

(2018) 12 J&K CK 0069

In the Jammu And Kashmir High Court

Case No : Other Writ Petition (OWP) No. 530 Of 2011

**Bashir Ahmad Fargodoo @APPELLANT@Hash State Of Jammu & Kashmir
& Ors**

Date of Decision : 19-12-2018

Acts Referred:

Jammu And Kashmir Land Acquisition Act, 1934 — Section 4, 4(1), 9, 9A

Citation : (2018) 12 J&K CK 0069

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Z. A. Qureshi, Rehana Fayaz, N.H Shah, Mir Suhail, M. A. Chashoo

Judgement

1. The petitioner has made the following prayers in this writ petition:

"In the premises, it is, therefore, prayed that the Hon'ble Court may be pleased to issue a writ, order or direction, one in the nature of:

a) Mandamus: commanding the respondents to conclude the proceeding of acquisition by adhering to the provisions of land Acquisition Act, in consequence thereof the amount of award be paid to the petitioner after assessing the amount of award on the market rate which subsisted at the time notice under Section 9 and 9A was issued by the Collector because prior to that acquisition notice under section 4(1) was de-notified on the recommendations of the Tehsildar.

b) Mandamus: commanding the respondents to pay the solatium, interest and compensation to the petitioner from the date the possession of the land has been taken over by the respondents i.e. from 4th of May 2004 when notice under section 4 was issued.

c) Mandamus: commanding the respondent to pay to the petitioner the amount for loss of income @ Rs.2½ lacs to Rs.3 lacs per year to be reckoned from 4th of June 2004 till the award is drawn and amount is paid to the petitioner.

In the alternative, in case the respondents are not interested to acquire the land, in that eventuality the possession of 8 kanals and 19 marlas under Khasra

No.209 be handed over to the petitioner and his co-sharers with a further direction to the respondents to pay the compensation equivalent to the rent for holding the possession of the land measuring 8 Kanals and 19 Marlas under Khasra no209 from 4th of May 2004 till the possession is handed over to the petitioner equivalent to the income which the petitioner would otherwise earn in case the land would have been with hi i.e. 2 ½ lacs per year.

And for any other writ, order or direction, though not specifically prayed for, yet this Hon'ble Court may deem fit and proper in the circumstances of the case, be also passed in favour of the petitioner and against the respondents."

2. The case of the petitioner is that his father had purchased 8 Kanals and 19 Marlas of land covered by Survey No. 209 situate at village Laripora, Pahalgam. On 04.06.2004, the respondents issued a notification under Section 4 of the J&K Land Acquisition Act, whereby a huge chunk of land, including the petitioner's aforesaid land, was notified for public purpose, i.e. "Extension of Golf Course, Pahalgam". However, thereafter, in terms of corrigendum dated 17.02.2005, the land, particulars of which are given in the corrigendum, including the petitioner's land, was de-notified. Subsequently, notifications under Sections 9 and 9-A of the Land Acquisition Act were issued on 22.05.2007, wherein the land in question was again reflected.

3. The petitioner states that on 04.05.2006 he issued a notice to the Chief Executive Officer, Pahalgam Development Authority, seeking allotment of land in lieu of the aforesaid land taken over from him. According to the petitioner, in response thereto the Chief Executive Officer, Pahalgam Development Authority, vide communication dated 8.07.2006, stated that the land measuring 8 Kanals and 9 Marlas covered under Survey No. 209, i.e. the land in question, , does not exist in the award passed by the Collector, Land Acquisition Anantnag. It is averred that he represented to respondents and communications were exchanged between him and the respondents, so much so vide one of the communications dated 17.09.2009 the Assistant Commissioner, Revenue, Anantnag, stated that previously the land in question was under the occupation of Maize Farm and later its possession was taken over by Pahalgam Development Authority for expansion of Golf Course. The petitioner is also seeking to place reliance on a report dated 21.10.2009 made by him on the application of the petitioner. What transpires from the said report would be referred to later in this judgment.

4. It is further averred in the petition that after de-notification, no fresh notice under Section 4 of the Land Acquisition Act was issued, yet the Pahalgam Development Authority continue to have the possession of 8 Kanals and 19 marlas of land under khasra no.209 belonging to the petitioner. It is further stated that after inclusion of the land in notifications issued under Sections 9 and 9A, no enquiry has been conducted by respondent no.2. The grievance of the petitioner is that neither award has been made in respect of the land in question, nor compensation has been paid to him. The petitioner claims violation of his

fundamental right to hold and enjoy his property and violation of his right to have adequate compensation in lieu of his land in accordance with law. On these counts, the petitioner has filed this writ petition for the relief first above quoted.

5. On notice, the respondents, besides filing reply affidavit, have filed various compliance reports/ affidavits, wherein they have resisted and controverted the averments made by the petitioner in his petition. In his report dated 17th of November, 2009, the Assistant Commissioner, Anantnag, has informed that the Tehsildar concerned has reported that the land in dispute is under the fencing of the Golf Course, Pahalgam, but same was previously under the occupation of the Maize Farm. In the reply affidavit filed by the Deputy Commissioner, Anantnag, in compliance to the direction of this Court dated 27th of December, 2012, it has been stated that a meeting was conveyed on the subject matter of the writ petition and that from perusal of the records with reference to the land measuring 8 Kanals and 19 Marlas falling under Survey No. 209, apportionment statement, etc., it came to fore that the land in question has been transferred from the SKUAST to the Tourism Department. The Committee had concluded that the said land has been transferred from the ownership of the SKUAST and not acquired from the petitioner. Thereafter, the Deputy Commissioner, Anantnag, in pursuance of order dated 19th of November, 2013, filed an affidavit before this Court, wherein it has been stated that the process to ascertain whether the compensation with respect to suit land has been paid or not by the Agriculture Production Department is in progress and that the acquisition process by the Agriculture Production Department in the year 1978 was not as per the Land Acquisition Rules, but through registered sale deeds with the parties, as such, the details are not available with the Collector and have to be ascertained from the intending Department. On 18th of February, 2015, a compliance report was filed by the then Director Employment (J&K), who was holding the post of Deputy Commissioner, Anantnag, at the relevant point of time, wherein he has stated that the land acquired for the maize farm by the SKUAST Kashmir/ Agriculture Department had been acquired through registered sale deeds with the parties. The report also brought it to fore that the SKUAST had contended that their records had been gutted in a fire accident in the year 1997 and, thus, no details about land thus acquired or compensation paid are available with the Collector. In that backdrop, , in terms of order dated 12th March, 2015, the Commissioner/ Secretary to Government, Agriculture Department was impleaded as a party respondent in the instant petition, being respondent No.5, so as to ascertain from the Agriculture Department whether compensation for the land in question has been paid to the petitioner. Accordingly, compliance report was filed by the Agriculture Department stating therein that the Department approached the Deputy Commissioner, Anantnag, for furnishing the copy of the registered sale deeds, but till date, no response is received from the Deputy Commissioner, Anantnag. By order dated 5th of April, 2016, the respondents were directed to deposit the compensation in respect of the land in question before the Registry of this Court and in compliance thereof, an amount of Rs. 46,31,625/- (rupees forty-

six lacs, thirty thousand, six hundred and twenty-five only) stands deposited before the Registry of this Court.

6. Heard the learned counsel for the parties, perused the record and considered the matter.

7. At the outset, what requires to be stated is that this is a case which has remained pending before this Court from the last more than seven years. The petitioner too has not approached the Court well in time. In pursuance of directions issued by this Court from time to time, the respondents have shifted the blame with respect to the claim of the petitioner for payment of compensation in lieu of the land in question from one Department to the other. The Chief Executive Officer, Pahalgam Development Authority, has stated that the land in question does not exist in the award passed by the Collector, Land Acquisition, Anantnag. The Deputy Commissioner, Anantnag, / Collector Land Acquisition has, in turn, stated that the said land has been transferred to the Tourism Department from the ownership of the SKUAST and not acquired from the petitioner. Thereafter, in pursuance of order dated 19th of November, 2013, the Deputy Commissioner, Anantnag, on affidavit, stated that the acquisition process by the Agriculture Production Department in the year 1978 was not as per the Land Acquisition Rules, but through registered sale deeds with the parties, as such, the details are not available with the Collector and have to be ascertained from the Agriculture Department. Accordingly, the Agriculture Department, after being arrayed as a party respondent in the writ petition, submitted that all the records in the offices of the Directorate were gutted in a fire incident in the year 1997, however, the SKUAST, Kashmir, has not purchased the land from the petitioner and his brothers, but the said land was transferred to the SKUAST by the Directorate of Agriculture, J&K Government, during 1982, when the SKUAST was established through an Act of legislation.

8. It is to be borne in mind that in a writ petition, the petitioner was required to establish that the land in question belonged to him or the persons on whose behalf he claims to be acting on the basis of the power of attorney and that it was taken over from him/them pursuant to a valid notification issued under Section 4 of the Land Acquisition Act. Instead, it is the admitted case of the petitioner that it does not reflect in the award passed by the Collector pursuant to the notice of acquisition. On the other hand, it is the positive case of the respondents that the land in question had been acquired through sale deeds way back in 1978 by the Agriculture Production Department which had, in turn, delivered its possession to SKUAST and was included in the Maize Farm. The Maize Farm was transferred to the Pahalgam Development Authority for expansion of the Golf Course. Thus, on the one hand the petitioner has not established his case set up in the writ petition, on the other hand, the respondents have clearly refuted his assertion that the land was acquired from him pursuant to the notification under section 4 issued on 04.06.2005 or that possession was taken over from him pursuant to such process.

9. In light of the above, the petitioner having failed to establish his case and there being dis`puted facts involved in the case, this Court, in exercise of its writ jurisdiction, cannot hold an enquiry into such disputed facts. The petition merits dismissal, and it is so dismissed alongwith all connected CMPs/MPs/IAs, vacating any interim order in operation. This, however, shall not preclude the petitioner from seeking appropriate remedy in accordance with law for any grievance against the respondents.

10. Registry to return the amount deposited before this Court to the Deputy Commissioner, Anantnag against proper receipt alongwith interest, if any, earned thereon.