
(2023) 10 J&K CK 0043

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 916 Of 2016

Devinder Bali And Others

APPELLANT

Vs

State And Others

RESPONDENT

Date of Decision : 19-10-2023

Acts Referred:

Citation : (2023) 10 J&K CK 0043

Hon'ble Judges : M A Chowdhary, J

Bench : Single Bench

Advocate : Dhiraj Choudhary, Monika Kohli, Nazia Fazal Choudhary

Final Decision : Allowed

Judgement

Ma Chowdhary, J

1. Both the petitioners claiming to be residents of Villages Baincch and Kuniyan of Tehsil Haveli District Poonch having a common cause of action, through this joint writ petition, have asserted that the devastating Earthquake of August 2005 had struck the northern India, particularly, the State of J&K and the worst affected areas were the Districts Poonch and Rajouri besides Kashmir valley, causing a lot of loss to human life, live stock and properties of the people.

2. Petitioners pleaded that their Kucha houses in their villages also got completely damaged, however, while calculating the grant of ex gratia relief, to provide relief, rescue and rehabilitation to the affected people, the cases of the petitioners were reported as showing their houses as 'partially damaged' instead of 'fully damaged' and they were granted an amount of Rs. 30,000/- each, for their houses though they were completely damaged. The petitioners refused to accept the meager amount of Rs. 30,000/- initially, but later accepted it under protest as there was no other alternative; that on a representation filed by the petitioners, re-assessment was made by a Committee comprising of District Agriculture Officer, Poonch as Chairman and local Tehsildar and Naib-Tehsildar as members and vide No. Relief/2005-06/19 dated 18.01.2006, the Chairman of the

Assessment Committee reported to the District Development Commissioner, Poonch that reassessment had been made personally, in the case of the damaged structures of the petitioners and one Ram Lal and a recommendation was made after re-verification that their houses fully damaged and all these victims be considered for full damage.

3. It was alleged that respondents despite the recommendation of the Assessment Committee after re-verification had not acted upon the recommendation and did not pay the amount which was due to the petitioners and hence the petitioners moved this joint writ petition, seeking a direction to the respondents to release the ex gratia relief, amounting to Rs. 1.00 lakh each under the 'Full damage head', as per the Assessment Committee's report dated 18.01.2006, in favour of the petitioners, by issuing a writ of mandamus.

4. Pursuant to notices, the respondents filed objections asserting therein that, an ex gratia relief to the tune of Rs. 30,000/- for partial and Rs. 1,30,000/- for fully damaged houses was paid to rehabilitate the victims of 2005 Earthquake. It has been pleaded in the objections that the cases of the petitioners were recommended for partial damage by the Assessment Committee and on the basis of the said recommendations, the petitioners were paid an ex gratia relief to the tune of Rs. 30,000/- each; that thereafter being dis-satisfied with the recommendations of the Committee, the petitioners approached the respondent no.4, Deputy Commissioner, Poonch to consider their cases for full damage.

5. It has been further pleaded that based on the petitioners' grievance and request, Assessment Committee was directed to revisit and re-assess the damage caused to their houses and respondent no.5 vide his No. Relief/2005-06/19 dated 18.01.2006 recommended the cases of the petitioners for full damage but there was no formal recommendation of the Assessment Committee for treating these cases under full damage category. As such, the cases were examined in the office and were found to be devoid of any merit.

6. Learned counsel for the petitioners has, vehemently, argued that the petitioners being the victims of the earthquake in view of complete damage to their houses were entitled to be compensated appropriately in terms of government order and alleged that despite re-assessment by the Committee as directed by the Deputy Commissioner Poonch and a recommendation in this behalf made by the Chairman of the Committee, the report was not accepted to pay the amount in terms of the full damage to the petitioners' houses and that the relief to the petitioners was denied. As such, the petitioners were compelled to approach this court for a direction to the respondents to make payment to the petitioners in terms of the government order with regard to full damage to the residential houses.

7. Learned counsel for the respondents, ex adverso, argued that though there was damage to the houses of the petitioners in the earthquake of 2005, however, initially the field staff had reported that there was partial damage to their

houses, as such, the respondents had paid an amount of Rs. 30,000/- to each of the petitioners, in terms of the government order governing relief and rehabilitation. She, further argued that the petitioners, having been dissatisfied with the grant of the compensation for partial damage, approached respondent-Deputy Commissioner, Poonch, for making payment to them for 'fully damaged' houses.

8. She has further argued that the Deputy Commissioner, Poonch ordered the re-assessment of the damage to be conducted by a Committee headed by District Agriculture Officer, Poonch. The District Agriculture Officer, Poonch in his report had stated that he had personally assessed the damage and recommended that the relief for 'fully damaged' houses be granted in favour of the petitioners. It is further argued that the case was pending in the office of Deputy Commissioner, Poonch and was rejected merely on this ground that the report was not made by the Committee but by the Chairman in his personal capacity.

9. Heard, perused and considered.

10. In terms of order dated 03.10.2023 passed by this court, the respondents were directed to produce the relevant record during the course of a week, but the requisite record has not been produced so far by the respondents.

11. Admittedly, petitioners' Kucha houses had suffered damage in the devastating Earthquake of August 2005, which had shook Northern India, besides the Indian Sub-continent, causing much loss to the life and property, on both sides of Line of Control (LoC) between India and Pakistan.

12. The short controversy falling for consideration of this Court is as to what extent the petitioners were entitled for ex-gratia relief in terms of the Scheme of the Government. The respondents have pleaded that in view of partial damage to the Kucha houses the ex-gratia for an amount of Rs.30,000/- was to be granted whereas in case of full damage to the houses, the ex-gratia for an amount of Rs.1,30,000/- was to be granted. The official team constituted by the respondents initially had reported that partial damage was caused to the houses of the petitioners and respondents granted an amount of Rs.30,000/- to each of the petitioners for partial damage of their houses.

13. The petitioners, however, on being dissatisfied approached Deputy Commissioner, Poonch seeking re-assessment of the damage to their houses claimed that their houses have been damaged fully and the Deputy Commissioner directed the Assessment Committee headed by District Agriculture Officer, Poonch to re-assess the damage caused to the petitioners' houses. The Chairman of the Committee filed a report stating that the petitioners' houses had suffered full damage and recommended that they be granted ex-gratia for their fully damaged houses. The Deputy Commissioner on receipt of the re-assessment report from the Chairman of the Committee did not accept the report and rejected the claim of the petitioners.

14. The damage has been caused to the houses of the petitioners in 2005 and now in the year 2023, no exercise with regard to fresh assessment can be ordered by this court and it was for the Deputy Commissioner at that point of time to get the damage assessed by any other official team at his disposal in case the Deputy Commissioner was not satisfied with the report of the Assessment Committee with regard to re-assessment of the damage caused to the petitioners' houses.

15. In the considered opinion of this court, the Deputy Commissioner had misdirected himself for not accepting the report filed by the Chairman of the Assessment Committee which was constituted by him only and it will be in the interest of justice to allow this petition with the direction to the respondents, particularly, respondent no.4, Deputy Commissioner, Poonch to sanction the amount of Rs.1,30,000/- as ex-gratia relief for fully damaged houses of the petitioners with adjustment of Rs.30,000/- paid to each of them earlier.

16. In this backdrop of the matter, the petition is allowed. The respondent no.4, Deputy Commissioner, Poonch is directed to sanction the ex-gratia relief of an amount of Rs. 1,30,000/- in favour of each of the petitioners for full damage to their houses based on the report of the Assessment Committee headed by District Agriculture Officer, Poonch. The respondent no.4, however, shall adjust the amount of Rs.30,000/- already paid by him and received by the petitioners as ex-gratia relief for partial damage to their houses against this amount. The needful shall be done within a period of six weeks from the date certified copy of the order is made available to respondent no.4 for compliance.