

(1998) 11 J&K CK 0057

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 486/95

Lal Chand

APPELLANT

Vs

Collector, Land Acquisition

RESPONDENT

Date of Decision : 10-11-1998

Acts Referred:

Constitution of India, 1950 — Article 31

Jammu and Kashmir Agrarian Reforms Act, 1976 — Section 28, 8

Citation : (2000) KashLJ 238 : (1999) 2 SriLJ 574 : (1999) SriLJ 574

Hon'ble Judges : O.P.Sharma, J

Bench : Single Bench

Advocate : R.S.Thakur, B.S.Salathia, A.Kapoor, Advocates appearing for the Parties

Judgement

1. The"" only question of law involved in this case is whether a person who has been conferred proprietary right u/s 8 of the Agrarian Reforms Act, 1976 is entitled to full compensation under the Land Acquisition Act like any other owner. The issue has arisen because the land of the petitioners has been acquired under the Land Acquisition Act for constructing railway line from Jammu to Udhampur. All of them have admittedly been granted ownership right u/s 8 of the Land Acquisition Act. However, the Collector, Land Acquisition has held them entitled to only 1/3rd of the amount of compensation assessed for their land. They have moved this petition for quashing the award to the extent it restricts the payment of compensation to 1/3rd of the total amount assessed.
2. The stand of the respondent State is that the petitioners should have approached the District Judge u/s 18 of the Land Acquisition Act who alone could determine their rights. Alternatively it is pleaded that the petitioners

being allottees of the land are limited owners and therefore, full compensation is not payable to them.

3. It appears the petitioners had approached the Divisional Commissioner, Jammu who vide his letter dated 6.8.91 addressed to the Financial

Commissioner wanted the matter to be taken up with the Commissioner Agrarian Reforms. The relevant portion of the letter is extracted below:

I have minutely examined the whole record produced by the applicants and also heard the views of their counsel. The request of the counsel for

amendment of the award under section 11A of Land Acquisition Act cannot be accepted as under the aforesaid section only the arthmetical/

clerical errothors are corrected after issuance of the award, whereas counsel for the applicants has been agitating for amendment of the draft

awards prepared by the collector, Northern Railways. The plea of the counsel is based on the recorded position of the applicants as given below

in respect of each persons:

i/ Shri Gulab Chand S/o Ramu R/o Jakhani stands recorded as allottee in Rabi 2010BK for area measuring 36 Kls comprised in Kh. No. 196

(Banjar Qadeem). Subsequently 24 Kanals 3 marlas was mutuited ujider section 8 of the Agrarian Reforms Act vide mutation No.314 of village

Jakhani. In the report of Patwari on the mutation sheet, he is recorded as allottee under Govt. Order LB7.

ii/ Dina Nath S/o Ramu R/o Jakheni has been conferred ownership rights u/s 8 of the Ag. Ref. Act in respect of the land measuring 12 Kanals

comprised in Kh. No.196min of village Jakheni vide mutation No.332. He is not shown as allottee of the land in Rabi 2010 or onward,

iii/ Muni Ram 'S/o Nathu R/o Jakheni has been shown as allottee of land in Rabi 2010BK for land measuring 21 Kanals 4 marlas (Banjar Qadim)

comprised in Kh. No. 195 of village Jakheni. Subsequently by virtue of mutation No.221, the aforesaid land was mutuited in his favour under the

provisions of section 8 of the Agrarian Ref. Act thereby conferring ownership rights,

iv/ Labu Ram S/o Sadhu Ram R/o Jakheni has been recorded as allottee in 2010BK for the land measuring 9 Kanals 11 marlas comprised in Kh.

No. 191 (3 Kanals 16 marlas) 192 (5 Kanals 15 marlas) of village Jakheni and mutation No.215 conferring ownership rights u/s 8 of the Agrarian

Reforms Act stands attested in his favour.

v/ Lal Chand is the son of Nek Rani R/o Sayal Sala. Nek Ram has been concerned ownership rights by virtue of mutation No.202 of village Sayal

Salam for land measuring 12 Kanals comprised in Kh. No. 1f5""min. He is entered as allottee in Kharief 1971. .

vi/ Kaka Ram S/o Sadhu Ram R/o Sayal Salam has been conferred ownership rights u/s 8 of the Agrarian Reforms Act upon the old State land

measuring 16 Kanals comprised in Kh. No. 139 of village Sujalta by virtue of mutation No.499 The aforesaid position of the applicants in the

record clearly indicates that these applicants have now acquired ownership rights under the provisions of Ag. Ref. Act, and the applicants claim the

benefits as absolute owners of the land having been acquired by them under the provisions of section 8 (2) read with section 3 (n) (ii) of the Ag.

Reforms Act.

In view of these facts, the case of the applicants is required to be examined by you as Commissioner, Agrarian Reforms to determine their claims.

The applications alongwith copies of Rev. documents and copy of referred circular are enclosed for perusal and appropriate orders in the matter.

4. So it is not disputed that all the petitioners are owners of the land in whose favour mutations u/s 8 of the Agrarian Reforms Act have been

attested. Consequent upon this reference, the Financial Commissioner appears to have discussed the matter with the Revenue Secretary and Law

Secretary and it was decided that Revenue Department will issue the circular. However, no follow up action was taken in the matter and instead

the Revenue Department vide letter dated 10.4.95 addressed to the Financial Commissioner took shelter under the Act that the award had

become final and, therefore, the matter cannot be retained, this letter reads as under:

I am directed to refer to your letter No. FC/LS/LA657/91 dated 12.10.92 regarding the subject cited above and to say that the award has

become final and the request for grant of compensation exceeding 1/3rd, subject to eligibility under the Govt. Orders relating to conferment of

tenancy rights/proprietary rights etc, cannot be considered by the Government. The applicants are at liberty to seek reference to the court under

the provisions of the Land Acquisition Act, if they can so desire.

5. It is strange plea that a person should be deprived of his right without the authority of law and the State should defend its illegal action on the spacious plea of limitation. The question before the Department was not whether the award had become final or not, but whether the property of a person who has been granted ownership right u/s 8 of the Agrarian Reforms Act can be acquired without the payment of full compensation. This question was avoided by the Department perhaps for the reason that its resolution would be inconvenient. Under the Agrarian Reforms Act, rights and liabilities of a prospective owner are regulated u/s 28 of the Act. However, the limitation u/s 28 OXa) operates only till the mutation u/s 8 is attested and not thereafter. Similarly, the limitation placed by clause (b) of section 1 of this section holds good if the transfer is not by operation of law and not otherwise. But section 28 does not in any way except in the manner indicated therein restricts or limits the right of ownership for entitlement of compensation under the Land Acquisition act because it is not transfer by act of the owner, but by way of compulsory acquisition. Since the land has been compulsorily acquired, the owners who have been granted proprietary/rights u/s 8 or the prospective owners will be entitled to compensation in the same manner as any other owner of the property to whom Act does not apply. No other view is possible without doing violence to the concept of ownership of the property. In that view, the proposition put forward by Commissioner can be answered only by holding the proprietors of land u/s 8 of Agrarian Reforms Act as good owners as any other owner of the property and therefore, entitled to full compensation. In view of the above, the petition is allowed and the respondents are directed to pay the entire compensation assessed for the land by the Collector, Land Acquisition (Railway) to the petitioners within a period of three months alongwith interest.