
(2021) 12 J&K CK 0074
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 2670 Of 2019

Krishan Singh And Another	Vs	APPELLANT
State And Others		RESPONDENT

Date of Decision : 30-12-2021

Acts Referred:

Constitution Of India, 1950 — Article 300A
State Land Acquisition Act, 1990 — Section 4, 4(1), 6, 7, 9, 17

Citation : (2021) 12 J&K CK 0074

Hon'ble Judges : Pankaj Mithal, CJ;Javed Iqbal Wani, J

Bench : Division Bench

Advocate : Rajdeep Singh Thakur, S. S. Nanda, Ravinder Gupta

Final Decision : Allowed

Judgement

1. Heard Sh. Rajdeep Singh Thakur, learned counsel for the petitioners; and Sh. Ravinder Gupta, learned AAG appearing for respondents 1 to 3 & Sh.

S S Nanda, learned Senior AAG for respondent No.4.

2. The petitioners claim that they are residents of Village Batroo, Tehsil Pogal Paristan (Ukhral) in District Ramban and are owners of land measuring

2 kanals and 3 marlas with nine walnut trees.

3. They allege that the aforesaid land with trees was utilized by the Government in the year 2012-13 for the construction of multi-purpose community

hall in Village Batroo but without any lawful authority. The land was not acquired and no consent of the petitioners was taken to use it. The petitioners were not even paid any compensation.

4. It is also alleged by the petitioners that initially, 1 kanal and 2 marlas of the land with two walnut trees was sought to be acquired but subsequently,

Assistant Commissioner (Revenue), Ramban submitted a report revealing that the entire 2 kanals and 3 marlas of land with all nine walnut trees would be needed for the purpose of construction of the multi-purpose community hall.

Accordingly, a notification under Section 4 of the State Land Acquisition Act, 1990 (for short "the Act") was issued on 09.01.2018 notifying the proposal to acquire 2 kanals and 3 marlas of the aforesaid land for the construction of community hall at Batroo in Village Dhanmasta. In respect of the said acquisition, a tentative cost of the land with walnut trees was notified to be Rs.15,00,000/- but the indenting department only deposited a sum of Rs.4,50,000/- with the result till date no compensation for the land has been paid to the petitioners.

5. The petitioners further allege that beside issuing the notification under Section 4 of the Act, till date no notification has been issued under Section 6 of the Act or Section 9 or Section 17 of the Act but even then possession of the land had been taken over and the hall has been constructed.

6. In the above facts and circumstances, the petitioners have preferred this writ petition seeking a direction for the release of the compensation in respect of the above land.

7. Respondent No.4, Collector Land Acquisition, Ramban has filed objections to the writ petition stating that an indent was placed by the Assistant Commissioner (Development), Ramban on 28.12.2017 for initiating proceedings for the acquisition of the above 2 kanals and 3 marlas of land for the construction of the community hall. Accordingly, notification under Section 4(1) of the Act was issued on 09.01.2018. Thereafter, the case was submitted to the District Collector/Deputy Commissioner, Ramban for issuing necessary declaration under Sections 6, 7 & 17 of the Act. The matter for final acquisition of the land stands submitted to the Government and the notification under Section 6 of the Act would be issued once a decision in this regard is taken by the Government.

8. Respondent no.4 further states that the indenting department had deposited a sum of Rs.4,50,000/- only against the demand of Rs.15,00,000/- raised by the Collector Land Acquisition for the purposes of the above acquisition.

9. Reply to the writ petition has been filed by respondents 1 to 3 stating that the matter regarding the acquisition of the above land stands submitted to the Government for issuance of the notifications under Sections 6, 7 and 17 of

the Act but a declaration under Section 6 of the Act has not yet been issued. The land is needed for public purpose of constructing a multi-purpose community hall and that the indenting department has already deposited a sum of Rs.4,50,000/- as against the tentative cost of acquisition calculated by the Assistant Commissioner (Revenue), Ramban to the tune of Rs.15,00,000/-.

10. On the above pleadings, it is crystal clear that the land of the petitioners has been utilized for the construction of a multi-purpose community hall but without there being a formal acquisition inasmuch as till date no declaration under Section 6 of the Act has been issued and published. The hall stands constructed without acquisition of land and without payment of any compensation. The stand of the respondents is that the matter regarding completion of acquisition proceedings stands submitted to the Government and they would be paying the compensation once the proceedings are complete and the final award is pronounced. They accept that as against the estimated cost of acquisition of Rs.15,00,000/-, the indenting department has deposited a sum of Rs.4,50,000/- only but even that has not been distributed to the lawful owners of the land.

11. Right to Property/Land used to be a fundamental right but now it has been recognized as a constitutional right vide Article 300A of the Constitution of India. It provides that no one can be deprived of his property save by authority of law. The aforesaid constitutional right has been acknowledged to be akin to a fundamental right and more importantly a basic human right. Thus, no one can be deprived of his property without following the procedure prescribed in law and payment of adequate compensation.

12. The proceedings for acquisition of any land commences with the issuance of notification under Section 4 of the Act proposing to acquire the land for public purpose. Once the Government is satisfied on consideration of the report of the Collector that the land is needed for public purpose, it directs for issuance of a declaration under Section 6 of the Act. Such a declaration is the conclusive proof of the acquisition of the land.

13. In the case at hand, till date no declaration under Section 6 of the Act has been issued and published, meaning thereby that the land has not been finally acquired and there is simply a proposal to acquire the said land. In such circumstances, when the land has not been finally acquired, the

respondents could not have taken possession of the said land and utilized it for construction purposes. The action of the respondents in constructing a community hall on the land in question without waiting for the final acquisition of land and in the absence of the invocation of the urgency clause, is nothing but an abuse of the process of law depriving the petitioners from their valuable right to possess property.

14. In the above circumstances, the respondents are clearly guilty of violation of the human rights of the petitioners and they are liable to compensate them for such infringement. At the same time, since the community hall has already been constructed and the land cannot be restored to the petitioners, it is desirable that the respondents complete the acquisition proceedings at the earliest and make a final award so that the petitioners may be compensated in a fair manner as per the market-value.

15. In view of the aforesaid facts and circumstances, we issue a writ in the nature of mandamus commanding the respondents to forthwith distribute the estimated cost of acquisition of the aforesaid land which has been worked out to be Rs.15,00,000/- within a period of one month from today and to conclude the acquisition proceedings by issuing a declaration under Section 6 of the Act and pronouncing the final award within a period of three months from today and to pay the compensation as per the award to the petitioners forthwith subject to any reference or appeal that may be preferred against the award.

16. A further writ in the nature of mandamus is issued to the respondents to pay a token compensation of Rs.10,00,000/- to the petitioners for illegally depriving them of their land without any authority of law and thus violating their human rights. This amount shall be paid to the petitioners within a period of two weeks from the date a certificate copy of this order is placed before the Secretary, Rural Development Department, Government of J&K.

17. The writ petition is allowed as aforesaid with costs.