

(1998) 09 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : C. I. M. A. No. 54 of 1990

Collector, (Assistant Commissioner) Land Acquisition, Jammu	APPELLANT
Vs	
Sansar Chand and Others	RESPONDENT

Date of Decision : 18-09-1998

Acts Referred:

Land Acquisition Act, 1990 — Section 18

Citation : (2000) KashLJ 160

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : L.K.Sharma, Amrish Kapoor, Advocates appearing for the Parties

Judgement

Arun Kumar Goel, Judge.

1. This appeal is directed against the judgement and decree dated 18.4.1990 passed by learned District Judge, Jammu, in land reference case No.

32/Arb. By means of the impugned judgement compensation as awarded by the Collector, Land Acquisition has been enhanced from Rs. 2000/

per kanal to uniform rate of Rs. 10,000/ per kanal, besides solatium and interest under the provisions of Jammu and Kashmir Land Acquisition

Act, 1990 (1934 AD) (hereinafter referred to as 'the Act1).

2. Facts which are not in dispute are that Notification under section 4 of the Act was issued on 10.12.1982 and proceedings under section 6 of the

Act are dated 25.2.1983, award was passed by the Collector (Assistant Commissioner) Land Acquisition, Jammu, on 26.4.1983, which is EX.

RWCL.

3. Learned counsel appearing for the parties were further not at variance that the possession of the land under acquisition was taken on 8.9.1983.

Land is comprised under khasra No. 820 measuring 14 kanals 17 marlas situate at village Jhajar Kotli, Tehsil and District Jammu. Its original

owner was Sh. Dessu and the public purpose for which the land was acquired alongwith khasra No. 816 was for setting up a Mulbery Nursery by

the Sericulture Development Department of the State. Operative portion of the award dt. 26.4.1983 is to the following effect:

1, Chaman Lal Bhushan, Collector (Assistant Commissioner Revenue, Jammu, therefore hereby make the award of compensation amounting to

Rs. 43,700/ (Forty three thousand seven hundred only) in the subject land acquisition case. Notice under subsection (2) of section 12 of Land

Acquisition Act be got served upon all the interested persons in the land through Tehsildar, Jammu." Here it may be worthwhile to refer to Section

12 of the Act, which is to the following effect:

12. Award of Collector when to be final. (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final

and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or

not, of the true area and the value of the land, and the apportionment of the compensation among the persons interested. (2) The Collector shall

give immediate notice of his award to such of the persons interested, as are not present personally or by their representative when the award is

made.

After passing of the impugned award, a reference was claimed by Shri Dessu, the original owner, who was father of the present respondents,

requiring the Collector that the matter be referred by him for determination of the court. This reference application is at pages 14 to 22 of the file of

the court below and reply of the Collectorappellant herein, is at page 23. Paragraph 15 of the land reference application at page 18 of the trial

court file, is to the following effect:

15. That the petitioner who is the owner of the land situated at Jaggar Kotli and is also occupier and a tiller of the land in dispute and informed the

petitioner that the land mentioned above has been acquired by the Government (Collector) and wanted to take possession of the land in question

and the possession of the land was not given to Patwari who came for acquisition purposes on the date of knowledge i.e. 8th September, 1983,

and the petitioner objected for the acquisition as he has no knowledge about the same nor he was a party to the proceedings upto the date of

Award. The Award thus made at the back of the petitioner requires to be set aside and revised assessment inclusive of damages, interest etc. may

also be accordingly assessed."" Besides this number of other factors were pleaded by Shri Dessu in the reference petition preferred by him under

Section 18 of the Act.

4. Ordinarily appellant*was expected and in fact should have filed a detailed parawise reply to the reference petition but instead of doing so a

twelve lined omnibus reply was filed which is to the following effect :

Sir,

Respondent respectfully submits his objections to the aforementioned reference as under:

1. That the reference is time barred.

2. That the award passed by the Collector is strictly in accordance with the provisions of law and does not suffer from any infirmity or irregularity.

3. That the amount of compensation awarded by the Collector was awarded after keeping in view the market rate of the land prevalent in the

locality at the time of acquisition of land.

It is, therefore, prayed that the reference may kindly be rejected.

Respondent through Advocate

Sd/ (E. A. Tak)

Advocate.

On the aforesaid pleadings of the parties issues were framed by the trial court which are to the following effect:

1. Whether the compensation awarded by the respondent to the petitioner was not according to the market rate prevalent at the time of

acquisition of the land ? OPP 2. In case issue No. 1 is proved what was the market rate of the land at the time of issuance of notification under

section 4 of the Land Acquisition Act ? OPP

3. Whether the reference is time barred? OPR.

4. Relief?

After conclusion of the trial, impugned judgement and decree has been passed,

hence this appeal.

5. Shri Kapoor, learned Additional Advocate General, made very precise and specific submissions based on plea of limitation as well as want of

evidence before the trial court in support of this appeal and urged that the impugned judgement of the court below as liable to be reversed and

consequently appeal allowed. It was also submitted by Shri Kapoor that since land reference was prima facie barred by limitation with reference to

Section 12 of the Act (supra), therefore, according to him it was the duty of the court below to have not gone the merits of the case and by passing

the impugned judgement it had ignored the provisions of Section 3 of the Jammu and Kashmir Limitation Act, 1995 (1938 A. D.). Regarding want

of evidence by referring to the statements of PWs it was pointed out by Shri Kapoor that in no case the impugned judgement can be sustained.

6. On the other hand learned counsel for the respondents while repelling all the submissions urged by the learned Additional Advocate General,

submitted that in the instant case there is no evidence worth the name examined by the appellant upon whom the onus of issue No. 3 was and with

reference to the award of the Collector Land Acquisition operative portion whereof has been reproduced hereinabove it was submitted that from

the contemporaneous official record, it is evident that predecessor's interest of the respondents was not present when the award was pronounced,

because had Shri Dessu been present there would not have been any direction in the award passed by the Collector Land Acquisition to serve all

the interested persons under subsection (2) of Section 12 of the Act. Regarding price of the land by referring to the statements of different

witnesses including the official witnesses it was submitted by Shri Sharma that government itself had negotiated for the purchase of land as far back

as in the year 1980 at the rate of Rs. 6,000/ per kanal for irrigated and Rs. 4000/ per kanal for unirrigated land, thus Shri Sharma urged that the

appeal deserves to be dismissed with costs.

7. Taking up the plea of limitation, when a reference is made to the evidence examined on behalf of the appellant it is clear that there is not a word

said by Shri Chaman Lal Bushan Collector Assistant Commissioner, Jammu, in that behalf. Besides this, there is no tangible evidence to support

this argument of Shri Kapoor on the file of the court below. Shri Chaman Lal

Bhushan, Assistant Commissioner (who was acting as Collector

Land Acquisition and had given the impugned award) has proved his award on the file of Collector Land Acquisition as EXRWCL. He further

states that the application for making the reference was submitted by Shri Dessu on 16.9.1983 which was followed by a supplementary application

on 5.10.1983.

8. File of the Collector Land Acquisition is also attached with the record of this case and in fact there is order of this court dt. 8.2.1996 for

production of the said file followed by another order dated 6.3.1996. There is nothing on the file to suggest that at any point of time Dessu was

ever present before the Collector Land Acquisition and or that the award was pronounced in his presence. In the later situation there was no

necessary for the Collector Land Acquisition to have ordered the issuance of notice under subsection (2) of Section 12 of the Act (supra). Sub

section (2) of Section 12 of the Act envisages the issuance of immediate notice of the award having been made by the Collector Land Acquisition

on such persons interested as are not personally or by their representatives present when the award is made. That being so, as well as on the

materials on record it is evident that the award was not passed in presence of Shri Dessu.

9. Section 18 (2) proviso (a) and (b) of the Act (supra) need to be examined on this aspect of this case. For ready reference Section 18 of the Act

is reproduced herein below:

18. Reference to Court. (1) Any person interested who has not accepted the award may, by written application to the Collector require that the

matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the

compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested. (2) The application shall

state the grounds on which objection to the award is taken :

Provided that every such application shall be made;

(a) if the person making it was present or represented before the Collector at the time when he made his award within six weeks from the date of

the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the collector under section 12, subsection (2), or within six months from the date of the Collector's award, whichever period shall first expire. In the event when a person interested is either present or is represented before the Collector when he makes his award limitation for making reference is six weeks from the date of Collector's award and for all other cases it is six weeks of the receipt of notice from the Collector under section 12(2) of the Act or six months from the date of Collector's award whichever period shall expire first.

10. As already observed from the date of Collector's award i.e. 26.4.1983, when six months period is calculated, which governs the present case, the reference application is well within time. As already stated hereinabove, there is nothing to suggest that Shri Dessu was served with any notice under section 12(2) of the Act (supra) as ordered by the Collector in his award.

11. In this context this court is at pains to observe that those who are entrusted for protecting the government's interest in courts including the Law

Officer, who filed the reply to the land reference petition, in the present case, does not prima facie appear to have taken up the matter seriously or

having cared to apply his mind. It appears that the reply which has been reproduced verbatim hereinabove had been filed on behalf of the appellant

before the reference court in a summary, slip shod and cursory manner. I have no hesitation in further observing that it was merely a ritual

performed by the learned law officer of the appellant without application of mind. Otherwise under the law of pleadings it was expected that

parawise reply would be filed to the reference application. God only knows what was the material before the law officer concerned when he filed

the reply in question. Technically speaking land reference may not be in the nature of a plaint but still it is analogous to it and on the principles

governing law of pleadings under the law of the land it is expected of the parties concerned, learned law officer, in the instant case, to have applied

his mind to the land reference and then having filed the pleadings by way of reply to the reference application. In fact, by not caring to properly file

the parawise reply to reference application, public interest has suffered.

12. In Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and another, AIR 1961 Supreme Court 1500, while examining

the question of limitation and interpreting the date of Collector's award, it was observed that it means date of award either communicated to or is

known by party whether actually or constructively.

13. In *State of Punjab Vs. Mst. Qaisar Jehan Begum and another*, (1964) 1 Supreme Court Reports 971, after following the case of *Raja Harish*

Chandra Raj Singh (supra) it was observed that scheme of the Act requires that before applying for reference under section 18 the parties must

have knowledge of essential contents of the award and in the present case the petitioners though they had come to know of the award earlier did

not know the essential contents of the award till July 22, 1955, therefore, the period of six months contemplated in the second part of clause (b) of

section 18 would commence from that date and the application for reference was held to be within time and while dismissing the appeal of State of

Punjab aforesaid observations were made on the question of limitation.

14. For the aforesaid reasons and when the case of the appellant is examined on the basis of the decided cases it is evident that there is no merit in

the argument urged in reversing the finding on issue No. 3 recorded by the trial court, therefore, the same is rejected and findings of the trial court

are upheld.

15. Now coming to the question of the second plea that this is a case of no evidence, therefore, the impugned judgement is liable to be reversed.

There is positive evidence of PW Tara Chand and PW Ajay Kumar, clerk from Rural Public Health Engineering Department, BC Road, Jammu,

to the effect that in the year 1980 at Jhajar Kotli, Public Health Engineering Department purchased land for construction of a Filter Plant measuring

4 kanals 12 marlas from Smt. Raj Kumari daughter of Shri Lachman Das at the rate of Rs. 300/ per marla for irrigated land. Similarly, 3 kanals

and 18 marlas of land was purchased at the rate of Rs. 200/ per marla. Likewise, land at the rate of Rs. 300/ per marla was also purchased from

Smt. Parvati Devi wife of Shri Lachman Das by the department. In addition to this irrigated land at the rate of Rs. 300/ per marla and unirrigated at

the rate of Rs. 200/ per marla was also purchased by the department from Ajit Singh, Mst. Jaila Devi, Tara Devi, Darshna Devi and Smt. Dhani

Devi. Besides these persons, irrigated land measuring 8 marlas was purchased from Capt. Bhola Nath at the rate of Rs. 300/ per marla. While

stating so, this witness has gone on record to say that payment was made to all the sellers by the department but he has not been able to locate and bring the original sale deed. 16. On the other hand it has come in the statements of PWTara Chand, respondent herein, that out of the land under acquisition 7 kanals area is recorded as irrigated since settlement and he has further stated in crossexamination that remaining land was also irrigated by diverting water to it and is so recorded in the revenue records of 1980. It has further come in the cross examination of PWTara Chand that the land purchased by the Public Health Engineering Department in 1980 is contiguous to his land under acquisition and there is only boundary inbetween these two lands, he has further stated that in the revenue record from the year 1983 onwards the land under acquisition has been shown to be irrigated.

17. This is the entire material evidence produced by the respondents who have further claimed that they should be at least paid Rs. 15,000/ per kanal uniformly keeping in view the fact that the entire land is irrigated.

18. RWChaman Lal Bhushan, Assistant Commissioner (Collector) has supported his award EX. RWCL He has categorically stated that the value of the lands have enhanced between 1980 to 1983. However, he has feigned ignorance regarding government having purchased adjoining land to the land under acquisition at the rate of Rs. 4000/ per kanal for unirrigated and Rs. 6000/ for irrigated land in the year 1980.

19. On the basis of evidence on record this court has no hesitation in coming to the conclusion that in the year 1980 for construction of a Filter Plant land contiguous to the land under acquisition was purchased by the department at the rate of Rs. 6000/ per kanal irrigated and Rs. 4000/ per kanal unirrigated. From the statement of PWTara Chand this court is further satisfied that the entire land under acquisition was irrigated though part of it had been recorded as such in the revenue record since the times of Settlement but the remaining land had been brought under irrigation later on. That being so the entire land had to be taken as irrigated for the purposes of assessing its price.

20. In the instant case on the nature of land as well as the price in the year 1980 at which the State Government had purchased the contiguous land at the rate of Rs. 6000/ per for irrigated land has remained unrebutted.

21. Then the next question that needs consideration is whether 50% increase in prices within the next two years would be justified or not. Here it

may be worthwhile to notice a few more facts. It is not in dispute that Jhajar Kotli is located on JammuSrinagar National Highway. Land on both

sides of the road has got enough future potential of its development giving better yields and much better price to the land owner. This is one of the

relevant consideration for this court to be kept in view. Further Police Station being located at a distance of one jareeb on the other side of the

road, Rest House Jhajar Kotli is also one furlong on the northern side of land under acquisition and is also very close to Forest Rest House.

22. On the other hand, on the question of price of land there is statement of Patwari Halqa RWMadan Lal Sharma, who has produced on record

EXRWML being the average price of land for three years from 1980,1981 and 1982, which cannot be taken to be legal evidence. As per this

witness the average price of land works out Rs. 4210.60 per kanal, and I am of the view that this is no legal evidence by the appellant on prices

prevailing on the date of notification under section 4 of the Land Acquisition Act. It may also be appropriate to notice here that the average is

worked out on the basis of entry made in the Register of Mutations whereas possibility of a purchaser not getting sale in his favour mutated in the

revenue record entered for mutating it is not completely ruled out, therefore, the best evidence would have been to summon the purchaser or seller

of land and then to prove from such person the sale transaction. Basic thing is the fixing of price in good faith followed by its payment. Possibility of

entering into sale transactions at an escalated price in anticipation of acquisition cannot be completely ruled out.

23. As already observed, there is instance of the purchase of land by the government for establishment of Filter Plant in the year 1980 and certified

copy of such sale deed is there on record as is evident from the statement of PWTara Chand. Original sale deed had been summoned which was

not produced as is clear from the statement of PWAjay Kumar, clerk Rural Public Health Engineering Department, B. C. Road, Jammu. In the

face of this position, this court has no hesitation in holding that the price of land acquired assessed by the reference court at Rs. 10,000/ perkanal

uniformly is thus correct, keeping in view the location, its nature and its potential for development. Consequently, this ground for allowing the

appeal urged by Shri Amrish Kapoor is also rejected.

24. No other point is urged.

25. As a result of the aforesaid discussion there is no merit in this appeal, which is accordingly dismissed. Appellant shall pay the costs of the respondents throughout.

26. In this case the amount awarded by the District Judge Jammu, which is lying with the registry of this court, shall be released in favour of the respondents forthwith on proper identification.