality and validity of the impugned notification No DCP/LAS-NHW/C-3/1740-43 dated 30.03.2010 of the respondent No 4 and not to take cognizance of the fact that the final award has come into the scene.

15) The Doctrine of Acquiescence in its practical manifestation has been well addressed by the Hon'ble Supreme Court in its latest pronouncement in the case of Chairman, State Bank of India Vs. M.J. James (AIR 2022 SC 582). Drawing from the said judgment, the Hon'ble Supreme Court has lend acceptance to the elucidation of the principle of Acquiescence in the Halsbury's Laws of England which is as under:-

"In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

- (i) acquiescence on the claimant's part; and
- (ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

"In view of the statement of law as summarized above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of

the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"

29. "Before proceeding further, it is important to clarify distinction between 'acquiescence' and 'delay and laches'. Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain."

In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. However, acquiescence will not apply if lapse of time is of no importance or consequence.

16) This writ merits dismissal. However before parting with the judgment and taking cognizance of the fact that in case the petitioner has not received the amount of compensation assessed and payable for his said land in terms of the award in reference, the Collector concerned shall enquire and ensure that the award amount stands credited with the account of the petitioner if the same has not already been done. The writ petition is dismissed.