

(2024) 03 J&K CK 0041
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 1975 Of 2021

Girdhari Lal

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 28-03-2024

Acts Referred:

Jammu And Kashmir Land Revenue Act, 1996 — Section 11, 12, 27

Citation : (2024) 03 J&K CK 0041

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Ajay Abrol, Monika Kohli, Vipin Gandotra

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1. The petitioner has challenged communication bearing No. SDM/JMU-S/2021-22/1638-39 dated 06.08.2021 issued by respondent No. 2, whereby recovery of an amount of Rs. 5,91,675/- on account of excess land compensation has been directed against the petitioner.

2. According to the petitioner, he owns land measuring 10 kanals and 6 marlas in khasra No. 112 min in Village Najwal. The respondent No. 2/Collector initiated process of acquisition of land for construction of Ring Road on behalf of respondent No. 4 and the total land regarding which process of acquisition was initiated is 102 kanals, 0.1 marlas and 5 sarsai. The final award has been passed by respondent No. 2-Collecotr on 22.09.2017. It is being claimed by the petitioner that out of 10 kanals and 6 marlas of his land in khasra No. 102 min, 7 kanals and 4 marlas came under the acquisition and as per the final award, the petitioner has been paid compensation of Rs. 39,72,675/- in respect of 7 kanals and 1 marlas of the acquired land. Regarding three marlas of balance land, it has been submitted that in view of the dispute with respondent No. 5, the compensation has been withheld in terms of order dated 04.12.2018 read with

order dated 25.07.2019 passed by the Financial Commissioner Revenue, Jammu in a case initiated by respondent No. 5.

3. It has been submitted that all of a sudden, the petitioner has received impugned communication, whereby a recovery of Rs. 5,91,675 has been ordered. It has been contended that the said communication is a result of total non application of mind on the part of the respondents and that the same has been issued without any justification. It has been submitted that as per the said communication, the petitioner has received excess compensation for the land measuring 1 kanal and 1 marla and if that is the case, then the indenting department has to return the aforesaid quantum of land to the petitioner, who is admittedly the owner of the 10 kanals and 6 marlas of land in khasra No. 112 min.

4. The respondent Nos. 1 to 3 have contested the writ petition by filing a reply thereto. In their reply, the stand taken is that a dispute arose between the petitioner and respondent No. 5 and the same landed before the court of Financial Commissioner Revenue, Jammu. It has been submitted that the Financial Commissioner vide order dated 20.03.2019 directed respondent No. 2 not to pay compensation for land measuring 03 marlas in khasra No. 112 min to the petitioner. It has been further submitted that Tehsildar Bishnah has reported to the Sub Divisional Magistrate, South on an application made by respondent No. 5 that demarcation of the land in Survey No. 112 was conducted in presence of the petitioner and respondent No. 5. As per the report of the demarcation, 01 kanal and 01 marla of land was found in excess in favour of the petitioner. Accordingly, the petitioner was asked to return the excess amount of compensation. He agreed to do so and refunded an amount of Rs. 5,91,675/-. According to respondent Nos. 1 to 3, only 6 kanals of land of the petitioner was acquired for which he received full compensation.

5. The indenting department-respondent No. 4 has, in its reply submitted that the Collector has acquired land measuring 102 kanals, 01 marlas and 5 sarsai in terms of the award passed by the Collector and the possession thereof has been taken over by the said department. It has been submitted that the compensation has been deposited by the indenting department with the Collector and the same has been disbursed to the land owners/interested persons.

6. Respondent No. 5 despite service, did not choose to contest the petition and he has been set ex parte.

7. I have heard learned counsel for the parties and perused the material on record.

8. If we have a look at the pleadings of the parties, land measuring 102 kanals, 01 marlas and 0.5 sarsai situated at Village Najwal has been acquired for construction of Ring Road and possession thereof has been handed over to respondent No. 4s who has deposited the compensation assessed in terms of final award dated 22.09.2017. A perusal of the apportionment statement

annexed to the final award shows that the land measuring 7 kanals and 4 marlas in khasra No. 112 min owned/possessed by the petitioner is included in the acquired land and in respect thereof, compensation for an amount of Rs. 36,65,970/- has been assessed. It is not in dispute that there is an order passed by the Financial Commissioner Revenue Jammu on an application filed by respondent No. 5 under Section 27 of the Land Revenue Act, whereby it has been directed that the land compensation in respect of 7 kanals and 4 marals in khasra No. 112 min excluding 03 marlas of land may be paid to the rightful claimant meaning thereby that the Financial Commissioner has stayed the payment of compensation in respect of only 03 marlas of land under survey No. 112 min, out of 7 kanals and 4 marlas of acquired land.

9. The respondent Nos. 1 to 3 are relying upon the report of Tehsildar Bishnah, according to which, the petitioner has claimed compensation in respect of 1 kanal and 4 marlas of land in khasra No. 112 min in excess. If we have a look at the said report, it is admitted therein that the petitioner owns 10 kanals and 6 marlas of land in khasra No. 112 min. It is further indicated in the report that 7 kanals and 4 marlas in khasra No. 112 min has been acquired for construction of Ring Road. As per the report, on spot inspection, it was found that land measuring 10 kanals and 6 marlas is comprised in khasra No. 112 min out of which, compensation in respect of 7 kanals and 4 marlas has been received by the petitioner-Girdhari Lal. It has been reported that on spot there should have been only 3 kanals and 2 marlas of land but upon measurement 04 kanals and 6 marlas of land has been found on spot which is being claimed by respondent No. 5. On the basis of this report, it has been claimed that compensation in respect of land measuring 1 kanal and 4 marlas has been received by the petitioner in excess and after deducting compensation in respect of 3 marlas, which has been stayed by the Financial Commissioner, Revenue, recovery of compensation in respect of land measuring 1 kanals and 1 marla has to be effected, which has been done in terms of the impugned communication.

10. So far as the final award is concerned, the land, which has been acquired by the respondents in khasra No. 112 min is measuring 7 kanals and 4 marlas. It is not the case of the indenting department that the possession of any less quantum of land has been taken over by the said department. Section 12 of the Land Acquisition Act makes award of the Collector final and conclusive evidence as between the Collector and the persons interested of the true area and the value of the land as also the apportionment of the compensation among the persons interested. Thus, once it has been accepted by the indenting department that it has received whole quantum of land under khasra No. 112 min i.e. 7 kanals and 4 marlas which was subject matter of acquisition and which is also reflected in the final award, it cannot be stated that only 6 kanals of land belonging to the petitioner were acquired.

11. Even otherwise, the Collector has no power to recall or review an award after it has been passed. Once an award has been made under Section 11 of the Land

Acquisition Act, the same being final is binding on the parties. In the instant case, the Collector has not even reviewed its award before passing the impugned communication. Therefore, it was not open to respondent Nos. 1 to 3 to issue the impugned communication seeking recovery of the amount from the petitioner, particularly when the land in respect of which compensation has been assessed in his favour admittedly belongs to him and the indenting department has not made any grievance that it has received less quantum of land than what is reflected in the award. The official respondents were therefore not justified in effecting recovery from the petitioner. Of-course, they were justified in withholding the payment of land compensation in respect of 3 marlas of land because of the stay order passed by the Financial Commissioner Revenue in this regard.

12. So far as the claim of respondent No. 5 with regard to the land compensation or with regard to the left out land from khasra No. 112 min is concerned, the same is a matter to be adjudicated between the petitioner and respondent No. 5 in appropriate proceedings. In fact respondent No. 5 has not contested the writ petition and he has been set ex parte. His claim to the acquired land or to the left out land in khasra No. 112 min cannot be considered in the manner in which it has been done by respondent Nos. 1 to 3. The same could have been done either by making a reference to the civil court or by asking respondent No. 5 to take any other recourse available under law but certainly not by issuing the impugned communication, which is not even a corrigendum to the final award.

13. For the foregoing reasons, the writ petition is allowed and the impugned communication issued by respondent No. 2 is quashed. Respondent Nos. 1 to 3 are directed to refund the amount of recovered compensation to the petitioner forthwith, subject to the furnishing of an indemnity bond to the satisfaction of the Collector.