

(2004) 06 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 509 of 2003

Mohd. Maqbool Dar and Another

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 04-06-2004

Acts Referred:

Land Acquisition Act, 1990 — Section 11, 17(1), 4, 6, 7

Citation : AIR 2005 J&K 45 : (2004) 3 JKJ 443

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : Virinder Bhat, for the Appellant; A.H. Qazi, AAG, for the Respondent

Final Decision : Allowed

Judgement

Permod Kohli, J.—Petitioners' land and structures have been acquired by adopting procedure prescribed under the provisions of Land

Acquisition Act. Notice u/s 4 and declaration Under Sections 6 and 7 of the Land Acquisition Act were issued. Award in terms of Section 11 of

the Land Acquisition Act has also been passed. Petitioners total land measuring 11 marlas and 30 Sq. feet is subject matter of acquisition.

Respondents also initiated proceedings u/s 17 of the Land Acquisition Act on account of immediate need of land for widening of road from Denis

Gate to Gujjar Nagar and New Tawi Bridge Gujjar Nagar to Deputy Commissioner's Office Jammu. Compensation of Rs 6,50,000/- and Rs

3,83,304/- for structures and land respectively has been assessed. Entry in this regard is existing in the draft award at serial No; 53/3. At the time

of acquisition, petitioners' father was alive and all the documents indicate name of the father of petitioners' namely Sh. Abdul Rehman S/o Sh.

Khjhar Mohd. Petitioners are his sons. Petitioners have stated that they were

running a unit of repair, colouring and washing of Old Carpets under the name and style of Dar Carpet House. In view of the acquisition proceedings initiated by the respondents, their unit has been closed. Grievance of the petitioners is that land has been taken over. They have already submitted their affidavits regarding handing over of possession of the land. Copies of affidavits dated 26.7.2002 are on the record. Despite acquisition, neither they have been paid compensation as assessed by the Collector Land Acquisition Jammu nor provided any alternate site for running their business as indicated in the award itself. Respondents have admitted acquisition proceedings. It is further stated that subsequently in the year 1995, the Jammu Core Area Development Project Division was disbanded. Executive Engineer PWD (R&B) Division II Jammu intimated respondent-2 to drop the acquisition proceedings. However, subsequently due to construction of 2nd Tawi Bridge at Gujjar Nagar, proposal was again put through. It is specifically admitted that proceedings under Land Acquisition Act stand completed. It is stated that indenting department vide their letter dated 19.7.2003 intimated that no structure/land of Shri Mohd Maqbool Dar falls under the preview of proposed widening of road from Denis Gate to D.C. Office Jammu. It is further stated that due to shift towards hill side, there is no need to acquire the land/structures of the petitioners. Respondents have admitted invocation of Section 17 of the Land Acquisition Act. It is stated that petitioners have not been asked to remove structure or vacate the land till date. Respondents have also admitted the issuance of tentative award and inclusion of the property of the petitioners in the said award. Learned counsel appearing for the respondents has argued that property of the petitioners is not required because of the change in the proposal. There is no question of compensation.

2. I have heard learned counsel for the parties. Acquisition proceedings have been initiated and completed. Respondents have not de-notified the property of the petitioners till date. Award also indicate the property of the petitioners amongst the acquired property. Respondents have invoked the provisions of section 17 of the Land Acquisition Act and sought affidavits from the petitioners to hand over the possession of their property. However, they have refused to pay compensation for the acquired property.

3. Section 46 of the J&K Land Acquisition Act 1990 permits the Govt. to withdraw from the acquisition of any land of which possession has not been taken. However, sub section (2) makes the Govt. liable for payment of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings there under and to pay compensation to the person interested as may be reasonably incurred by him in prosecution of the proceedings. No doubt the Govt. can withdraw from the acquisition as provided u/s 46 of the Land Acquisition Act 1990. However, in the present case the acquisition proceedings have been completed. Land and structures belonging to the petitioners have not been de-notified till date. Respondents have issued notification dated 10.6.2002 for taking possession. Relevant portion of the said notification is reproduced below:

Whereas the identifying department have expressed urgency for taking over possession of the land.

4. Now, therefore, it is declared u/s 6 of the Land Acquisition Act that the land abovementioned is need for public purpose. Further, the Collector,

1 and Acquisition PWD, Jammu is directed u/s 7 of the said Act to take order for Acquisition of the land of which specification are given above,

further in pursuance of section 17 of the said Act the Collector Land Acq. PWD Jammu is allowed to take possession of aforesaid land subject to

the completion of all formalities including those under Sec 9(2) and 17-A of the State; Land Acquisition Act and Rule 63 of the Land Acquisition

Rules and to finalise the final award immediately.

5. Pursuant to the aforesaid notification, affidavits have been obtained from the petitioners duly attested before Judicial Magistrate First Class. Both

the affidavits dated 26.7.2002 show that the possession has been handed over by the petitioners to the Collector, Land Acquisition and the

engineering department. Not only above said notification, even draft award has also been passed. There is stipulation contained in para 17 of the

said award which reads as under:

17. Consequent upon completing all required formalities the secretary to Govt. Revenue Deptt was requested through the financial commissioner

(Rev) J&K Jammu vide this office No: LA/806-07 dt 10.11.2001 for issue of declaration u/s 6 :7 and authorized the Under Sectiond to take

possession u/s 17 of the Land Acquisition Act. Since the indenting deptt. has been pressing hard for handing over the possession of the proposed

land, and the fund to the tune of Rs 3.22 lacs has been placed in advance for meeting the compensation of the interested persons and as such there

is clearly an urgency involved; in the instant acquisition case. Accordingly, Revenue Deptt. issued declaration u/s 6:7 and 17 vide No 20 RD of

2002 and endorsed to this office vide No: 1-Rev (LAJ)2002 dated 10.6.2002.

6. Apex Court in case of Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, held as under:

After possession has been taken pursuant to a notification under S 17(1) the land is vested in the Government and the notification cannot be

cancelled u/s 21 of the General Clause Act nor can the notification be withdrawn in exercise of the powers of the Land Acquisition Act u/s 48.

When possession of the land is taken u/s 17(1) the land vests in the Government. There is no provision by which land statutorily vested in the

Government reverts to the original owner by mere cancellation of the notification.

7. Mr. Qazi's argument that the possession is still with the petitioners and therefore, respondents are not liable to pay compensation, cannot be

accepted on account of vesting of the property in the State, completion of acquisition proceedings and issuance of notification u/s 17 of the Land

Acquisition Act. Respondents are entitled to take over possession at any time in view of affidavits filed by the petitioners. Otherwise also,

petitioners have not expressed any reservation for delivery of possession rather their entire case is only for compensation which obviously means

they are willing to part with possession.

8. In another case of Awadh Bihari and Other Vs. State of Bihar and others, , where acquisition proceedings were initiated but final award could

not be passed because of lapse of two years and during the pendency of the proceedings, provisions of Section 17 of the Land Acquisition Act

were invoked for taking over the possession from the owners but were denied compensation, the Apex Court taking into consideration vesting of

the property in the State held as under:

It was contended that in view of Section 11A of the Act the entire land acquisition proceedings lapsed as no award u/s 11 had been made within

2 years from the date of commencement of the Land Acquisition Amendment Act

1984. We are of the view that the above plea has no force. In

this case, the government had taken possession of the land in question u/s 17(1) of the Act. It is not open to the government to withdraw from the

acquisition (Section 48 of the Act). In such a case, Section 11A of the Act is not attracted and the acquisition proceedings would not lapse even if

it is assumed that no award was made within the period prescribed by Section 11A of the Act. Delivering the judgment of a Three Member Bench

of this Court, in Satendra Prasad Jain and Others Vs. State of U.P. and Others, , S.P Bharucha J at page 374 paragraph 15 (of SCC) (At P.

3189 para 14 of AIR stated the law thus:

Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has

been made u/s 11. Upon the taking of possession, the land vests in the Government that is to say, the owner of the land loses to the Government

the title to it. This is what Section 16 states. The provisions of Section 11A are intended to benefit the landowner and ensure that the award is

made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore when the Government fails to make

an award within two years of the declaration u/s 6 the land has still not vested in the Government and its title remains with the owner, the

acquisition proceedings we still pending and by virtue of the provisions of Section 11A, lapse. When Section 17(1) is applied by reason of

urgency, Government takes possession of the land prior to the making of the award u/s 11 and thereupon the owner is divested of the title to the

land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11A can have no application to cases of

acquisition u/s 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily

vested in the Government can revert to the owner.

9. Apex Court in another case of Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, , observed that

even where despite completion of the acquisition proceedings, possession of the land remained with the owners, State can not be permitted to say

that compensation in such case is not payable. Relevant part of the judgment reads as under:

It is seen that the entire gamut of the acquisition proceedings stood completely by April 17, 1976 by which date possession of the land had been

taken. No doubt, Shri Parekh has contended that the appellant still retain their possession. It is now well settled legal position that it is difficult to

take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchnama in the

presence of Panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land.

Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.

10. In the present case all the proceedings right from issuance of the notification till passing of the award have been completed. Respondent-State

has also invoked section 17(1) of the Land Acquisition Act before completion of the acquisition proceedings. Land of the petitioners has been

specified in all the notifications issued Under Sections 4:L 6: 7: 9, 9A 17(1) and draft award issued u/s 11 of the Land Acquisition Act. Till date no

steps have been taken to de-notify the property. Thus property of the petitioners stands vested with the State. Respondents are liable to pay

compensation assessed by the Collector or as may be payable under law. In view of the detailed discussion and law, I allow this petition.

Respondents are directed to pay compensation to the petitioners in accordance with law.