
(2023) 08 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 130 Of 2010

Mohammad Iqbal Lone And Another

APPELLANT

Vs

UT Of J&K And Others

RESPONDENT

Date of Decision : 08-08-2023

Acts Referred:

Citation : (2023) 08 J&K CK 0016

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : B.A.Tak, Alaudin Ganie, Shaila Shamim

Final Decision : Disposed Of

Judgement

Sanjay Dhar, J

1. The petitioners seek a direction upon the respondents to pay compensation to them for the land measuring 2 Kanal 8 Marlas under survey No.320, situated in Estate Khandiyal Tehsil Gurez District Bandipora. A further direction has been sought upon respondent No.3 to deposit the amount of compensation with respondents No.5 and 6 for its disbursement to the petitioners.

2. It is the case of the petitioners that they are owners of land measuring 2 Kanals and 9 Marlas under Khasra No.320 situated in Estate Khandiyal Tehsil Gurez District Bandipora. It has been further submitted that the Power Development Department placed an indent in the year 1988 for acquisition of land measuring 48 Kanal for construction of Mini Hydel Project at Khandiyal, whereafter it was enhanced to acquisition of land measuring 72 Kanal and 2 Marlas. It has been submitted that Dy.Commissioner Baramulla by virtue of letter dated 21.12.2019 asked the Executive Engineer concerned to approach the Sub Divisional Magistrate Sopore for acquisition of the land, who in turn asked the Executive Engineer to authenticate revenue extracts and deposit an amount of Rs.7.26 lacs for acquisition of land at Rs.10,000/- per kanal. It has been submitted that the land in question has been handed over to the Power

Development Department for construction of the project and the petitioners' land has also been occupied by the Power Development Corporation. This according to the petitioners is recorded in the revenue extracts.

3. It has been submitted by the petitioners that right from the year 1988, the respondents have not finalized the land acquisition and have not paid compensation to the petitioners at the market value, though they have taken over the possession of the land from the petitioners in the year 1988 itself. It is in these circumstances that the petitioners have sought direction upon the respondents to pay compensation to them for the land which has been taken over by the respondents.

4. Respondents No.2 to 4, the Power Development Department has filed reply to the writ petition in which it has been admitted that the indent was placed by the said department for acquiring land measuring 48 Kanals and 2 Marlas in the year 1988, which was later on increased to 72 Kanals and 12 Marlas for construction of Micro Hydel Project at Gurez. It has been further submitted that the said respondents have deposited Rs.7.26 lacs with Sub Divisional Magistrate Sopore for disbursement of same amongst the land owners, as per the rates approved by the Government.

5. Respondents No.5, 6 and 7, the Revenue Authorities have filed reply to the writ petition in which it has been submitted that the land measuring 2 kanals and 19 Marlas under Survey No.320 is still in possession of the petitioners who have grown maize crop on the said land. It has been submitted that this position is reflected from the Girdawari for the year Kharief 2021, a copy whereof has been placed on record. Regarding the acquisition proceedings it has been submitted that though in the Shajre Kashtaward the Power Development Department has been shown in possession of the land, but process of acquisition has never been taken to its logical conclusion, because rates for compensation could not be finalized.

6. Heard and Considered.

7. From the pleadings of the parties, it becomes clear that while the respondents had intended to acquire the land, including the land measuring 2 Kanals and 19 Marlas under survey No.320 of Estate Khandiyal, but the process of acquisition of the land has not been finalized so far. The petitioners claim that their land measuring 2 Kanals and 9 Marlas under Khasra No.320 has been taken over by the respondent, Power Development Department and in this regard they have relied upon entries in Khasrie Girdawari. As per the revenue extracts placed on record, land measuring 2 Kanals and 19 Marlas in khasra No.320 is still in possession of the predecessor in interest of the petitioners, while as land measuring 2 Kanals and 8 Marlas under Khasra No.320 min is shown to be in possession of Power Development Department.

8. The latest revenue extract produced by the official respondents reveals that the land measuring 2 Kanals and 19 Marlas in Khasra No.320 continues to be in

occupation of the petitioners. Learned counsel for the respondents has placed on record a copy of letter dated 18.07.2023 addressed by the Executive Engineer, PDC Sopore to the Tehsildar Gurez, according to which the land in question is still in possession of the petitioners and no mutation has been attested in favour of the Power Development Corporation.

9. The petitioners have also placed on record copy of communication dated 10.09.2022 addressed by Tehsildar Gurez to Sub Divisional Magistrate Gurez alongwith CM No.4230/2023, according to which land measuring 15 Marlas under Survey No.320 is under the occupation of the petitioners on which residential house, cowshed and aab wari is located, while as the land measuring 1 Kanal and 16 Marlas under survey No.320 is lying barren with dumped material reportedly belonging to PDC. It also appears that pits have been dug in land measuring 8 Marlas under Khasra No.320, while as land measuring 2 Kanals and 4 Marlas under Survey No.320 is without any crop and belongs to the petitioners as per record.

10. It is clear from the pleadings and the documents on record that there is a serious dispute between the parties as regards the present position of the land. According to the petitioners the same has been occupied by the respondent/ Power Development Department, while as according to the respondents they have not occupied the same. It is not in dispute that the acquisition proceedings have not been taken to its logical conclusion despite lapse of more than 44 years.

11. In view of the aforesaid position, the instant petition is disposed of with a direction to the respondents not to interfere in the use, enjoyment and possession of the petitioners over the land in question and in case the respondents require the said land for any public purpose, they shall occupy the same only after adopting due course of law.