

(2023) 08 J&K CK 0056

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 688 Of 2006, IA No. 897 Of 2006, 1089 Of 2008, 463, 99001 Of 2015, 1 Of 2017

Mohinder Singh And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 28-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Constitution Of Jammu And Kashmir, 1956 — Section 103

Citation : (2023) 08 J&K CK 0056

Hon'ble Judges : Wasim Sadiq Nargal, J

Bench : Single Bench

Advocate : P.N Bhat, Abheya Thusoo, Monika Kohli, Pallavi Sharma, Ravinder Gupta, Vishal Sharma, Sumant Sudan, L.K Moza

Final Decision : Disposed Of

Judgement

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Wasim Sadiq Nargal, J

1. The petitioners, through the medium of this petition filed under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir, seek a direction to respondent Nos.1, 3 and 6 to vacate their land measuring 1 Kanal and 15 Marlas falling under Khasra No.359 min (now renumbered as Khasra No.444 under New Land Settlement Scheme) situated at Mouza Khellani Tehsil and District Doda, as the aforesaid land has been illegally trespassed and used by the respondent No.3 to 6 since 1991. Additionally, a direction is also sought for payment of compensation amounting to Rs. 2,000/- per month for illegal use and unauthorized occupation of the said land.

2. Brief facts of the case are that:

The land measuring 1 Kanal 15 Marlas situated at Mouza Khellani Tehsil and District Doda falling under Khasra No.359 min (now renumbered as Khasra

No.444 under New Land Settlement Scheme) owned and possessed by the petitioners has been illegally and forcibly occupied by the then R&B Department, Incharge National Highway Batote-Kishtwar Road in the year 1991 however, assurance was given for payment of rent/compensation in lieu of the said land. The communication dated 25.03.2006 of Assistant Executive Engineer, R&B West Sub Division Doda state that the land in question does not belong to the R&B Department. Despite repeated requests made by the deceased petitioner's father, neither the possession of the land has been handed over nor any compensation/rent has been paid to the petitioners till today. No acquisition process has been undertaken by the respondents.

3. Inaction on part of the respondents not to hand over the possession of the land or pay any compensation/rent forced the petitioner's deceased father to knock portals of this Court by filing the present petition and on the strength of grounds taken in it, the aforesaid relief has been sought by the petitioner, which is now claimed by the legal heirs of the deceased petitioner.

4. I have heard learned counsel for the parties, considered their submissions and perused the record.

5. Mr. P.N Bhat, learned counsel appearing for the petitioners vehemently argued that the use and occupation of land of the petitioners is in illegal and forcible use and occupation of the respondents since 1991, which deserves to be got restored back to the petitioners with reasonable rent/compensation. Mr. Bhat, learned counsel submits at the Bar that it is admitted by the respondents that no acquisition proceedings have been undertaken by them and the land of the petitioners is in use of the respondents-departments. He further submits that this petition has been filed by the father of the petitioners who has expired during the pendency of this petition and now his legal heirs are contesting this petition after proper impleadment in the petition. It is also submitted by learned counsel for the petitioners that one generation has collapsed without having fruits of right and now second generation is struggling for their legitimate rights. Mr. Bhat also submits that despite repeated requests made by the petitioners, neither the possession of the land is handed over to the petitioners nor any effort in this regard for payment of rent/compensation has been made till today. He prays for payment of rent/compensation along with 15 per cent interest to the petitioners for the period land in question remained under possession of the respondents.

6. Mr. Bhat, learned counsel has very vigorously argued that besides a direction for grant of compensation along with interest, a strict direction should also be given to the respondents for their wrong act. He submits that the petitioners are being deprived of their valuable property since 1991, therefore, the respondents must be penalized with a caution not to repeat this act again and they shall remain watchful in this regard.

7. Mr. L.K Moza, learned CGSC submits that the GREF has taken possession of land of the petitioners from the State of Jammu and Kashmir's Public Works

Department in the year 2002 and even the structures in question were also handed over by the said Public Works Department. In this regard, response has been filed by respondent Nos.1 & 3 (GREF) objecting the petition. It is contended in the response that vide order No.7669-70 dated 22.07.2002 passed by Chief Engineer, State PWD(R&B) Special Division Doda, the possession of road side assets/buildings along NH-IB have been handed over to GREF by the PWD department and the GREF has no records about the road/road side assets/buildings as well no records with regard to outstanding rent/compensation is lying with them.

8. Response/status report dated 13.06.2023 has been filed by the Deputy Commissioner, Doda through Ms. Monika Kohli, learned Sr. AAG wherein it is contended that a Committee of Officers under the Chairmanship of Tehsildar Doda was constituted and the said Committee was directed to furnish joint detailed report/specific comments whether the land of the petitioners is under occupation of the GREF with date of possession and whether the compensation has been paid or not. The Committee of the Officers in their report admitted that the land in question relates to the petitioners and as per the record of Patwari Halqa concerned, spot verification, it has been found that the land has not been acquired so far and no compensation/rent has been paid to the land owners. It is further contended that some structures in the shape of quarters were also found on spot and the Committee has mentioned that the detail of possession on spot by different agencies as under:

S.No

Name of Agency

Period of Possession

Remarks

1

GREF (BRO)

Dec 1990 to 27.12.2014

2

PWD (R&B) Spl. Sub Division Doda

27.12.2014 to 29.08.2018

3

NHIDCL

29.08.2018 to till date

9. The respondent No.8-National Highways and Infrastructure Development Corporation (NHIDCL) has also filed its response dated 25.07.2023 through Mr.

Vishal Sharma, learned DSGI. It is contended that from the year 1990 to 2014, the land of the petitioners remained in possession of GREF and from the year 2014 to 2018, it was in possession of PW(R&B) Department and thereafter from 29.08.2018 to till date, it is in the possession of National Highways, possession whereof has been handed over by the Public Works Department, Doda.

10. Mr. Vishal Sharma, learned DSGI has fairly conceded the fact that the acquisition proceedings in the matter has not been done. He submits that the National Highways and Infrastructure Development Corporation has recently come in picture as this Court vide order dated 08.12.2022 arrayed the department represented by him as party respondent No.8 and he assures the Court that the petitioners cannot be deprived of their legitimate rights and whatever is warranted under law, the respondent No.8 is liable to abide the same.

11. Learned counsel appearing for the respondents have also admitted in their response that the land in question has been taken by them without initiating the acquisition proceedings.

12. It is jointly admitted by the learned counsel appearing for the respondents that in lieu of the land of the petitioners, they are entitled for compensation under law and now a direction may be issued to the respondents to act in accordance with law as the petitioners have suffered a lot with the afflux of time.

13. In view of the admitted position as is evident from the facts of the case as well as from the statements of learned counsel for the respondents, this petition is disposed of, with a direction to the Deputy Commissioner, Doda to assess the rent payable to the petitioners for the period the land in question has been used by the various agencies i.e., GREF, Public Works Depart and National Highways and Infrastructure Development Corporation. He shall constitute a Committee in which all the stakeholders of the three departments, including the petitioners will be given adequate opportunity of being heard. The Deputy Commissioner, Doda shall take a decision in the matter within a period of one month from today and subject to to said decision which is likely to be taken on the basis of findings of the Committee, the rental compensation will be paid to the petitioners within one month thereafter, for the period the land has been used by the three departments i.e., GREF (BRO), PW(R&B) Department and the National Highways and Infrastructure Development Corporation which finds mention in the status report filed by the Deputy Commissioner, Doda dated 13.06.2023. A direction is further issued to respondent No.8 that in case the National Highways and Infrastructure Development Corporation intends to acquire the land of the petitioners, then the proper procedure as envisaged under law, i.e., the acquisition proceedings shall be initiated within a period of one month, thereafter.

14. Disposed of in the manner as indicated above along with all connected applications.