
(2021) 08 J&K CK 0021
In the Jammu And Kashmir High Court
Case No : LPAOW No. 10 Of 2019

Bashir Ahmad Fargodoo

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 18-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Jammu And Kashmir Land Acquisition Act, 1934 — Section 4, 4(1), 9, 9(A)
Code Of Civil Procedure, 1908 — Section 9

Citation : (2021) 08 J&K CK 0021

Hon'ble Judges : Pankaj Mithal, CJ; Sanjay Dhar, J

Bench : Division Bench

Advocate : M. A. Qayoom, D. C. Raina

Final Decision : Dismissed

Judgement

Pankaj Mithal, CJ

1. The petitioner/appellant has preferred this Letters Patent Appeal questioning the correctness of the judgment and order dated 19.12.2018 passed by

the learned Single Judge dismissing his OWP No.530 of 2011 : Bashir Ahmad Fargodoo v. State of Jammu and Kashmir and others.

2. The petitioner/appellant had invoked the writ jurisdiction of this Court alleging that his father Abdul Aziz Fargodoo owned and possessed 8 kanals

and 19 marlas of land falling under survey/ khasra no.209 in Village Laripora, Pahalgam District Anantnag. The said land was purchased by his father

sometime in the year 1969 and he continued to be in possession till 1978. Thereafter, it was occupied without his consent by the Sher-i-Kashmir

University of Agriculture Sciences and Technology (SKUAST). The said land was notified to be acquired by notification dated 4th June, 2004 issued

under Section 4(1) of the Jammu & Kashmir Land Acquisition Act for expansion of Pahalgam Golf Course but subsequently vide notification dated

17.02.2005 it was de-notified from acquisition, however, the subsequent notices issued under Section 9 and 9(A) again reflected that the aforesaid land

is under acquisition.

3. The petitioner/ appellant kept on making representations to the authorities but neither the award in respect of the said land was passed nor the

petitioner/ appellant was paid any compensation or the rentals thereof. The petitioner/ appellant up to the year 2003 used to pitch tents for stay of

tourists and used to earn about two and a half lakhs to three lakhs per year.

4. On the above allegations, the petitioner/ appellant by means of the above writ petition claimed a direction upon the respondents to conclude the

proceedings for acquisition and for payment of compensation and to pay an amount of Rs.2.5 lakhs to 3 lakhs per annum towards loss of income from

the date of possession till the award is drawn. In the alternative, it was prayed that if the respondents are no longer interested in acquiring the land, it

may be returned to the petitioner with compensation for retaining possession for all the above years.

5. The writ petition, after exchange of pleadings and after requiring the respondents to submit reports on various aspects of the matter, was ultimately

dismissed on 19.12.2018 on the ground that the petitioner/ appellant has failed to establish that the land in question belonged to him or to the persons on

whose behalf he claims to be acting on the basis of the power of attorney or as heir. He could not bring on record any material to establish that the

land was taken from him or that it had been acquired in accordance with the provisions of the Jammu & Kashmir Land Acquisition Act rather the

petitioner/ appellant admits that in the final award the land is not reflected meaning thereby it has not been acquired.

6. On the other hand, it is the positive case of the respondents that the land was acquired either through sale deed or negotiations way back in the year

1978 by Agriculture Production Department which in turn delivered its possession to SKUAST on its establishment in the year 1982 and was used as

its Maize Farm. The said Maize Farm and the entire land was transferred to the Tourism Department for Pahalgam Development Authority for

establishing the Golf Course. In this view of the matter, as the petitioner/

appellant failed to establish that the land belonged to him or was acquired from him, he is not entitled to any relief and the question of title, if at all, cannot be decided in exercise of writ jurisdiction.

7. Mr. M. A. Qayoom, learned counsel for the petitioner/ appellant argues that the right to property, which has been recognized akin to a fundamental right, cannot be denied by permitting the State authorities to grab it without following the due process of law. Where there is infringement of such a right, the delay in approaching the court is meaningless. He further argued that a writ petition under Article 226 cannot be thrown out merely on the ground of alternate remedy due to involvement of factual aspects where valuable right to property of a person are involved. In such circumstances, it is incumbent upon the court to examine even the disputed questions of fact, if necessary, by adducing evidence.

8. In support of his above submissions, he has placed reliance upon some authorities of the Supreme Court which we would be referring to at some later stage.

9. In response to the case set-up by the petitioner/ appellant, it would be appropriate to set-out the defence taken by the respondents by means of their separate affidavits as well as the reports called for by the court during the pendency of the writ petition. At the very initial stage, the Chief Executive Officer, Pahalgam Development Authority, took objection in writing stating that a huge area of land measuring 203 kanals and 12 marlas comprising of different khasra numbers situate at Laripora, Pahalgam, was taken over/ purchased by the Agriculture Production Department way back in 1978, to establish a Maize Development Farm which include the so called land of 8 kanals and 19 marlas claimed by the petitioner/ appellant. The aforesaid land was acquired by the Agriculture Production Department by way of private treaty and sale deeds executed between the department and the land owners. The aforesaid record relating to the acquisition of land by private negotiations and sale deeds is not available as it got destroyed during a fire in 1997 that engulfed the department. In the year 1982 when the SKUAST was established, the entire aforesaid land was transferred to it. Thereafter, by virtue of order bearing No. 08/S(Rev) of 2005 dated 14.01.2005, it was transferred to the Tourism Department for establishment of the Golf Course. Simultaneously, as more land was required for expansion of the Golf

Course, a notification was issued under Section 4 of the Act on 04.06.2004 for acquiring additional land in which the land allegedly claimed by the petitioner/ appellant was inadvertently included as it already stood purchased by the Agriculture Production Department way back in the year 1978. Accordingly, by a corrigendum dated 17.02.2005, the land as claimed by the petitioner/ appellant, was excluded from the acquisition. Neither the petitioner/ appellant nor his predecessor ever since 1978 or even after the issuance of the notification under Section 4 of the Act claimed any rights in the said land or any compensation thereof till filing of the writ petition. This has been the consistent claim of all the respondents right from the very beginning.

10. The respondents have brought on record the notification issued under Section 4 of the Act dated 04.06.2004 wherein at serial number 2 the land claimed by the petitioner/ appellant is mentioned for the purposes of acquisition for expansion of the Golf Course. However, the corrigendum notification dated 17.02.2005 clearly states that the aforesaid land is not needed for expansion of Golf Course and stand de-notified, meaning thereby that the land as claimed by the petitioner/ appellant was never acquired. It is admitted fact that the aforesaid land is not part of the final award.

11. It is pertinent to mention here that no declaration to finally acquire the aforesaid land is available on record. In short, the land as claimed by the petitioner/ appellant was never acquired in accordance with the provisions of the Land Acquisition Act.

12. This apart, the consistent case of the respondents is that about 203 kanals and 12 marlas of land of various khasra numbers in village Laripora, Pahalgam, was acquired by the Agriculture Production Department not by drawing the proceedings under the Land Acquisition Act but by private negotiations and sale deeds way back in the year 1978. This land as a whole was transferred in the year 1982 for the establishment of SKAUST and the Maize Farm as established by the Agriculture Production Department continued to exist on it. The Government by notification No.8/S(Rev) of 2005 dated 14.01.2005 accorded sanction to the SKAUST for transfer of the aforesaid 203 Kanals and 12 marlas of land which specifically included the land under khasra no. 209 of 8 kanals and 9 marlas of the petitioner/ appellant to the Tourism Department for the purposes of Golf Course. The

aforesaid notification for the sake of convenience is reproduced hereinbelow:

GOVERNMENT OF JAMMU AND KASHMIR

CIVIL SECTT REVENUE DEPARTMENT

Subect:- Transfer of land for expansion of Golf Course at Pahalgam.

Ref.:- U.C. No.Agri/SKUAST/11/04 dated 1.9.04 from Agriculture Production Department.

Government order No:- 08/S(Rev) of 2005

D a t e d :- 14.01.2005

Sanction is accorded to the transfer of 203 kanals 12 marlas of land comprising khasra Nos. 30(2k-10mls), 150(9k), 194(2k-10m),

195(17k-01M), 196(2K-18M), 197(2K-18M), 198(1K-8M), 1256/199 (04K), 1562/199 (10K-01M), 1563/199 (5K), 200(2 K-19M),

1257/200 (4K), 1600/201(11K0, 202(17M), 203(3M), 204(02K-13M),209(08K-19M), 1549/206(01K-01M), 207(05K-12M), 208(05Mls),

205(8 K-19M), 1539/210 (03K), 1540/210 (02K-17M), 211(04Mls), 1545/212(02K-09M), 1543/212(2K-1M), 213(3K-8M), 214(3K-06M),

1554/215(09K-7M), 216(15M), 217(2K-18M), 220(8K-06M), 1533/221(06K-01M), 1535/221(09K), 222(15K-15M), 1103/224(07K-01M),

1104/224min (02K-06M), 1116/224 Min (05 K-18M), 1674/220(06K-15M), 1675/228(04K), 351(2K-08M) belongs to Sher-i-Kashmir

University of Agriculture Sciences and Technology (SKUAST) Agriculture Production Department, situated at village Pahalgam to Tourism

Department for expansion of Golf Course.

By order of the Government of Jammu and Kashmir.??

13. The aforesaid notification clearly establishes that the aforesaid land in question was the land of the SKUAST who had received it from the

Agriculture Production Department in the year 1982. The petitioner/ appellant has not brought on record any material whatsoever to indicate that the

land was ever purchased by his predecessor in interest in the year 1969 or any time thereafter. There is no document to establish any right/ title of the

petitioner/ appellant or his predecessor on the said land prior to 1982 or even thereafter. Mere assertion that the land was owned and possessed by his

father or that he used to pitch tents for tourists is not at all sufficient to establish any of his rights / title over the said land.

14. The court had repeatedly, during the course of the proceedings, formulated a question whether the land in dispute was acquired from the petitioner

and his brothers at any point of time but was unable to get any answer to it. In so far as the rights of the SKUAST over the said land are concerned,

the same were established to have been obtained from the Agriculture Production Department that had acquired it by means of various sale deeds in

the year 1978. Despite the fact that the said sale deeds were not brought on record as the record was gutted in fire, the very fact that the Government

issued a notification permitting transfer of land from SKUAST to Tourism Department substantially establishes that it must have been done after due

verification of the record.

15. In the above facts and circumstances, in the absence of any evidence that the land was acquired under the provisions of the Land Acquisition Act

or the respondents have obtained its possession after overthrowing the petitioner/ appellant or their predecessor in interest, we are of the opinion that

the writ court committed no error of law in dismissing the writ petition.

16. The contention of the petitioner/ appellant in effect raises disputed questions of fact for which material evidence is necessary which is not

available on record and, as such, the learned Single Judge rightly held that the court cannot hold an enquiry on such questions.

17. The contention of Mr. Qayoom that in matters involving right to property which has been recognized as a human right, writ petition cannot be

dismissed on the ground of alternate remedy of suit. In this regard, he has placed reliance on Century Spinning & Manufacturing Co. Ltd., and another

v. The Ulhasnagar Municipal Council and another : AIR 1971 SCC 1021.

18. In the aforesaid case, the dispute was regarding the levy, assessment, collection, recovery of octroi under the Maharashtra Municipalities (Octroi)

Rules, 1967 and it was held that where the parties aggrieved by the action of a public body or authority on the plea that the action is unlawful,

highhanded, arbitrary or unjust is entitled to a hearing of its petition on the merits and went on to observe as under:

“Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy,

dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary.

19. In order to do justice, the High Court may entertain a petition despite efficacious alternate remedy instead of relegating the parties to a civil suit

where the action is against a public body but that would depend upon the nature of the questions of fact. If the questions of fact raised are not

elementary and are complicated which requires not only documentary but oral evidence, the court in its discretion can always decline to entertain a

petition leaving it open for the parties to get the matter adjudicated by the civil court.

In view of the above, the aforesaid authority is not of any much help to the petitioner/ appellant as it is applicable where factual dispute is only

elementary in nature which is not the case herein.

20. Mr. Qayoom has also relied upon ABL International Ltd. and another v. Export Credit Guarantee Corporation of India Ltd. & Ors. : (2004) 3 SCC

553. In this case, the Supreme Court held that even where disputed questions of fact are involved in an appropriate case the writ court may entertain

the writ petition but a writ petition involving serious disputed questions of fact which requires consideration of evidence which is not on record will not

normally be maintained under Article 226. It further observed that where disputed questions of fact pertaining to interpretation, meaning of the

documents or parts thereof are involved, the courts can very well go into the same and decide it even if oral evidence has to be taken. In the case with

which we are dealing with, no disputed questions relating to interpretation/ meaning of documents are involved which could have compelled the writ

court to have decided the same in exercise of writ jurisdiction. Accordingly, the above authority is distinguishable and is again of no assistance to the

petitioner/ appellant.

21. Again in M/s Real Estate Agencies v. Govt. of Goa and others : AIR 2012 SC 3848, the Supreme Court repeated that High Court is not debarred

from entertaining a writ petition even if it involves a question of fact and observed that it is improper to dismiss it without making a probe into the claim

set-up. In the said case also, the claim was for compensation and founded on proof of title/ ownership. The court in observing as above clarified that

naturally if the claim of compensation is required to be founded on proof of title/ ownership, it has to be established by evidence and, therefore, no part

of the judgment and order shall be construed to be an expression of any opinion

of this court with regard to the ownership or any other right or entitlement of the parties which has to be proved in accordance with law. In other words, the Apex Court made the above observations regarding entertainment of writ petition involving disputed questions of fact but ultimately clarified that the title/ ownership cannot be decided in writ jurisdiction.

22. The aforesaid decision, as such, would have no application in the present case where the right of compensation of the petitioner/ appellant is dependent upon proof of his title/ ownership as well as on the fact that whether the land was acquired from him or his predecessor in interest.

23. It is important to bring to notice a decision of the Special Bench of four judges in the case D.L.F Housing Construction (P) Ltd. v. Delhi Municipal

Corpn. And others : (1976) 3 SCC 160. Here in this case, the Apex Court categorically laid down that where the basic facts are disputed and

complicated questions of law and fact depending on evidence are involved, the writ court is not the proper forum for seeking the relief. The right

course for the High Court to follow is to dismiss the writ petition on the preliminary ground without entering upon the merits of the case. It further

observed that in the absence of firm and adequate factual foundation, it is hazardous to embark upon the determination of the disputed factual points.

24. The aforesaid decision of the larger Bench eclipses all the other decisions cited above and the decision in ABL International Ltd. and another v.

Export Credit Guarantee Corporation of India Ltd. & Ors. and M/s Real Estate Agencies v. Govt. of Goa and others : AIR 2012 SC 3848 (supra) to

that extent are obiter in nature as they have been rendered in ignorance of D.L.F Housing Construction (P) Ltd. v. Delhi Municipal Corpn. And others

(supra).

25. Lastly, we come to Vidya Devi v. State of Himachal Pradesh and others : AIR 2020 SC 4709. In this case, the dispute was regarding acquisition

of land of 80 year old illiterate lady without following the procedure of law and payment of compensation. The State took the plea of adverse

possession for last 42 years which was not held to be tenable.

26. The case we are dealing with is set out in a completely different situation. Here the State is not taking plea of adverse possession or continuous

possession rather the plea of ownership/ title as against the title claimed by the petitioner/ appellant. Therefore, it necessarily involves a dispute of title

which is to be adjudicated in accordance with the provisions of Section 9 CPC by an appropriate civil court on the basis of the evidence of the parties.

27. In view of the aforesaid facts and circumstances, we find no force in this appeal and the same is dismissed.