

(2022) 03 J&K CK 0058

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 1017 Of 2017

Krishan Lal Sharma And Others

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 31-03-2022

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12(2), 18, 31, 32, 34, 35

Citation : (2022) 03 J&K CK 0058

Hon'ble Judges : Sanjeev Kumar, J;M. A. Chowdhary, J

Bench : Division Bench

Advocate : Rajiv Kumar Sharma, S.S.Nanda

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1. The short grievance projected by the petitioners in this petition is that their proprietary land measuring 18 marlas and 3 sarsai [?the subject land?] comprising in Khasra No.565 situated at village Gadi Garh was acquired along with other lands falling in different khasra numbers for widening of road from Satwari Airport to R.S.Pura. Acquisition proceedings initiated by respondents No.3 for acquiring the subject land culminated into final award bearing No.LA/928-31 dated 12.01.2012. As per the final award, a total compensation of Rs.8,43,333/- was assessed by respondent No.3 with respect to the subject land. The petitioners claim that they being owner of the subject land approached the respondents for release of the compensation amount but respondent No.3 instead of releasing the amount of compensation in favour of the petitioners vide its order dated 16th September, 2013, made Reference to the Court of District Judge, Jammu in terms of Section 31 of the J&K State Land Acquisition Act [?the Act?]. As mandated by law, the compensation was not deposited by respondent No.3 in the Court. The Reference was assigned to 1st Additional District Court, Jammu, who vide its order dated 17th October, 2016 decided the Reference and found the petitioners alone entitled to the compensation amount of

Rs.8,43,333/- for the subject land. It was in pursuance of the order of the Reference Court dated 17th October, 2016, the respondents in the month of March, 2017 transferred the said amount of compensation in the account of petitioner No.5. The amount transferred was only the principal amount and no interest accrued thereon was paid to the petitioners when in terms of Section 35 of the Act, they were entitled to statutory interest. It is in this background, the petitioners, after serving a legal notice upon the respondents and after having failed to persuade the respondents, have filed the instant petition seeking, inter alia, a direction to the respondents to pay interest @ 10% per annum on the amount of compensation actually paid to them in the month of March, 2017, which, otherwise, was payable in the year 2010.

2. On being put on notice, respondent No.3 has filed his objections. Respondent No.3 has not denied the acquisition of proprietary land of the petitioners measuring 18 marlas 3 sarsai. It is submitted that a fair and just compensation for the subject land was awarded in terms of the final award passed on 12th January, 2012, however, the payment could not be released in favour of the petitioners, as some other persons claiming to be the tenants of the subject land also put forth their claim over the compensation for the subject land. This dispute was raised by two persons, namely, Shiv Ram S/o Surjan Dass and Amar Singh S/o Gopal Singh. In view of the aforesaid dispute the matter was referred by respondent No.3 to the learned Principal District Judge, Jammu under Section 31 of the Act. It is the admitted case of respondent No.3 that neither compensation was paid to the petitioners nor was the same deposited in the Court, as is mandated under Section 11 of the Act. Respondent No.3 further submits that compensation amount was not deposited in the Court as there was no such direction from the Reference Court to do so. It has also come in the objections filed by respondent No.3 that it was only after the Reference was decided by the Court vide order dated 17.10.2016, the matter was taken up with the indenting department for release of requisite funds so that the payment could be released in favour of the petitioners. The payment was ultimately released in favour of the petitioners immediately after the requisite funds were received. Respondent No.3 has also denied the contention of the petitioner that possession of the land was taken over in the year 2010. Respondent No.3 claims that possession of the subject land was taken over only after passing of the final award in the year 2012.

3. Having heard learned counsel for the parties and perused the material on record, we are of the considered view that the petitioners cannot be denied the statutory interest, which is payable to them under Section 35 of the Act.

4. There is no dispute that the subject land belonging to the petitioners has been acquired by respondent No.3 and compensation amount of Rs.8,43,333/- has been assessed to be paid to the petitioners. It is true that there was a dispute raised by few persons claiming to be tenant qua the subject land, which necessitated making of Reference by respondent No.3 to the Principal District

Judge, Jammu in terms of Section 31 of the Act. Let us have a look at Section 31 of the Act, which reads thus:-

"31. Dispute as to appointment.-- When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable the Collector may refer such dispute to the decision of the Court?

5. Equally important are the provisions of Section 32 of the Act, which, for facility of Reference, is also reproduced hereunder:-

"32. Payment of compensation or deposit of same in Court. --

(1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested/entitled thereto, according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court, to which a Reference under section 18 would be submitted :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18 :

Provided also that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title or in such other way as may be equitable having regard to the interest of the parties concerned.

(4) Nothing in the last foregoing sub section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof."

6. From a bare reading of Sections 31 and 32 of the Act, it is abundantly clear that compensation is to be paid or deposited on or before taking possession of the land, failing which the Collector shall be liable to pay the amount awarded along with interest thereon in terms of Section 35 of the Act. We will advert to

Section 35 of the Act a little later. Suffice it to say that when there is dispute as to the apportionment of compensation or any part thereof or to the persons to whom the same or part thereof is payable, the Collector is under statutory obligation to make the Reference of such dispute to the decision of the court. This is so amply clear from a bare reading of Section 31 of the Act. Perusal of Section 32, reproduced herein above, would show that on making of award under Section 11 of the Act, Collector is under obligation to tender the payment of compensation awarded by him to the persons interested/entitled thereto, as per the award. It is only where the persons interested do not consent to receive it or if there is no person competent to alienate the land or, if there is any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount in the Reference Court. However, if the Collector after making Reference to the Court under Section 31 of the Act, fails to deposit the amount of compensation in the Reference Court and releases the same in favour of the interested persons only after decision of the Reference, he will then pay it along with interest in terms of Section 35 of the Act. For ready Reference, Section 35 is also reproduced hereunder:-

"35. Payment of interest. — When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 1[six per centum] per annum from the time of so taking possession until it shall have been so paid or deposited Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of ten Per centum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited on the date of such expiry.?"

7. From a reading of Section 35 of the Act, it becomes crystal clear that when the amount of compensation is neither paid to the interested persons nor deposited in the court on or before taking possession of the land, the Collector is liable to pay the amount awarded with interest thereon @ 6% per annum for the first year from the date of taking possession and thereafter @ 10% per annum till the amount is actually disbursed to the interested persons.

8. The Supreme Court in paragraph No.9 of the judgment rendered in the case of Delhi Development Authority v. Sukhbir Singh and others, (2016) 16 SCC 258 held thus:-

"9.The scheme of the Land Acquisition Act, insofar as the making of award and the payment of compensation to persons interested, is as follows. On the day fixed, the Collector after the inquiry that is contemplated under Section 11, has to make an award which must contain the necessary ingredients mentioned in Section 11. As soon as the award is made, under Section 12(2) of the Act, the Collector is to give immediate notice of the award to such of the persons interested as are not present personally. This provision, when read with Section 31 of the Act, makes it clear that the statutory scheme is that the Collector is to

tender payment of compensation awarded by him to the persons who are interested and entitled thereto, according to the award, on the date of making the award itself. It is therefore, clear that under the statutory scheme, the Collector must be armed with the amount of compensation payable to persons interested as soon as the award is made. Such persons have to be paid the sum mentioned in the award, it being well settled that the award is only an offer which may be accepted or rejected by the claimants. If accepted, whether under protest or otherwise, it is the duty of the Collector to make payment as soon as possible after making the award. It is only in a situation where the persons interested refuse consent to receive monies payable, or there be no person competent to alienate the land, or if there be any dispute as to title to receive compensation or its apportionment, is the Collector to deposit the amount of compensation in the Reference court. It is only after these steps have been taken that the Collector may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances. The Act further makes it clear, on a reading of Section 34, that where such compensation is neither paid or deposited on or before taking possession of the land, interest is payable at the rate of 9 per cent per annum for one year and 15 per cent per annum thereafter. This is because a person becomes divested of both possession and title to his property without compensation having been paid or deposited, as the case may be. This statutory scheme has been adverted to in some of the decisions of this Court."

9. In the instant case, admittedly, final award was made on 12th January, 2012 and in the absence of any contrary evidence on record, possession of the acquired land of the petitioner shall be deemed to have been taken over w.e.f. 12th January, 2012. Indisputably, neither the payment of compensation has been made to the interested persons i.e. the petitioners herein nor the same was deposited in the Reference Court in terms of Section 31 of the Act. The plea of respondent No.3 that the amount of compensation was not deposited in the Court as there was no order from the Court to do so is totally misconceived and baseless and, therefore, cannot be accepted. Section 32 of the Act casts a mandatory duty on the Collector to deposit the amount of compensation in the Court in case there is dispute with regard to apportionment of the compensation or as to the persons to whom it is payable and a Reference is made to the Court for determination of such dispute. This obligation to deposit the amount of compensation in the Reference Court is not to be carried out pursuant to the orders of the Reference Court. In case, Collector fails to perform statutory duty of depositing the amount of compensation in the Court, the awarded amount shall become payable to the interested persons entitled thereto with interest payable under Section 35 of the Act.

10. For the foregoing reasons and discussion made above, we find merit in this petition and the same is, accordingly, allowed. The respondents are directed to pay interest to the petitioners on the awarded amount of Rs.8,43,333/- @ 6% per annum w.e.f. 12.01.2012 to 11.01.2013 and thereafter i.e. w.e.f. 12.01.2013

till the date of payment of the awarded amount @ 10% per annum. Respondent No.3 shall take immediate steps to arrange the said amount and pay it to the petitioners within a period of three months. It is made clear that in case the interest, as ordered above, is not paid to the petitioners within the period aforesaid, the entire awarded amount shall become payable along with interest @ 12% per annum.