

(2017) 02 J&K CK 0028

In the Jammu And Kashmir High Court

Case No : 417 of 2015 c of w OWP No 431 of 2013 MP No 01 of 2015 MP No 691 of 2013

Ghulam Mohammad & Ors.

APPELLANT

Vs

Mr. Mohammad Iqbal Khanday

RESPONDENT

Date of Decision : 28-02-2017

Acts Referred:

Citation : (2017) 02 J&K CK 0028

Hon'ble Judges : Ramalingam Sudhakar

Bench : SINGLE BENCH

Advocate : Nissar Ahmad, Showket Naqashbandi

Final Decision : Disposed Of

Judgement

1. On the consensus of the learned counsel for the parties, matter is taken up for final disposal.

2. Petitioners claim that they have inherited the land measuring 4 Kanals falling under survey No. 771 situated at Moza Zewan, Pantha Chowk,

Srinagar from one Mst. Mali R/O Zewan, Srinagar.

3. It is the case of the petitioners that in the year 1966, the above stated property comprising of land measuring 4 kanals were forcibly taken by the

Government for the development of Ply Board Industry.

4. Petitioners claim that they are aggrieved by the action of the Government in taking away their ancestral property and not paying just

compensation. In paragraph 5 of the writ petition, it is stated that the legal heirs of the deceased Mst. Mali made several representations for

payment of adequate compensation but all went in vain. Petitioners rely upon the letter of the Collector dated 19th September 1987, wherein it is

stated that on spot inspection, it is found that the owners of land measuring 15 Kanals 1 Marlas under survey No. 771, 823,742,766,745-Min

have not been paid the compensation. Even thereafter nothing has happened.

5. It is the case of the petitioner that in the year 2004, the land in question was handed over to the Handicrafts Department of the State. Even

thereafter no compensation was paid to the petitioners, forcing them to file the writ petition bearing OWP No. 643/2008, for payment of

compensation with interest. The said writ petition came to be disposed of on 4th August 2008 with certain directions.

6. Consequent upon the order of this Court dated 04.08.2008, a Committee was formed. Based on the report of the Committee, Tehsildar South,

Srinagar has addressed a letter to the Dy. Commissioner, copy whereof has been marked to the petitioners. That has been challenged in the

present writ petition.

7. To make the issue clear, the proceedings Annexure-H to the writ petition is reproduced herein below:-

Subject:- Constitution of Committee to probe into the land acquisition case of Ply Board Zewan, Sgr.

Sir,

(i) Regarding the subject cited above, the report submitted by the field staff in detail is enclosed herewith. Also is patent to mention

the serially report of Naib Tehsildar concern which is as under:-

(ii) The land measuring 06 kanals and 01 Marlas under Survey Nos: 766,852,778,752,762 & 771 from to Survey No. 852 is

acquired in favour of Bharat Petroleum limited. They Survey Nos 778,752,765 are not pertaining to Ply Board and falls outer of their

Border

(iii) Kareem Malik S/O Lala has taken the compensation land 04 Kanal and 10 Marlas under Survey No. 742. In Survey Nos. 745,

766 and 882 land measuring 14 Kanals and 17 Marlas Mst. Janni and others Ali S/O Habib Malik and Ismail Wani has taken the

compensation. The Survey No. 775 remains still stand in the name of the owners.

(iv) In the reply of S. No. 3, the land measuring 05 Kanals and 05 Marlas have not given the clear identification of Survey Nos. so

that we may be able to submit a needful answer. Hence submitted for favour of further necessary action.

8. On 05.05.2015, this Court has passed the following order:-

Petitioner has filed this application. Annexure- A is the communication dated 13.02.2015 sent by Incharge LAC to the Additional

Dy. Commissioner, Srinagar in which it is observed that Survey No. 771 falling in village Zewan, Pantha Chowk has not been

acquired for establishment of industrial unit, namely, Ply Board Industries Limited, Pampore as per the records forthcoming from the

office.

Notice.

In the meanwhile, status quo as on date be maintained"".

9. The petitioner has also filed the contempt petition, pending the writ petition, on the plea that despite a Status-quo order being passed,

respondent department is proceeding to put up the wall construction without paying the just compensation.

10. Respondents have chosen not to file any reply in response to the writ petition.

11. Heard the learned counsel for the parties on considerable length.

12. Learned counsel for the respondents vehemently argued that petitioners have no right whatsoever on the property in question and furthermore

the writ petition is liable to be dismissed in view of delay and laches.

13. Be that as it may, there is an earlier direction, passed by a coordinate Bench of this Court, calling upon the respondents to consider the

petitioners claim. The petitioners claim is that they are the inheritors of the landed property measuring 4 Kanals falling under survey No. 771

situated at Village Zewan, Srinagar.

14. A bare reading of the impugned proceedings makes it clear that the Authority has proceeded on the premise that the land measuring 6 Kanals

and 1 Marla falling under survey No. 766,852,778,752,761 & 771 to Survey No. 852 has been acquired in favour of the Bharat Petroleum Ltd.

It is also stated that Survey No. 778,752 & 756 does not pertain to Ply Board Industry and the Survey Nos. are outside of its borders. It is further

stated that the survey No. 775 remains in the name of the owner. The report does not speak about the status of land measuring 4 Kanals in relation

to survey No. 771 of village Zewan, Srinagar. The proceeding of the Tehsildar is even more vague because he says that there is no clear

identification of the survey Numbers. On such a vague order, neither this Court nor Dy. Commissioner will be able to take a decision on a disputed

fact.

15. This Court is not in a position to render a decision for grant of compensation to the petitioners or to decline the relief because there is no final

conclusion by the revenue authorities that 4 kanals of land falling under khasra No. 771 was acquired either for Bharat Petroleum or for Ply Board

Industry.

16. Learned counsel for the petitioners rely upon certain revenue records and the decision of the Committee which according to him would

establish their claim with respect to the land measuring 4 Kanals under survey No. 771, situated in village Zewan, Srinagar.

17. In this case the issue is whether 4 kanals of land falling under survey No. 771 situated in village Zewan, Srinagar was in the ownership of the

petitioners or their ancestors and as to whether it was acquired for any purpose either for Bharat Petroleum or Ply Board Industry. Further what is

the effect of the Committees report in relation to the petitioners claim for compensation has to be decided by the Collector concerned. Since the

report of the Tehsildar is not clear with regard to Khasra No. 771, Dy. Commissioner has to make a detailed enquiry, based on the documents

that are relied upon by the petitioners. The report of the revenue officials also has to be taken. A decision as regards the claim of the petitioners for

grant of compensation in respect of land measuring 4 Kanals under survey No. 771, as to taken on the above materials.

18. The stage has not come for this Court to adjudicate upon the claim merely on the basis of letter of Tehsildar which is only a report. The final

decision has to be taken by the Collector and therefore, writ petition stands disposed of with a direction to Collector to take a final decision in the

matter, based on the documents relied upon by the petitioners as well as revenue records and pass a reasoned order on the merits of the

petitioners claim for compensation in relation to land measuring 4 Kanals under survey No. 771, situated at Zewan, Srinagar is concerned. This

exercise to be completed preferably within a period of six to eight weeks from

the date of receipt of this order. The petitioners will be given an opportunity to project their case before the Collector concerned before passing any order.

19. With these observations, writ petition along with contempt arising out of the same is disposed of.