
(2007) 07 J&K CK 0004
In the Jammu And Kashmir High Court

Mohd. Shafi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 18-07-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 17, 18, 23

Citation : AIR 2008 J&K 56 : (2008) 2 JKJ 32

Hon'ble Judges : N.A. Kakru, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Nisar Ahmad Kakru, J.—Two writ petitions listed together for hearing, owe their origin to the failure of the Collector, occasioned in

disbursement of the compensation, awarded in their favour by a common award, favouring a number of owners in respect of a big chunk of land,

structures, residential and non residential, acquired on the directions of the State of Jammu and Kashmir for construction of Thein Dam Project at

the expense of the State of Punjab, in pursuance of an agreement dated 20.01.1979, arrived at between the State of Jammu and Kashmir and the

State of Punjab, inter alia involving acquisition of 39 non-residential structures including the structures of the petitioners in the two writ petitions on

hand. Their grievances being similar, both on facts and law, therefore, disposal of both these petitions by this common judgment.

2. Parties are not at variance that the award has come into being on 14th June 1997 but disbursement of the compensation was made to await re-

assessment in all the 39 structures, resultantly litigation by medium of three writ petitions. The objection having failed to prevail on the Court, the

petitions were settled by three separate judgments, dated 26.12.2000, 31.08.2001 and 10.09.2001, commanding the Collector-respondent to

release the payment in favour of the petitioners therein. All the three judgments having attained finality, the compensation was paid to the petitioners

therein but the compensation payable to the petitioners herein remains withheld on the similar ground as was urged by the Collector in the above

decided writ petitions that is the awaited re assessment. The said objection stands turned down by the judicial decisions referred above but

impliedly, therefore settlement in explicit terms is called for.

3. To achieve the purpose, it is appropriate to extract Sub-section (1) Section 12 of the Land Acquisition Act (for short Act):

12. Award of Collector when to be final - (1) Such award shall be filed in the Collector's Office and shall, except as hereinafter provided, be final

and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or

not, of the true area and the value of the land, and the apportionment of the compensation among the persons interested.

4. The language of the section is unambiguous to the effect that the award is final and conclusive evidence, as between the Collector and the

persons interested, except as provided in the provisions, following Section 12 and the relevant being Section 32 of the Act, may be reproduced:

32. Payment of compensation or deposit of same in Court. - (1) On making an award u/s 11, the Collector shall tender payment of the

compensation awarded by him to the persons interested entitled thereto, according to the award, and shall pay it to them unless prevented by some

one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive

the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court, to which a reference u/s

18 would be submitted.

5. The contingencies spelt out by Sub-section (2) reproduced above undoubtedly empower the Collector to withhold the payment but not on the

ground that he wishes to have the structures re-assessed. It goes without saying that the Collector cannot pretend to be oblivious of the legal

position that he lacks the power to unsettle the settled issues in view of finality attached to the award by Section 12 of the Act, except on the grounds contained in Section 32 of the Act. Is there any justification in doing so, relevant events may be noticed. The Collector withheld the compensation until re-assessment by the experts and accordingly sought it through a communication. In response thereto, the authorities having the expertise conveyed to the Collector in writing that the assessment was made by due adherence to the rules and certified the genuineness of the award, very specifically but payment was not released, giving cause to the dispossessed proprietors to invoke the extra-ordinary writ jurisdiction of this Court. Objection was over ruled by the Writ Court and direction for implementation of the award was passed. Judgments were implemented and the compensation was paid to the successful writ petitioners.

6. There is no denying that the experts to whom the job of re-assessment was entrusted by the Collector, reiterated the correctness and genuineness of the assessment, consequently, disbursement of about thirteen crores to the owners of land and structures by the Collector as contended by learned Counsel for the petitioners which contention has gone un-rebutted. On top of all there are three judgments of the Writ Court which have turned down the objection of awaited re-assessment of compensation. Apart from that, why re-assessment in the face of the evaluation made by the experts of the Government on the basis of cogent documentary evidence, that too when award has become final and compensation disbursed, no explanation even worth the name has come forward much less satisfactory one from the Collector which speaks volumes and to say the least, tantamounts to putting the cart before the horse. In the given facts, awaited re-assessment could not furnish a cause to the Collector to withhold the compensation because it does not fall within the contingencies stipulated by Sub-section (2) of 32 of the Act.

7. In the face of the view taken by me and stated in the preceding para that contingencies stipulated in Sub-section (2) of Section 32 alone furnish a cause to the Collector to withhold the payment, the implications are far reaching. I say so because situations are conceivable where awards may be obtained by practicing fraud and in absence of specific mention of fraud as one of the contingencies, no wonder that the Collector may refuse

interference. That being contrary to common sense, I therefore, take it upon myself to indicate the powers of the Collector in such situations.

8. To begin with it has to be borne in mind that undoubtedly Section 12 of the Act attaches finality to the award which is legally valid but not to an

award which is obtained by fraud as is evident by the very construction of the provisions of the Act envisaging that no finality can be claimed to

stem out of an award originating from fraud. Let there be no confusion that the Collector cannot express helplessness in respect of an award

obtained by fraud or by misleading the Court. To be specific, there is no place for an impression that the Collector can plead lack of power to set

at naught an award which is obtained by playing fraud and if any, that has to be dispelled, even if it means widening of the scope of the

contingencies contained in Section 32 lest the ends of justice get defeated. There has to be no misunderstanding that when it is established before

the Collector that the award emanates from fraud, natural consequence is, exercise of incidental power by the Collector to set at naught the same.

It may not be impertinent to mention that the construction of the provisions of the Act no way divests the Collector of his ancillary powers to recall

the award, obtained by fraud which is a nullity and amounts to an abuse of the process of the Court. Situated thus Collector cannot afford to be a

mute spectator. He has not only the power but also the duty to rise to the occasion, take the remedial measures, and save the public money by

recalling the"" order/award, be it on his own, or on the motion laid by an aggrieved person, immaterial that the Court has become functus officio.

Indulgence can also not be declined where the Court itself or the Collector himself commits a mistake resulting in a judgment or an award

prejudicial to the rights of a party or works detrimental to the public interest.

9. Having ruled that the Court has the power to reopen the issue on the basis of fraud, sight cannot be lost of the fact that any conclusion of fraud

attributable to the claimant beneficiary would result in civil consequences, inasmuch as any amount paid to him without entitlement and by fraud and

deceit, would become refundable therefore, the beneficiary of alleged fraud has to be heard by due adherence to the audi alteram partem rule

which would mean that a reasonable opportunity of being heard has to be provided to him before execution of such conclusion.

10. This brings me to the argument of non availability of funds. Enumerating the submission it was contended by Mr. Qazi that the disbursement should await release of funds by the Punjab Government. The argument necessitates reference to Sections 17 and 17A of the Act which read as under:

17. Special powers in case of urgency. - In cases of urgency, whenever the Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days, from the publication of the notice mentioned in Section 9, Sub-section (1), take possession of any land needed for public purposes. Such land shall thereupon vest absolutely in the Government, free from all encumbrances:

17A. Payment of compensation before acquisition proceedings are completed. - Before taking possession of any land u/s 17, the Collector shall without prejudice to the provisions of the said section:

(a) Tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested and entitled thereto; and

(b) pay it to them unless prevented, by some one or more of the contingencies mentioned in Section 32 of the Act, and where the Collector is so prevented, the provisions of Section 32 shall apply as they apply to the payment of compensation under that section.

11. A conjoint reading of the two sections undoubtedly makes the power of the Collector manifest to take the possession of any land needed for public purpose in terms of Section 9 of the Act when directed by the Government but the provisions reproduced above at the same time make it obligatory upon the Collector to tender payment of eighty per centum of the compensation as estimated by him before taking possession.

Indisputably the payment has not been made to the petitioners, yet they were dispossessed. Why dispossession without payment of eighty per

centum, no answer is advanced by the Collector. Significantly there is no dispute that possession of the land and structures was taken without

payment of compensation which on the one hand amounts to violation of legal rights of the owners/interested persons and on the other flagrant

breach of the statute on the part of the Collector, perpetuated further by withholding the payment on the pretext of awaited re-assessment.

12. There is something more to hint at unfairness and unreasonableness of the

excuse of non availability of the funds, being evidenced by an undisputed fact that the award involves a very huge sum of rupees thirteen crores which stands disbursed to the claimants. How amazing it is that the assessment report is acceptable to the Collector for release of a sum running into crores but not in respect of one lack and an odd, a meager sum compared to 13 crores as contended by learned Counsel for the petitioners which contention has gone un-rebutted. It is saddening to note that the Collector could obtain 13 crores but not a lack and an odd more. Otherwise also the contention appears a pretext for the simple reason that it is not a claim for exgratia relief but for compensation in lieu of property belonging to the petitioners which cannot be denied to them because right to compensation acquired by the state under the Act is not destroyed by any of the provisions of the Act. Moreover, the provisions contained therein the Act itself, guarantee compensation to the owners/interested persons which has accrued due to them nearly a decade back but is withheld for no legally valid reason. In the face of the safeguards enshrined in the Act it is difficult to appreciate that payment could be withheld in the given circumstances of the case. Enough is enough. The argument of non availability of funds having no sanction of law, fails. Any further delay in disbursement is unjustified.

13. Notwithstanding the fact that it is a case of compulsory acquisition, yet claimants are left high and dry and are aspiring for compensation since 1997, fall out being a difficulty for the petitioners to raise the houses within the amount assessed a decade back, ostensibly due to escalation of price of land and material. Being fully satisfied that the petitioners have in no manner whatsoever contributed to the withholding of compensation, coupled with the fact that they have knocked the doors of the Court with clean hands, besides attending circumstances of the case indicated in the preceding paras, they are entitled to interest on the withheld payment even in absence of a specific provision to that effect but that is not the situation because of a statutory charge envisaged by Section 35 of the Act.

14. To appreciate the scope of the controversy involved, I quote the Section 35 of the Act.

35. Payment of Interest. - When the amount of such compensation is not paid or deposited on or before taking possession of the land, the

Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is

taken, interest at the rate of ten per centum shall be payable from the date of expiry of the said period of one year on the amount of compensation

or part thereof which has not been paid or deposited the date of such expiry.

15. Language of the section makes it very clear that failure of the Collector to pay the compensation renders him liable to pay interest on the

withheld payment. It may not be inapt to mention that the State and the Collector have not denied- the non payment of the compensation but, have

admitted the omission, therefore no chance for them to escape the liability of interest which shall be calculated by the Collector strictly as per the

mandate of Section 35 of the Act to be paid to the petitioners alongwith Jabrana as provided in Sub-section (2) of Section 23 of the Act. I may

hasten to add that had the Collector adhered to the statutory obligations and paid the compensation immediately after genuineness of assessment of

compensation was communicated to him by the experts, public exchequer could have safely escaped the liability of interest cast upon it by the

Land Acquisition Act. Thus, both the petitioners as also public exchequer have suffered, the petitioners have suffered because of escalation

whereas, suffering of the public exchequer is traceable to the burden of interest and the cause being inaction of the Collector.

16. In the background aforementioned, the writ petitions succeed.

17. Accordingly the respondents are directed to deposit in the Registry the amount of compensation alongwith interest in full payable u/s 35 of the

Land Acquisition Act within three months to be reckoned from the day, the judgment is communicated to the Respondents.

18. The respondents shall pay Jabrana also unless included in the award. The amount so deposited shall be released by the Registrar Judicial in

favour of the claimants-petitioners on due verification.

19. Registry to convey the judgment

20. Disposed of.