
(2013) 12 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : O.W.P. No. 967/13 and C.M.A. 1336/13

Mushtaq Ahmed

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 30-12-2013

Acts Referred:

Citation : (2014) 1 JKJ 436

Hon'ble Judges : Dhiraj Singh Thakur, J

Bench : Single Bench

Judgement

Dhiraj Singh Thakur, J.—Petitioners in the present petition seeks issuance of a writ of certiorari for quashing the final award dt. 12.11.2010,

passed by the respondent No. 3, with regard to the land, which is stated to be owned and possessed by the petitioner measuring 1 kanal 5 marlas,

comprised under Khasra No. 262, land measuring 1 kanal 1 marla under khasra No. 263 and one kanal 4 marlas under khasra No. 264, situate at

village Thaloran, tehsil Gandoh, district Doda. Counsel for the petitioners urged that no notice was issued to the petitioners which could have

enabled them to file objections to the notification issued by respondent No. 3 u/s 4 of the Land Acquisition Act (in short 'Act'). It was urged that

there was no enquiry conducted u/s 5-A(2) of the Act and the provisions thereof were not complied with nor the petitioners given an opportunity

of being heard.

2. Notification u/s 9 and 9-A of the Act is also challenged on the ground that no notice was issued to the interested persons for filing objections,

which the petitioners claim was a right available to them under the Act.

3. Another ground urged by the counsel for the petitioners is that the earlier

survey conducted by the official respondents for construction of road

which is almost 35 kms long, was subsequently changed without any approval by the Central Government. This was done for mala fide

considerations as the change of road alignment had the effect of depriving the petitioners of their small parcel of land.

4. Finally, the counsel for the petitioners urged that the final award dt. 12.11.2010, reflects non application of mind as the said award has been

passed in respect of the land which was acquired for construction of road of a different village i.e. Bhatyas Challar and not the road in respect of

which notification under Sections 4, 9 and 9-A of the Act was issued.

5. In response to the case set up by the petitioners, Mr. H.A. Siddiqui, learned AAG, appearing for the respondent-State, submitted that the final

award did wrongly mention the name of the village which was subsequently corrected by the Collector in terms of the corrigendum issued in

accordance with the provisions of the Act aforementioned. It was urged by Mr. Siddiqui, that the petitioners were not, at all, entitled to receive

compensation and, therefore, could not be said to be the persons interested in terms of Section 5-A(3) of the Act, as the land is recorded in the

ownership of one Chammaru in the revenue records. The petitioners are recorded as tillers who are not entitled to receive compensation and,

therefore, cannot be stated to be the persons interested within the meaning of the Act.

6. Mr. Siddiqui, learned AAG, further urged that since the petitioners had no clear title over the land in question, they could not question the award

and the proceedings initiated preceding the same. It was stated that once a final award was passed, the land vested in the Government free from all

encumbrances and, therefore, the same cannot be challenged in these proceedings.

7. The record has not been produced despite the assurance given by the State counsel.

8. In regard to the compliance of Section 4 of the Act, in view of the strong objection taken by the counsel for the petitioners regarding non

compliance thereof, a stand has been taken that notice under Section, 4(1) of the Act was issued on 4.1.2010 and was widely notified in the

locality regarding the acquisition. It is stated that a process server of tehsil

Gandoh was deputed regarding issuance of notification but the land owners did not acknowledge the receipt of notice u/s 4(1) as is reflected from the report submitted to the Tehsildar concerned.

9. Clearly the steps which were required to be taken in terms of Section 4 of the Act were not taken. Since the record is not produced, even the reply is silent as to whether notice issued u/s 4 was published in the Government Gazette and in two daily newspapers having largest circulation in the locality. Requirement of Section 6 of the Act is that the Government must fully satisfy itself upon consideration of the report, if any, made u/s 5-

A(2) of the Act that any particular land is needed for a public purpose. A declaration then has to be made to that effect under the signatures the

Revenue Minister or of some officer duly authorized in that behalf. The said declaration then has to be published in the official gazette, which shall

then be a conclusive evidence that the land is needed for public purpose.

10. In the present case, as can be seen from the final award that declaration u/s 6 has been issued by the District Collector (Deputy Commissioner,

Doda), and not by the Government. The role of the Collector is clearly distinct u/s 5-A from that of the Government u/s 6 of the Act. The

declaration had, necessarily, to be made by the Government and not by the Collector. It is, thus, clear that the mandatory provisions of the Act

have been flouted quite brazenly in the present case.

11. The issue that arises for consideration in the background of the aforementioned violations of the mandatory provisions of the Act is as to

whether this court can quash the proceedings initiated when they have already culminated in the passing of the final award.

12. In Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, , the Apex Court has held

as under:-

29. It is thus well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings

have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of

the Constitution to quash the notification u/s 4(1) and declaration u/s 6. But it should be exercised taking all relevant factors into pragmatic

consideration. When the award was passed and possession was taken, the Court

should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches.

13. Testing the facts of the present case on the touchstone of the law laid down by the Apex Court in the aforementioned case, it will be seen that the acquisition was for purposes of construction of road in a hilly area under PMGSY programme to connect village Changa to Thaloran, which would have also benefited all the villages en route.

14. The entire stake of the petitioners in this stretch is only about 3 kanals and 10 marlas which stretches over a distance of 100 mtrs in the entire road which is almost four kms in length. It was stated at the Bar by the counsel for the respondent-State that but for this short stretch of 100 meters, which has been now blocked by the petitioners, the road is almost complete. It was stated that because of the blockade by the petitioners, even the general public was deprived from user of the road, which was certainly in public interest.

15. There is merit in this submission of the counsel for respondents. While, it is true that the respondents have failed in complying with the mandatory provisions of Section 4 and 6 of the Act, it cannot be denied that the road under PMGSY scheme was constructed which would necessarily be for a public purpose. Petitioners had also issued a legal notice dt. 11th May, 2010, through their counsel objecting to the change of alignment of the road contrary to the one undertaken earlier to the Executive Engineer, PMGSY, Division Doda-II, which suggests that they were very well aware of the entire project and the acquisition proceedings.

16. The entire stretch of road appears to have already been constructed but for the short stretch which has been blocked by the petitioners. No satisfactory reasons at all, have been given in the writ petition as to why the award dt. 12.11.2010 and the notifications preceding it were challenged as late as on 10th of July, 13, the date, when the petitioners filed the present petition. This petition, therefore, suffers from delay and laches as well. Moreover, in view of the fact that the final award already stands

passed, the present petition, in the light of the judgment of the

Apex Court in Municipal Corporation's case *supra*, is held to be not maintainable and is, accordingly, dismissed.