

(2012) 09 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1556 OF 2010

Mohan Singh

APPELLANT

Vs

State of Jammu & Kashmir and ors

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Constitution of India, 1950 — Article 19(1)(f)

Land Acquisition Act, 1894 — Section 17, 4, 5(a), 6, 9

Citation : (2012) 09 J&K CK 0008

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Advocate : F.A. Natnoo, for the Appellant; H.A. Siddiqui, AAG, for the Respondent

Judgement

Mr. Justice Muzaffar Hussain Attar, Judge

1. In this writ petition, petitioner has called in question Notification issued u/s 4 of the Land Acquisition Act and declarations issued u/s 6 and

further notifications issued under Sections 9, 9(a) and 17 of the Land Acquisition Act. The claim of the petitioner is that he is owner in possession

of the land measuring one (01) Kanal 18 (eighteen) marlas of land covered by Khasra No. 56 min situated at Village Kundrorian Tehsil Katra and

District Reasi. The case set up by the petitioner in the writ petition is that earlier Notification u/s 4 of the Land Acquisition Act was issued in

respect of land measuring 547 kanals 6 = marlas and in terms of the Corrigendum to Notification 191- RD of 1977, one (01) kanal 18 (eighteen)

marlas of land covered by Khasra No. 56 min was denotified. It is further claimed that in terms of Notification issued u/s 4 of the Land Acquisition

Act dated November 14, 2009, the land of the petitioner was again notified for

acquisition. Learned Counsel for the petitioner submitted that petitioner was not given an opportunity to file objections and there has been violation of the fundamental Rights of petitioner and statutory Rights contained in the Land Acquisition Act. The Notification issued u/s 4 of the Act and other notifications issued by the Collector were subject matter of many other writ petitions with lead writ petition (OWP) No. 1239/2010 which were decided on September 07, 2011. The Court in its decision did not found fault with the Notification issued u/s 4 of the Land Acquisition Act, but declaration u/s 6 and Notifications under Sections 9, 9(a) and 17 were held to be invalid. Respondent No.2 in that case was directed to provide opportunity of hearing to the petitioners therein as is mandate of Section 5(a) of the Land Acquisition Act and thereafter was directed to frame his report and make recommendations in respect of the objections and submit the same to the Government. Government was given opportunity to take decision in the matter. It was also provided that the decision of the Government will be binding on the petitioners therein. The matter came before the Division Bench of this Court in the batch of LPA(s) wherein (2012 (2) JKJ 43(HC) 43) the judgment of Writ Court was upheld, however, with some modifications. The case of the petitioner is covered by the judgment of the learned Single Judge and aforementioned judgment of the Hon'ble Division Bench of this Court.

2. There is one distinguishing factor in respect of the case of the petitioner, in view of the material placed on record and admission of respondent No.5 that the possession of land of the petitioner in respect of one (01) kanal 18 (eighteen) marlas has not been taken. Otherwise, after quashment of the Notifications and declarations, the possession of the land can be taken only in accordance with the State Land Acquisition Act.

Learned Counsel for the respondents submitted that this case is covered by the judgment of the Writ Court passed in batch of writ petitions with lead writ petition (OWP) No. 1239/2010 and the Division Bench of this Court. Learned Counsel further submitted that this case be disposed of accordingly.

It is the duty of the Collector to afford opportunity to file objections and to hear the petitioner after the Notification u/s 4 is issued. Section 5(a) though the statutory provisions has in essence constitutional flavor in it. Section

5(a) constitutes the soul of the State Land Acquisition Act and denying such right as mandated in the said Section would result in not only breach of the said provision of the statute but constitutional right to hold the immovable property which is guaranteed under Article 19(1)(f) of the Constitution of India. For the above stated reasons, this writ petition is disposed of along with connected CMA(s) in the following manner By issuance of writ of certiorari the declaration u/s 6 and Notifications under Sections 9, 9(a) and 17 of the State Land Acquisition Act to the extent of petitioner are quashed. Respondents are directed to proceed in the matter in accordance with law contained in the State Land Acquisition Act. Petitioner is directed to file objections within two weeks from today before the Collector to the Notification issued u/s 4 of the State Land Acquisition Act and the Collector concerned is directed to proceed in the matter in accordance with the law contained in Section 5(a) and related applicable provision(s).

It is further provided that the possession of the land of the petitioner shall be taken strictly in accordance with the provisions of State Land Acquisition Act.