
(2021) 10 J&K CK 0062

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1993 Of 2019, 1034, 1410, 1070 Of 2020,
Contempt Petition CCP(S) No. 202 Of 2020

Khalid Jehangir Bhat & Ors

APPELLANT

Vs

Union Territory Of JK & Ors

RESPONDENT

Date of Decision : 28-10-2021

Acts Referred:

Jammu And Kashmir Land Acquisition Act Samvat, 1990 — Section 11, 11A, 11B
Land Acquisition Act, 1894 — Section 1(2), 2(13), 4, 4(1), 4(1), 4 (1)(a), 4 (1)(b), 4 (1)(c), 6
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24, 24(1)(a), 37
General Clauses Act, 1897 — Section 6
Jammu And Kashmir Reorganisation Act, 2019 — Section 103

Citation : (2021) 10 J&K CK 0062

Hon'ble Judges : Pankaj Mithal, CJ; Vinod Chatterji Koul, J

Bench : Division Bench

Advocate : G. A. Lone, Mian Tufail, D. C. Raina, Sajad Ashraf, Omais Kawoosa

Final Decision : Allowed

Judgement

Pankaj Mithal, CJ

1. All the above four writ petitions relate to the same land acquisition proceedings wherein in substance, the petitioners allege that the land acquisition proceedings stand vitiated on account of several illegalities basically for the reason that the proceedings were initiated under the J&K Land Acquisition Act Samvat 1990 (hereinafter referred to as the 'Act'), which stood repealed vide J&K Re-organization Act 2019 (hereinafter referred to the 'Re-Organization Act') w.e.f. 31st October 2019 and therefore no award could have been passed under Section 11 of the said Act.

2. In the first writ petition WP (C) No. 1993/2019 filed by Ghulam Mohammad and 20 others (later petitioner No. 1 being substituted by Khalid Jehangir Bhat & Ors), the petitioners have prayed for the following reliefs:-

(i) Writ, Order or direction in the nature of Certiorari for quashing Notification No. 03 of 2017 dated 02.05.2017, issued by Collector Land Acquisition (ACR) Pulwama under Section 4 (i) of J&K Land Acquisition Act (forming Annexure-I to this writ petition), Notification No. 32 of 2018 dated 17/05/2018 issued by Collector Land Acquisition (ACR) Pulwama (forming Annexure-II to this writ petition) and tentative assessment bearing endorsement No. DCP/LA/2018/402-08 dated 17.07.2018 (forming Annexure-III) including the Notification No. 122-Rev(LAK) of 2018 dated 06.03.2018 under endorsement No. Rev/LAK/07/2018 dated 06.03.2018 directing Collector to take order for acquisition of the land.

(ii) Writ, Order or direction in the nature of Mandamus declaring the proceedings initiated in the case under J&K Land Acquisition Act have lapsed by force of J&K Re-Organization Act, 2019 as no award has been passed till date.

(iii) Writ, Order or direction in the nature of Prohibition restraining the respondents from taking over the possession of the land from the petitioners and protect their fundamental and statutory rights."

3. In the second writ petition, WP (C) No. 1034/2020 filed by Ali Mohammad Rather, prayer of the petitioner is as under:

(i) Writ, Order or direction in the nature of Certiorari for quashing Notification No. 03 of 2017 dated 02.05.2017, issued by Collector Land Acquisition (ACR) Pulwama under Section 4 (i) of J&K Land Acquisition Act (forming Annexure-I to this writ petition), Notification No. 32 of 2018 dated 17/05/2018 issued by Collector Land Acquisition (ACR) Pulwama (forming Annexure-II to this writ petition) and tentative assessment bearing endorsement No. DCP/LA/2018/402-08 dated 17.07.2018 (forming Annexure-III) including the Notification No. 122-Rev(LAK) of 2018 dated 06.03.2018 under endorsement No. Rev/LAK/07/2018 dated 06.03.2018 directing Collector to take order for acquisition of the land.

(ii) Writ, Order or direction in the nature of Prohibition restraining the respondents from taking over the possession of the land from the petitioners and protect their fundamental and statutory rights."

4. In the third writ petition WP (C) No. 1410/2020 filed by Raja Banoo and 5 others, the following reliefs have been claimed: -

(i) Issue an appropriate writ, order or direction in the nature of Certiorari, quashing the impugned award dated 20.02.2020 bearing endorsement No. DCP/CA/2020/2803-88 passed by Collector Land Acquisition (ACR) Pulwama being without jurisdiction.

(ii) Issue an appropriate writ, order or direction in the nature of Mandamus, commanding the respondent Collector to pass the award in terms of Section 24 of the New Act, and grant compensation as Rs. 100 lacs per Kanal to the petitioners together with the interest."

5. In the last writ petition WP (C) No. 1070/2020 again filed by Ghulam Mohammad and 20 others, the petitioners have prayed for the followings reliefs:-

(i) Writ, Order of direction in the nature of Certiorari for quashing the proceedings initiated for acquisition of the land for the respondent-University measuring 38 kanals 09 marlas 6 ½ sirsai falling under 3392/3285/2711 min. 3285/2711, 2712, 2713 min. 2714 and land measuring 8 kanals 03 marlas falling under Survey No. 2715 situate in Estate Awantipora, District Pulwama.

(ii) Writ, Order or direction in the nature of Certiorari for quashing the impugned award bearing endorsement No. DCP/LA/2020/2883-88 dated 20.02.2020 (forming Annexure-I to the writ petition).

(iii) Writ, Order or direction in the nature of Prohibition prohibiting the respondents from proceeding further in the matter of acquisition of petitioner's land with a further prohibition that respondents should not visit the land or deprive the petitioners from possession.

(iv) Writ, Order or direction in the nature of Mandamus commanding the respondents 6 and 7 to protect the rights of the petitioners in respect to their ownership and possession over the land in question."

6. In the first writ petition filed by Ghulam Mohammad and others, the prayer is primarily for the quashing of the notification issued under Section 4 of the Act and the subsequent notification in connection thereto with the further prayer that the respondents be restrained from taking over possession of the acquired land. In the subsequent petition, i.e., the last one referred to above, the aforesaid Ghulam Mohammad had prayed for the quashing of the entire acquisition proceedings including the award dated 20.02.2020 on the ground that no such award under Section 11 of the Act could have been passed after the repeal of the Act.

7. Considering the prayers made in all the writ petition, the challenge to the acquisition proceedings appear to be primarily on the grounds that the notification issued under Section 4 (1) of the Land Acquisition Act is invalid as it has not been published in the manner prescribed under the Act and that no award could have been passed under Section 11 of the Act once the said Act stood repealed w.e.f. 31st October 2019 under the Re-organization Act. Apart from the above two grounds, some ancillary issues have also been raised but for the time being, we confine ourselves to addressing to the above points of challenge only.

8. Learned Advocate General has sought to raise a preliminary objection that the petitioners are not coming before the Court with clean hands and has pointed out that in each of the writ petitions, they have alleged that they have not filed any other writ petition before any of the High Court and that similar proceedings are not pending before any court including the Supreme Court which fact stand belied by the very pendency of the above four writ petitions filed successively in

respect of the same acquisition on similar grounds.

9. The petitioners in two writ petitions are different, therefore, the averments made in those writ petitions that they have not filed any other writ petition seems to be correct. Even in the other two writ petitions filed by Ghulam Mohammad Rather, the averments to the above effect are not false as the claim thereunder are based on different causes of action. In one of the writ petition, the cause of action is based upon the various notifications issued to acquire the land, whereas, in the last one, the cause of action is on the award dated 20.02.2020 which is a subsequent event. The grounds for challenge in both the petitions, are also different. Thus, it cannot be said that the petitioners have not approached the court with clean hands.

10. In view of the above, the preliminary objection as raised by the learned Advocate General stand overruled.

11. The second objection of the learned Advocate General is that on the plain reading of the reliefs as claimed in the writ petitions, the petitions should be dismissed.

12. The petitioners may not have happily worded the prayer clause in the writ petitions, but on the complete reading of the pleadings and the prayer made in each one of them, it is apparent that the petitioners have made an effort to challenge the notification issued under Section 4 (1) of the Act on the ground that it was not published in all the modes prescribed under law; that the notification issued under Section 6 of the Act stand vitiated as it has not been issued by the competent authority; and the petitioners have not been given opportunity of personal hearing.

Once the award came to be passed on 20.02.2020, a further relief for quashing of the award has been claimed though in effect the prayer ought to have been for declaring the said award to be null and void and for declaration that the proceedings for acquisition have lapsed.

13. Since the procedural technicalities are not very relevant in dispensing with substantial justice, we are of the opinion that the writ petitions cannot be thrown out on the ground that the prayers made therein are not very proper particularly when a substantial legal question worth consideration has been raised in the matter.

14. The first contention of the learned counsel for the petitioners that as the notification issued under Section 4 of the Land Acquisition Act was not published in the manner prescribed in law, the very initiation of the acquisition proceedings is bad in law.

15. Section 4 of the Act reads as under:-

4. [Publication of preliminary notification and powers of officers thereupon.- (1) Whenever land in any locality is needed or is likely to be needed for any public

purpose the Collector shall notify it-

(a) through a public notice to be affixed at convenient places in the said locality and shall also cause it to be known by beat of drum and through the local Panchayats and Patwaries ;

[(b)] in two daily newspapers having largest circulation in the said locality of which at least one shall be in the regional language.

(2) [After the Collector has notified any land in the manner prescribed in clause (a) of sub-section (1) as being needed or likely to be needed for a public purpose] it shall be lawful for any officer, either generally or specially authorised by the Government in this behalf, and for his servants and workmen,- to enter upon and survey and take levels of any land in such locality ; to dig or bore into the sub-soil ; to do all other acts necessary to ascertain whether the land is adopted for such purpose ; to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ; to make such levels, boundaries and line by placing marks and cutting trenches ; and where otherwise the survey cannot be completed, and the levels taken and the boundaries and lines marked, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that, no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least 2 [ten days] notice in writing of his intention to do so."

16. In view of the plain language of the aforesaid provisions, a notification issued Under Section 4 of the Land Acquisition Act has to be published by affixing at convenient places in the locality and by beat of drum and through the local Panchayats and Patwaries. It is also required to be published in two daily newspaper having largest circulation in the locality of which one at least should be in the regional language. Accordingly a notification under Section 4 has to be published (i) by affixing at convenient place in the locality; (ii) by beat of drums (iii) through local Panchayats and Patwaries; and (iv) in two daily newspapers of one shall be in regional language. The use of the word "shall" in the aforesaid provision establishes that the publication in all the aforesaid modes is mandatory for a valid notification under Section 4 of the Act.

17. It is well settled principle of law that if a statute provides for doing a particular thing in a particular manner, then it should be done in the manner so prescribed or not at all. In this connection, there are ample authorities but we need not site them as the above principle is very well recognized.

18. The petitioners in paragraph 4 of the writ petition have clearly stated that "..... the notification issued in terms of Section 4(1) of the Acquisition Act is required to be given due publicity in the manner prescribed therein. The publication includes the notification to the fixed at convenient place in the locality

and shall also cause to be known by beat of drum and through local Panchayats and Patwaries. It is also required to be published in two daily newspapers having larger circulation in the locality of which at least one shall be in the regional language. The publication through all the aforementioned statutory modes is mandatory and imperative. The Collector has not complied with the mandatory requirements in so far as there has been no publication through local Panchayats. The notification has also not been published in the regional language i.e. Kashmiri as required to be done in terms of the provisions of the law.....".

19. In response to the above averments made in paragraph 4 of the writ petition, the respondents 3 to 5 in their reply to the above paragraph simply states that due publication has been given to the notification and all statutory modes like affixing the same at convenient place of the locality, making it known by beat of drum and informing people through local Panchayats and Patwaries and publishing it in the newspapers have been resorted to, but they have failed to bring on record any material to establish that the said notification was so published in any manner and in the newspapers including a regional newspaper. No such newspaper has been brought on record and no other material has been placed along-with the counter affidavit to establish that it was published by beat of drum or through information by Panchayats and local Patwaries or that the notification was pasted on some conspicuous place in the locality.

20. The original record of the acquisition was also produced before us and we have perused the same. The record also does not reveal or contain any newspaper of regional language in which the said notification was published except the newspaper "Aftab" in urdu language dated 19th May 2007 containing the aforesaid notification dated 2nd May 2017 issued under Section 4 of the Act, but the said notification is in English language. Thus, there is no publication of the notification in the regional language. The record contains no other newspaper in which the said notification was published meaning thereby that the publication was not made in the two newspapers as contemplated by Section 4 of the Act and there was no publication in the regional language.

21. The record does not even contain any material which could establish that the notification was duly published by pasting it on the conspicuous place in the locality or was made known to the people by beat of drum or through Patwaries and Panchayats.

22. The declaration made under Section 6 of the Act which has been placed on record states that the land referred to in the table below is required for public purpose for creating infrastructure as per Master Plan in the phased manner for the Islamic University of Sciences and Technology in Village and Tehsil Awantipora, District Pulwama. It further states that on the basis of the indent placed by the Registrar, Islamic

University of Sciences and Technology Awantipora, a notification under Section 4 (1) was issued by the Collector on 2nd May 2017 for acquiring 46 Kanals, 12

Marlas and 6 ½ sirsa of land. The said notification was served upon the interested persons to enable them to file objections. It falls short of stating the manner in which the said notification was published which also clearly reveals that the petitioners are right in contending that it was not published in the prescribed manner.

23. In J&K Housing Board & Anr. vs. Kunwar Sanjay Krishan Kaul & Ors. (2011) 10 SCC 714 in context with the acquisition of land under the aforesaid Act of J&K, it was held that the expression "Collector shall notify" occurring in Section 4(1) of the Act makes it clear that the procedure provided in Section 4 (1)(a) (b) & (c) is mandatory and has to be strictly complied with and merely for the reason that the landlords have failed to submit their objections and have the knowledge of the notification makes no difference and the non-publication of the notification in the two newspapers including the regional language would vitiate the notification. In the light of the ratio laid down in the aforesaid decision, it is apparent that the publication of the notification issued under Section 4 of the Act in all the modes prescribed under the aforesaid provision is imperative and that it is non-publication in the manner so provided would vitiate the acquisition proceedings.

24. In view of the aforesaid facts and circumstances, it is evident that as the notification issued under Section 4 of the Act was not published in all the prescribed mode as provided under the Act and the acquisition proceedings pursuant thereof are invalid and cannot be sustained in law.

25. The second point for determination before us is whether the award made on 20.02.2020 under Section 11 of the Act, pursuant to the proceedings initiated under Section 4 and 6 of the Act is null and void and non-est as the Act stood repealed w.e.f. 31st October 2019 by virtue of Re-organization Act.

26. In this regard, Mr. G. A. Lone, by referring to the various provisions of the Re-organization Act and Section 24 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (hereinafter referred to as the 'New Act') submitted that the aforesaid provision in unequivocal terms provide that on the repeal of the Act, the provisions of New Act would apply relating to the determination of the compensation in respect of the acquisition proceedings initiated under the Act if no award under Section 11 of the Act has been made before its repeal.

27. In defence to the aforesaid argument, learned Advocate General has placed heavy reliance upon Section 6 of the General Clauses Act and the J&K Re-organization (Removal of Difficulties Order), 2019 which has been promulgated by the President of India in exercise of powers under Section 103 of the Re-Organization Act providing that the repealing of the Act shall not affect the legal proceedings initiated earlier which can be continued as if the Act (referring to Re-organization Act) had not been passed. He therefore submits that the land acquisition proceedings initiated under the Act have rightly been continued under

the said Act so as to make an award under Section 11 of it.

28. By virtue of Section 1(2) of the Land Acquisition Act 1894 which specifically provides that it is applicable to the whole of India except the State of J&K, the Land Acquisition Act 1894 which was applicable to the rest of the nation was not applicable to J&K rather The J&K Land Acquisition Act Samvat 1990 held the field in the State of J&K.

29. The L.A. Act 1894, was repealed by the New Act which was enforced w.e.f 01.01.2014 vide notification No. S.O 3729 (E) dated 19.12.2013. The New Act was made applicable to the whole of India except the State of J&K. The words 'except the State of J&K' of the New Act was omitted by the Re-Organization Act vide Entry 94 of Table-1 of the Schedule V of the Re-Organization Act w.e.f 31.10.2019, and, as such, the New Act was made applicable to the Union Territory of J&K w.e.f. the above repeal i.e., 31.10.2019. In other words, the L.A. Act, 1894 stood repealed w.e.f. 01.01.2014 and the Act w.e.f 31.10.2019 and the New Act was enforced in became applicable the Union Territory from the same day.

30. It may be noted that the provisions of the L.A. Act 1894 and the Act were *pari materia* especially Section 11-A of the Land Acquisition Act 1894 and Section 11-B of the Act which provided that in the event an award is not made within a period of two years from the date of publication of the declaration under Section 6 of the Act, the entire land acquisition proceedings shall lapse. In short, both the Acts mandated for passing of an award under Section 11 of the Acts within a period of two years of the publication of the declaration under Section 6 of the Acts so that the land owners or the persons interested may get the adequate compensation in time.

31. In the case at hand, the notification under Section 4 of the Act was issued on 02.05.2017, whereas, the declaration under Section 6 of the Act was published on 27.07.2017. Both the aforesaid notifications as such were published prior to the repeal of the Act and before the enforcement of the New Act. The award was not passed within the statutory period of 2 years and it came to be passed on 20.02.2020 after the Act was repealed yet in accordance with the provisions of Section 11 of the repealed Act.

32. It is in this background that the question has arisen whether the aforesaid award under Section 11 of the Act is illegal and null and void as the same has been passed beyond time and under the provisions of the repealed Act rather than in accordance with the provisions of the New Act which have come into play.

33. It is to be noted that under the New Act different factors have to be applied for determining the compensation of the acquired land in contrast to the factors that were applicable under the old Act. The factors for determining the compensation under the New Act are totally different from the factors provided for its determination under the old Act. The factors under the New Act are more beneficial to the land holders whose land has been acquired than the provisions

of the repealed Acts.

34. Under the New Act, compensation has to be determined as per the market value of the land in accordance with the provisions of Sections 26 to 30 of the Act and thereafter the Collector is obliged to make an award under Section 37 of the New Act.

35. The New Act vide Section 24 of the Act clearly provides that in case where land acquisition proceedings were initiated under the Land Acquisition Act which impliedly include the Act, and where no award under Section 11 of the said Act has been made then all provisions of the New Act relating to the determination of compensation shall apply.

36. Section 24 of the New Act with which we are concerned is quoted below:

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.-

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,-

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

37. A reading of the aforesaid provision would reveal that in cases where land acquisition proceedings have been initiated under the previous Act but where no award is made then the provisions relating to the determination of compensation under the New Act would apply. In the event, the award had also been declared under the previous Act then only the proceedings would continue under the old Act.

38. It is evident from the facts narrated that the land acquisition proceedings were initiated under the previous Act but no award was made thereunder till its repeal on 31.10.2019 or even till date. Thus, in the light of Section 24 (1) (a) of the New Act, the provisions of the New Act became applicable relating to the determination of compensation.

39. A reading of Section 6 of the General Clauses Act and Clause 13 of the Removal of Difficulties Order issued under the Re-organization Act would reveal that they are virtually one and the same except that the provisions of General Clauses Act, apply to the repeal of a central enactment whereas the Removal of Difficulties is in context with the repeal of the State Act of the J&K, otherwise the effect of both of them is identical.

40. In contrast to the above, Section 24 of the New Act provides that in case the land acquisition proceedings were initiated under the Land Acquisition Act 1894 and if no award is made thereunder, then all provisions of the New Act relating to the determination of compensation shall apply. It means that in the above contingency the award has to be made under the provisions of the New Act. It is only in those cases where an award under Section 11 of the Land Acquisition Act 1894 has also been made prior to the repeal that the acquisition proceedings would continue under the provisions of the previous Act as if it had not been repealed.

41. On the plain reading of the aforesaid provision, it is ample clear that if the land acquisition proceedings are initiated under the provisions of L.A. Act, 1894 and the award has not been pronounced under Section 11 of the said Act, then the provisions of the New Act relating to the determination of compensation shall apply and the award has to be in accordance with the New Act.

42. Thus, the argument that in view of Sub clause (13) of Clause 2 of Removal of Difficulties Orders issued under the J&K Reorganization Act which is nothing but repetition of Section 6 of the General Clauses Act, the compensation has to be determined in accordance with the provisions of the previous Act and the award has to be made under Section 11 of the said Act is completely misplaced and cannot be accepted. The previous/old Act stands repealed in its applicability to the J&K with effect from 31.10.2019 and, as such, its provision cannot be applied thereafter except to the limited extent where award has already been made under the previous /old Act in which condition, the proceedings have been permitted to be continued under the provisions of the same Act.

43. The express specific provision of Section 24 (1) (a) of the New Act is in no way gets diluted or affected vide Sub clause (13) of Clause 2 of the Removal of Difficulties Orders issued under the J&K Reorganization Act. The said Clause only saves those things that may have been done under the previous Act i.e., the notifications issued to require the land. The right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act which are sought to be saved by it does not cover within its ambit, the right to get determined the fair

compensation which matures only with the pronouncement of a valid award and in its absence by an award under Section 37 of the New Act.

44. In view of the aforesaid facts and circumstances, the determination of compensation for the land acquired under the provisions of the previous/old Act is misconceived and, in fact, amounts to nullifying the express provision of Section 24 (1) (a) read with Section 37 of the New Act.

45. In *Indore Development Authority v. Manohar Lal*, (2020) 8 SCC 129, in paragraph 366.1, the Supreme Court has clearly laid down that in view of the provisions of Section 24(1)(a) of the New Act, in case an award is not made on date of the repeal of the previous/old Act, or the date of the commencement of the New Act, compensation has to be determined under the provisions of the New Act.

46. In the present case as only the notifications to acquire the land were issued under the provisions Act which was repealed and there was no award under Section 11 of the Act, therefore, the compensation was liable to be determined in accordance with the provisions of the New Act after the New Act became applicable to the UT w.e.f 31.10.2019. However, as the compensation has been determined by an award dated 20.02.2020 passed under Section 11 of the previous Act without referring or applying any of the provisions of the New Act, the award dated 20.02.2020 is clearly in conflict with Section 24 (1) (a) of the New Act.

47. In the light of the aforesaid discussion, we are of the opinion that in the first instance, there is no proper and valid publication of the notification issued under Section 4 of the Land Acquisition Act and, secondly, the award dated 20th February 2020 is not within time and has been made under the repealed enactment in clear violation of the provisions of Section 24(1) (a) of the New Act. Accordingly, we declare the award to be illegal, without jurisdiction and null and void and that the entire acquisition proceedings are invalid in law.

48. The petitions are allowed with no order as to costs.

49. In terms of the order passed above, the contempt petition Nos. CCP(S) No. 202/2020 & CCP(S) No. 393/2020 are consigned to records.