

(2019) 09 J&K CK 0057
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 3192 Of 2019

Kanwarjit Singh Bedi

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 05-09-2019

Acts Referred:

Jammu And Kashmir Requisitioning And Acquisition Of Immovable Property Rules, 1969 — Rule 9(7), 9(8), 9(9), 9(10), 9(11), 9(12), 9(13), 9(14)

Citation : (2019) 09 J&K CK 0057

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Raghu Mehta

Final Decision : Dismissed

Judgement

Rajesh Bindal, J

1. The petitioner has filed the present petition in this Court impugning the order dated 27.06.2019 passed by the Financial Commissioner, (Revenue)/ Commissioner Agrarian Reforms, J&K Jammu. Further prayer has been made for directing respondent No. 4 to release the balance compensation to the petitioner on account of acquisition of land of the petitioner along with interest.

2. Learned counsel for the petitioner submitted that the petitioner was owner of land measuring 118 Kanals and 18 Marlas. The land of the petitioner was requisitioned way back in the year 1963 by the State for Army. The amount of rent was being paid to the petitioner. However, certain persons who claimed that they were protected tenants on the part of the land, filed application before the Deputy Commissioner, Kathua seeking apportionment of compensation. The same was allowed on 08.06.1994. Petitioner filed appeal against the order dated 08.06.1994 before the Deputy Commissioner, Kathua. The same was rejected on 26.07.2017. Even further appeal was also dismissed by the Financial Commissioner, (Revenue) on 27.06.2019. Before that the aforesaid land was

acquired and award was announced by the Deputy Commissioner, Kathua on 26.12.2006.

3. The argument is that reliance on SRO 817 dated 30.12.1976 by the authorities below, who allowed the apportionment of compensation to the tenants, is totally misplaced. No amendment was carried out vide aforesaid SRO as it is not part of the Statute Book. Hence, there being no statutory right in favour of the tenants, they could not claim share in the compensation merely being tenants. It was further submitted that apportionment orders passed by the authorities below had in fact merge with the award of the Collector, wherein it was directed that the entire compensation is payable to the original land owners and not to the tenants, hence, they are entitled to receive the same.

4. After hearing learned counsel for the petitioner, I do not find any merit in the present petition.

5. It is not in dispute that the land owned by the petitioner was requisitioned by the State for Army way back in the year 1963. Initially the persons who were sitting as tenants thereon did not seek any share in the rental compensation being paid to the petitioner. However, later on they filed application before the Deputy Commissioner, Kathua. In the order passed by him on 08.06.1994, it has been recorded that at the time of handing over of possession of the land to the Army, the land was in possession of the tenants, who were recorded as protected tenants. Hence, in terms of amendment carried out in Jammu and Kashmir Requisitioning and Acquisition of Immovable Property Rules, 1969 (for short 'Rules') vide SRO 817 dated 30.12.1976, the tenants had a right to get share in the rent being paid by the Army authorities.

6. The petitioner being aggrieved, filed appeal before the Additional Commissioner, Jammu against the order dated 08.06.1994 passed by the Deputy Commissioner, Kathua. The same remained pending for more than two decades. It was finally disposed of on 26.07.2017. As there was no error found in the order passed by the Deputy Commissioner, the same was dismissed. The aforesaid order of the Deputy Commissioner was further challenged before the Financial Commissioner (Revenue). The appeal was also dismissed on 27.06.2019.

7. The plea raised by the petitioner that the owner was recorded as 'Maqbuzian Malikan' in 1963 was not supported by any documentary evidence.

8. Challenging the aforesaid order, learned counsel for the petitioner sought to argue that any amendment carried out in the Rules vide SRO 817 is not part of the statute book, hence, could not have been relied upon by the authorities below for the purposes of grant of share in the rent to the tenants. In support of his arguments copy of the J&K Requisitioning and Acquisition of Immovable Property Rules, 1969 as published in some book has been annexed. There from it is sought to be referred that sub-rule 7 to 14 of Rule 9 of the Rules, which were inserted in 1976, have not been shown in the book, hence the same being not

part of the statute book could not be relied upon by the authorities to allow part compensation to the tenants. However, the argument is totally misconceived. The petitioner himself has placed on record the Gazette Notification published by the State of J&K, wherein the aforesaid amendment in the Rules has been notified vide SRO 817 dated 30.12.1976. Merely because the private publisher in his book has failed to take note of these amendments, while publishing the same in the book, will not mean that the amended provisions in the rules are not part of the statute book. Once the aforesaid Rule confers right on the tenants to claim apportionment of the rental compensation, no error can be found with the order passed by the authorities below. Hence, the prayer of the petitioner to that extent is rejected.

9. As far as assessment of compensation by Deputy Commissioner, Kathua on account of subsequent acquisition of land for Army authorities is concerned, nothing contained therein will mean that earlier orders passed by the authorities below wherein dispute regarding apportionment of rental compensation was determined, stand overruled.

10. For the reasons mentioned above, I do not find any merit in the present petition and the same is, accordingly, dismissed.