

(2024) 06 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 2602 Of 2023

Chaman Kumar And Others

APPELLANT

Vs

UT Of J&K And Others

RESPONDENT

Date of Decision : 05-06-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Jammu And Kashmir Land Acquisition Act, 1934 &Mdash; Section 4, 4(1), 11B
Control Of National Highways (Land And Traffic) Act, 2002 — Section 26(6)

Citation : (2024) 06 J&K CK 0005

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : R.K.S. Thakur, Anandita Thakur, Neha Abrol, Monika Kohli, R.K. Gupta, Sunny Mahajan

Final Decision : Dismissed

Judgement

Sindhu Sharma, J

1. Petitioners seek quashing of final award bearing No. ACR/LA/ NHAI/ F-Award/ T.Parking/2017-18/325-31, dated 10.07.2017, to the extent of land measuring 3 Kanals 8 Marlas comprising of Khasra No. 134-min situated at Village Jhajjar Kotli, which is owned and possessed by them. A further prayer is sought for quashing of Notification No. LA/ACR/ NHAI/ Jhajjar Kotli/2016-17/88-95, dated 30.04.2016, issued by respondent No. 5 under Section 4(1) of the J&K State Land Acquisition Act, Svt. 1990 (hereinafter referred to as 'the Act'), whereby, the above-mentioned land of the petitioners has been notified at the instance of respondent No. 6 for truck parking adjoining to National Highway.

2. The Project Director, National Highway Authority of India, placed an indent with the Collector Land Acquisition, (Assistant Collector, Revenue), Jammu, vide letter dated 06.01.2016 for acquisition of land measuring approximately 2 hectares, for the construction of wayside amenities (Truck Parking) along the National Highway in Village Jhajjar Kotli, Tehsil Dansal, District Jammu. After

completing all necessary documentation, a notification under Section 4(1) was issued to invite objections from interested persons, along with its publication in newspaper. No objections were filed by the interested persons within the prescribed period. Consequently, the acquisition proceedings concluded with the issuance of an award dated 10.07.2017, amounting to Rs.2,32,45,900/-.

3. The petitioners filed a writ petition, i.e., WP(C) No. 1469/2020 titled 'Chaman Kumar and others vs. UT of J&K and others', seeking quashing of notification dated 30.04.2016, issued under Section 4(1) of the Act and also award dated 10.07.2017. They also sought setting aside of notices dated 07.02.2020 and 18.02.2020, directing them to remove shops and structures possessed by them. This writ petition was considered and dismissed by this Court vide judgment dated 28.12.2020 by holding as under:

"If seen in the light of enunciation of Law as referred to above, the petitioners have not been able to make out a case for interference by this Court as larger public interest has to be given preference over the private interest in the matter of acquisition of land for development of infrastructural projects."

4. The petitioners, aggrieved by the dismissal of the writ petition, filed an appeal, i.e., LPA No. 157/2020, which was partly allowed and disposed of on 27.04.2021 by holding as under:

"44. Thus, applying the above principles of law laid down by the Apex Court to the facts and circumstances of the case, even though we have found that the notification under Section 4 of the Act was not in consonance with the provisions of the Act, we do not intend to quash the same and instead provide that ends of justice would be sub-served if the appellants are provided by way of damages additional compensation which may be worked out as on the date of this judgment in accordance with the provisions of the Act by making a fresh award in respect of the land of the appellants only within a period of three months and to pay the compensation accordingly after adjusting the amount already paid within a further period of one month and keeping it open for the appellants to avail the remedies available to them in law for seeking enhancement, if necessary."

5. The contention of the petitioners is that pursuant to the judgment dated 27.04.2021, a fresh award was to be passed within a period of three months, and compensation was to be paid to the petitioners. The respondents, however, failed to comply with the directions and passed the award within the prescribed time, which has resulted in setting aside of the entire proceedings. In fact, respondent No.6 issued a notice for removal of unauthorized construction to the petitioners under Subsection (6) of Section 26 of the Control of National Highways (Land and Traffic) Act, 2002, calling upon them to remove the unauthorized occupation and construction within a period of ten days from the date the notice was served. The notice also stated that representation, if any, should be filed within a period of seven days from the date of its service. This

notice was received by the petitioners on 7th March 2023, and they submitted their reply/representation through their counsel on 08.03.2023.

6. In their reply, the petitioners submitted that they are in possession of their proprietary land and they are not, therefore, unauthorized occupants of the same. On their land, their Dhaba has been existing, much before the acquisition proceedings were initiated. The respondents have neither passed the fresh award in terms of the judgment of the Hon'ble Division Bench nor any compensation has been received by them, therefore, the acquisition proceedings have lapsed, as such, the notices are not in accordance with law. It was submitted that the petitioners are still owners in possession of the land and Dhaba and respondent No. 6 has no right or interest in respect of the land.

7. The petitioners thereafter have approached this Court by filing the present petition, challenging the acquisition proceedings as well as the notices issued to them. It is submitted that the Hon'ble Division Bench of this Court, vide judgment and order dated 27.04.2021, directed the respondents to make a fresh award and pay compensation in respect of the petitioners' land within three months. The respondents, however, failed to comply with the judgment regarding a fresh award and payment of compensation within the period of four months as per the judgment, as such, the entire acquisition proceedings have lapsed.

8. The Division Bench had set aside the final award dated 10.07.2017, by holding that notification under Section 4 was not in consonance with the Act and instead of quashing the entire proceedings, directed the respondents to pass a fresh award in respect of the aforesaid land keeping in view the public interest. The payment was to be made after adjusting the amount already paid within a further period of one month. The petitioners were given the liberty to avail the remedies available to them in law for seeking enhancement. The petitioners further submit that as the award has not been passed within the stipulated period, therefore, the acquisition proceedings are also hit by Section 11(b) of the Act.

9. In the writ petition, the petitioners have specifically pleaded that respondents No. 1 to 5 had already acquired the land for widening the National Highway from Jammu to Udhampur. In the earlier acquisition proceedings, out of the total land measuring 6 Kanals 14 Marlas, 2 Kanals and 6 Marlas have already been acquired. The question of parking trucks on the roadside is misconceived and illogical, therefore, the entire acquisition proceedings and the award are required to be quashed. The respondents, in fact, do not require land for truck parking, which is not the purpose reflected in the notification. The petitioners and their family members are poor persons, and 3 Kanals and 6 Marlas of their land already stands acquired. In the remaining 3 Kanals and 8 Marlas of land, they have established their Dhaba and shop, and are earning their livelihood, therefore, the same cannot be taken away, as it would deny the petitioners of their right to livelihood.

10. The respondent No.6-Project Director, PIU Udhampur, NHAI, in their objections, have submitted that the petitioners have not approached this Court with clean hands and they were aware of the fact that the judgment dated 27.04.2021 stands complied with, and the reassessment on account of compensation for the structure has already been completed by the Executive Engineer, PWD (R&B), Division Nagtora, and a fresh award has been passed by the Collector Land Acquisition (Assistant Commissioner, Revenue), Jammu, vide order No. ACR/LA/T-Parking/Jhajjat Kotli/2023-24/686-88 on 19.10.2023.

11. It is further submitted by respondent No. 6 that the Land Acquisition Proceedings in respect of the land acquired for wayside amenities along the National Highway at Village Jhajjar Kotli, Tehsil Dansal, District Jammu, have been carried out in accordance with the provisions of the Act, and due procedure has been followed in the entire acquisition proceedings. It is submitted that after the passing of the award on 10.07.2017, the land vested in the Government and the petitioners have no right to occupy the same.

12. According to the respondents, the petitioners were well aware of the entire acquisition proceedings, but they did not file any objections when the acquisition proceedings were initiated. They only approached this Court for quashing of the same after they came to know of the making of the award. It is denied that the land in question was acquired for a purpose other than that which is mentioned in the notification and final award, as it was acquired for the purpose of wayside amenities (Truck Parking) and is for that purpose only.

13. It is further submitted that in compliance with the judgment passed by the Hon'ble Division Bench on 27.04.2021, they have already passed a fresh award, and compensation for the structure in question has been assessed at the rate of Rs. 17,24,000/-. The said amount has also been deposited, as such, the writ petition is required to be dismissed.

14. The petitioners are aggrieved of the fact that the respondents have failed to pass the award within the prescribed period, therefore, the notifications under Section 4 as well as the award dated 10.07.2017 are without any sanctity, bad and are required to be set aside.

15. The challenge to the acquisition proceedings and notification is related to the development of infrastructure along the Jammu-Srinagar National Highway, which was a project of public importance, strategic and otherwise. The view in the judgment dated 28.12.2020 was that even if the notifications were not published in absolute conformity with the provisions of the Act, the same could not be considered tenable in view of the project being of public importance. This was in view of the law laid down by the Hon'ble Apex Court in "Ramniklal N. Bhutta and another vs. State of Maharashtra and others", 1997 (1) SCC 134, wherein it was held as under:

"The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal

point. And in the matter of land acquisition for public purposes, the interests of justice and the public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

16. Similarly, in "Jaipur Metro Rail Corporation Ltd. vs. Alok Kotahwala and others", AIR 2013 SCC 754, the Hon'ble Apex Court has held as under:

"31. With respect to ecological balance, there has to be sustainable development and such projects of immense public importance cannot be halted. It is not the case that requisite permissions from the Central Government and the State Government have not been obtained, thus, objections were flimsy. In other petitions also pertaining to the same Project, this Court has held that such project of immense public importance should not be put to halt. Thus, flimsy and untenable objections were raised, which have been rightly rejected after due application of mind.

x x x x

48. On merits, we find the order of interim stay passed by the single Bench to be untenable, thus, we have no hesitation in setting aside the same. Suffice it to observe that in such cases of public importance of Metro Rail Project, there should not be any interim stay, rather an effort should be made to decide the matter finally at an early date. Staying the land acquisition proceedings is not appropriate and would be against the larger public interest involved in such projects. Thus, relying upon the decision in the case of Ramniklal N. Bhutta (supra), we hold that in the matter of immense public importance like the present one, the power to grant interim stay under Article 226 of the Constitution should not be exercised in the normal course."

17. The Division Bench, while considering the appeal, held that they have not been shown that the writ Court had acted in an arbitrary manner in passing the impugned order or that its decision is legally unsound. Therefore, the Division Bench found that even though the notification under Section 4 was not in consonance with the provisions of the Act, it would not quash the same but

directed the respondents to pass the award. It would be profitable to reproduce the following paragraphs of the judgment:

"37. It is settled that the forum of writ petition is not as a matter of right or an appellate forum but is an extra ordinary remedy provided to check miscarriage of justice which has to be exercised sparingly and at the discretion of the court. It is not necessary to be exercised in each and every case of infringement of a right. The court in exercise of its discretionary jurisdiction has to balance the competing interests of the parties in such a way that public interest prevails over the private one in granting relief thereof.

38. It is also equally settled in law that the acquisition of land for public purpose if challenged by any one person only or by the owner of a small piece of the acquired land is not sufficient to vitiate the entire proceedings of acquisition more particularly where there are no malafidies.

39. The Apex Court in 'the Authorized Officer, Thanjavur and another versus S. Naganatha Ayyar and others', 1979 (3) SCC 466, observed that procedural irregularities in acquiring the land in the absence of malafidies needs to be overlooked. The development of infrastructure should not be hampered and that scope of judicial review in such matters of land acquisition ought to be very limited and the court must focus its attention more on social and economic justice and should not exercise a lethal blow on the entire acquisition proceedings.

40. In 'Ramnikhal N. Butta and another versus State of Maharashtra and others', AIR 1997 SC 1236, it has been observed that power of the High Court under Article 226 is discretionary. It should be exercised in furtherance of interest of justice and not merely on making out of legal points. It was also observed that the High Court may devise ways and methods to adequately compensate the person interested instead of quashing the acquisition proceedings in its entirety."

18. Per Contra, the petitioners submit that since the award was not passed in terms of the judgment of the Hon'ble Division Bench within the stipulated time, all the proceedings initiated by the notification issued under Section 4 on 10.04.2016, as well as the final award, have lapsed, as Section 11(b) of the Act would be applicable to the land specifically owned and possessed by the petitioners.

19. The respondents have passed the final award on 19.10.2023. It is settled by both the above-referred judgments that larger public interest is to be given preference over private interest in the matter of acquisition of land for development of infrastructure projects. In this view of the matter, both the Courts refused to interfere in the acquisition process. However, in the interest of the petitioners, the Court directed the respondents to pass a fresh award.

20. The law being well settled, the only issue now is whether the delay in passing the award would result in the lapsing of the entire acquisition proceedings.

Reliance placed on Section 11-B of the J&K Land Acquisition Act is also misplaced, as the same is not applicable to the facts and circumstances of the case.

21. The award was to be made as per the mandate of the judgment of the Division Bench. The petitioners accepted the judgment of the Division Bench which directed the respondents to pass the award within a period of three months and compensation to be made within a period of one month thereafter. Though, the respondents have taken time to pass the award and there is delay in the same, still the element of public interest cannot be overruled. The petitioners, if aggrieved by the fact that the compensation has not been adequately awarded or otherwise, can avail the remedy available to them.

22. The Division Bench did not quash the notification even after holding that the same is not in consonance with the provisions only in view of the public interest involved and had provided for damages by way of additional compensation as on the date of the judgment. There is no change in the facts and circumstances to warrant any different view. The respondents have passed the award and the delay in passing the same would not result in lapsing of the proceedings which were upheld by the Division Bench and accepted by the petitioners.

23. In view of the aforesaid, there is not merit in this petition and the same is, accordingly, dismissed along with connected application(s).