

(1991) 07 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Civil Revision Petition No. 162/1987

Laxmi Dass & Ors.

APPELLANT

Vs

Collector, Land Acquisition, Doda & ors.

RESPONDENT

Date of Decision : 18-07-1991

Acts Referred:

Land Acquisition Act, 1990 — Section 18, 30

Citation : (1992) JKLR 526 : (1991) KashLJ 478

Hon'ble Judges : B.A.Khan, J

Bench : Single Bench

Advocate : J.S.Kotwal, Advocates appearing for the Parties

Judgement

This Civil Revision petition is directed against the order of learned District Judge, Bhadarwah dated August 17, 1987, rejecting the reference made

by Collectorrespondent No. 1 under section 18 of the J&K Land Acquisition Act (hereinafter called the Act).

The reference stands rejected on the ground that no application, as envisaged under section 18 of the Act requiring the Collector to make

reference, was available on the record,

The matter arises out of acquisition proceedings initiated at the instance of Executive Engineer, Rural Electrification Construction Division, Batote

culminating in an award dated October 29, 1980 awarding compensation of Rs. 80,242.40. subsequent thereto, the Collector made reference to

the District Judge, Bhadarwah vide his No. 176/Acg/77/ 453/L AC dated December 1, 1980. In the order of reference, the Collator indicated the

subject as under :

Application of : 1. Zamindars of village Tandwal

2. Lal Din and others.

for making references under section 18 of the Land Acquisition Act.

Record reveals that learned District Judge, entered upon the reference inviting objections from the parties which were filed. No. preliminary

objection was taken by either party questioning the validity of the reference on any count, least of all on the ground that petitioners herein had failed

to make the application under section 18 of the Act. Thereafter, three issues came to be framed by the reference court and on the closure of

evidence, matter was posted for final arguments. It was during the course of arguments so it seems that District Judge came across what he treated

as preliminary objection, which eventually formed the basis for rejection of reference.

The order impugned is assailed amongst others on the ground that the District Judge had no competence to go beyond the reference to determine

its validity. It is submitted that even if such a jurisdiction was conceded he had acted with material irregularity and illegality in exercise of his

jurisdiction resulting in failure of justice.

Dealing with first contention, it is no more res integra that District Judge is possessed of jurisdiction to determine the validity of a reference made

under section 18 of the Act. The matter stands concluded even by Division Bench judgment of this court, reported in AIR 1962 J&K : 59. It is

true that a controversy had been moving on the subject and conflicting views were taken by a number of High courts on either side. Eventually, the

matter has been set at rest by a decision of the supreme court and the better view prevailing as at present is that District Judge has the competence

to go into the validity of a reference in relation to conditions precedent, as laid down in Section 18 of the Act, while making the reference.

It is a beaten law that the court hearing a reference under section 18 or 30 of the Act is a court of special jurisdiction. It acquires jurisdiction only

on a reference being made by the Collector, it is also well settled that such jurisdiction extends only over the matters referred to by the Collector.

However, the power of the Collector to make a reference is circumscribed by the conditions laid down in section 18 of the Act. In a case where

the Collector fails to observe these conditions, any reference made by him would not be a proper reference. In other words even though

jurisdiction of the court springs' from a reference, it has to be a proper and valid reference fulfilling all requirements contemplated in section 18 of

the Act. In a case where the court finds the reference falling short of requirement and ultravires of section 18 nothing bars it from determining its

validity and rejecting it in limini. In doing so it does not sit In appeal over the reference made. All it does is to satisfy itself whether in law it is

required to entertain the reference. This should dispose of the main contention raised by Mr. Kotwal regarding the competence of the District

Judge to go beyond the reference.

Coming to other aspect, it does come out from record that District Judge has erred in rejecting the reference and has acted with material

irregularity. In my opinion, he should not have dismissed the reference on the ground of nonavailability of application from record. Moreso,

because the record pointed more towards existence of such application than anything else. "" The all important application formed the subject

matter of references order passed by Co lector dated Dec. 1,1980. It was no body's case that Collector had made the reference suomoto without

any application from petitioners. If the application was not available from record, it would not be assumed that it had not been filed at all. In

nonavailability did not prove its nonexistence.

It can't be disputed that existence of otherwise of a document involves a question of fact which requires to be proved, or disapproved according to

rules of evidence If District Judge had any doubts about existence or otherwise of the application, he should have followed rules of the game to

show that petitioners had failed to file the requisite application entailing dismissal of the reference. This he should have done by adhering to

procedure and by confronting the parties with an issue requiring them to furnish necessary proof thereon. In no case could he draw his own

conclusion at their back. As already pointed out a document may not be available from record and yet it may be existing. Situations are

conceivable where a document could be misplaced; removed, withheld and so on and yet it could have been executed and filed in fulfilment of

requisite requirements. Therefore, it could not have been assumed that as the application was not fort coming from on record, it had not been filed

at all. Moreover, any such nonavailability does not form any condition under

section 18 of the Act. Rejection of the reference on this ground was, therefore, totally misconceived and erroneous.

Viewed thus, I find myself at odds with the course adopted and I have no doubt that District Judge has acted with material irregularity. The result is that order impugned dated August 17,1987 cannot sustain and is hereby set aside. The file shall go to the District Judge Bhadarwah who is directed to proceed in the matter in accordance with law exploring all possibilities to dispose of the reference on merits.