
(2016) 10 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 477 of 2010, MP No. 01 of 2015, MP No. 257 of 2013, MP No. 644 of 2010 c/w Others Writ Petition (OWP) No. 151 of 2016, MP No. 01 of 2016, Others Writ Petition (OWP) No. 533 of 2016, MP No. 01 of 201, MP No. 02 of 2016 and Ot

National Highway 1-A People

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision : 06-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1990 — Section 11-B, Section 17, Section 4, Section 6

Citation : (2017) AIRCC 1151 : (2016) 4 JKJ 507

Hon'ble Judges : Mr. Alok Aradhe, J.

Bench : Single Bench

Advocate : Mr. Jehangir I. Ganai, Advocate General, Mr. Jatinder Choudhry, Advocate, Mr. Ahsan Mirza, Dy. AG & Mr. Faraz Iqbal, Dy. AG, for the Respondent; Mr. O. P. Thakur, Advocate with Mr. R. K. S. Thakur, Advocate and Mr. K. D. S Bandral, Advocate, Mr. Irfan Kha

Final Decision : Disposed off

Judgement

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Mr. Alok Aradhe, J. - In this bunch of writ petitions, the petitioners have assailed the validity of the proceedings initiated under the provisions of" ,,,,,,

the State Land Acquisition Act, Samvat, 1990 (hereinafter referred to as the Act). Since common questions of law and facts arise for" ,,,,,,

consideration in this bunch of writ petitions, they were heard analogously and are being decided by this common order. In order to appreciate the" ,,,,,,

petitioners' grievance, few facts need mention, which are stated infra." ,,,,,,

2. The petitioner No. 1 in OWP No. 477/2010 are the persons, who are aggrieved by the action of the respondents in seeking to acquire their" ,,,,,,

lands, whereas petitioner Nos. 2 to 13 are the owners of the lands situated in different villages. The petitioners in three remaining petitions are also",,,,,,

the aggrieved persons, whose lands are being acquired for the construction of four lanes on NH 1-A from the village, Dhalwas to village Thethar in",,,,,,

District Ramban. The petitioners seek quashment of proceedings under the Act on the ground that same has lapsed as awards have not been,,,,,,

passed within a period of two years from date of notification under section 6(1) of the Act. The petitioners also seek a direction not to dispossess,,,,,,

the petitioners from their properties and to make payment of compensation to them in accordance with law.,,,,,,

3. Learned counsel for the petitioners submitted that the except two villages, namely, Neera and Krawah, awards have not been passed in respect",,,,,,

of remaining 10 villages within a period of two years from the date of issuance of the notification under section 4(1) of the Act, therefore," ,,,,,,

proceedings under the Act have lapsed under Section 11-B of the Act. Attention of this Court has been invited to paragraph 16 of the objections,,,,,,

filed on behalf of the respondents 1 to 5 as well as paragraph 8 of the counter affidavit filed by the respondent No. 6 and it has been pointed out,,,,,,

that the respondents themselves have admitted that the possession of the land belonging to the petitioners have not been taken over by the,,,,,,

intending department i.e. NHAQ. Therefore, proceedings initiated under the Act are liable to be quashed. It is argued that the respondents may",,,,,,

initiate the proceedings under the Act afresh and re-assess the compensation payable to the petitioners.,,,,,,

4. It is contended that the depriving the petitioners from their immovable property amounts to violation of Article 21 of the Constitution of India,,,,,,

and even if some of the petitioners may have been paid 80% of the amount of compensation, the same does not attach any sanctity to the",,,,,,

proceedings under the Act. It is also submitted that the action of the respondents in invoking the provisions of the Section 17 of the Act in the fact,,,,,,

situation of the case is arbitrary as the respondents till today have failed to take possession of the lands of the petitioners. Therefore, by virtue of",,,,,,

the mandate contained in Section 11-B of the Act, the proceedings under the Act have lapsed. In support of the aforesaid submissions, learned",,,,,,

counsel for the petitioners has placed reliance on the decisions of the Supreme Court in the case of Bhimandas Ambwani (D) Thr. Lrs. v. Delhi,,,,,,

Power Company Ltd. 2013 (14) SCC 195, in the case of M/s Soorajmull Nagamull v. State of Bihar and ors, 2015 (6) Supreme 258, in",,,,,,

the case of Uddar Gagan Properies Ltd. v. Sant Singh and ors. 2016 (4) Supreme 73, in the case of Delhi Development Authority v.",,,,,,

Reena Suri and ors. 2016 (3) Suprme 295, in the case of Greater Noida Development Authority v. Devendra Kumar and ors. 2011 (12)",,,,,,

SCC 375 and in the case of Singareni Collieries Co. Ltd. v. Vemuganti Ramakrishan Rao and other, 2013 (8) SCC 789.",,,,,,

5. On the other hand, learned Advocate General for the respondents 1 to 5 submitted that in the proceedings under the Act, provisions of section",,,,,,

17 of the Act have been invoked and there are no pleadings in the writ petition that the provisions of Section 17 of the Act could not be invoked in",,,,,,

the facts of the case. It is further submitted that the provisions of Section 11-B of the Act have no application, once provisions of Section 17 of the",,,,,,

Act have been invoked. The proceedings under the Act survive notwithstanding the fact that awards have not been passed within a period of two",,,,,,

years. It is further submitted that the interim order was passed on 03.05.2010, by which Land Acquisition Officer was restrained from passing the",,,,,,

awards. Therefore, period during which interim order has remained in operation is liable to be excluded. It is contended that in respect of the land",,,,,,

involved in OWP No. 151/2016 and OWP No. 533/2016, possession has already been taken on 20.09.2012 and 20.09.2014 respectively and",,,,,,

there is no rebuttal in this regard on behalf of the petitioners.,,,,,,

6. It is argued that the petitioners have been paid 80% of the compensation in the year, 2013 and if the proceedings are quashed, the same would",,,,,,

tantamount to undue enrichment. It is urged that the petitioners at the most are entitled to payment of interest on the amount of compensation under",,,,,,

Section 35 of the Act on account of delay in conclusion of the proceedings under the Act. Lastly, it is urged that once the award has been passed",,,,,,

only remedy which is available to the petitioners is to invoke section 18 of the Act. In support of the aforesaid submissions, reliance has been",,,,,,

placed on the decisions in cases of Satendra Prasad Jain and Ors v. State of U.P. and others, 1993 (4) SCC 369, in the case of Awadh",,,,,,

Bihari Yadav and others v. State of Bihar and others, 1995 (6) SCC 31, in the case of Smt. Ailamma (Dead) and ors. v. Poornaprajna",,,,,,

AIR 2006 SC 1132, in the case of Banda Development Authority, Banda v. Moti Lal Agarwal and others, 2011 (5) SCC 394, in the case",,,,,,

of M/s Delhi Airtech Services Pvt. Ltd. v. State of UP, AIR 2012 SC 573, in the case of Laxmi Devi v. State of Bihar and others,",,,,,

2015(10) SCC 241 and in the case of Bashir Ahmed Paul and ors. v. State of J&K and ors. 2005 (1) JKJ 68.,,,,,,

7. Learned counsel for the respondent No. 6 while referring to the decision of the Supreme Court in case of Ramniklal N. Bhutta and anr. v.,,,,,,

State of Maharashtra and others, (1997) 1 SCC 134 has submitted that the relief can be moulded in such a way, that the project in question",,,,,,

does not suffer.,,,,,,

8. I have considered the respective submissions made at bar and have perused the record. The State has the power of eminent domain, however,",,,,,

the aforesaid power can be exercised subject to constitutional rights of a person to hold the property. The acquisition of land of a person is a.,,,,,,

serious matter as it deprives the land owner not only of his property but means of livelihood as well as social status. The Supreme Court while.,,,,,,

taking note of Section 11-A of the Land Acquisition Act, 1894, in the case of Madhao v. The State of Maharashtra (2007) 7 SCC 555, R.",,,,,,

Kolandaivelu and ors. v. Govt. of T.N and another (2010) 2 SCC 97 and Singareni Collieries Co. Ltd. v. Vemuganti Ramakrishan.,,,,,,

Rao and other, 2013 (8) SCC 789 has held that if the Award is not passed within a period of two years, the proceeding under the Act would",,,,,,

lapse. It has been held by the Supreme Court that mere passing of an award would not vest the land with the State Government unless possession.,,,,,,

is taken (See Delhi Development Authority v. Reena Suri and ors. 2016 (3) Supreme 295). It is equally well settled legal proposition that.,,,,,,

once transaction in question is found to be vitiated, there cannot be any estoppel on the ground that land owners have received the compensation",,,,,,

and relief cannot be confined only to those land owners, who have not received the compensation (See Greater Noida Development Authority",,,,,,

v. Devendra Kumar and ors. 2011 (12) SCC 375 and Uddan Gagan Properties Ltd. v. Sant Singh and ors. (2016) 4 Supreme 73.,,,,,,

S.

No.",Village,"Area

Kanal

Marlas", "Date of

Notification

u/s 4(1)", "Date of

notifications

u/s 6 & 7", "Date of

notification

u/s 9 & 9-A", Remarks

1, Dhalwas, 211, 24.06.2006, 25.07.2007, 08.08.07,

2, Sawni, 12 04, 15.05.2006, 25.07.2007,,

3, Kenthi, 78 00, 11.11.06, 25.7.2007, 08.8.07,

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4, Neera, "169 1-

1/2", 22.09.2006, 25.7.2007,, "Final award

passed No. 32-

34/ACQ/NH-1A

dated 6.4.2009

5, Kunfer, 163 09, 20.06.2006, 01.08.07,,

6, Chanderkot, 184 19, 19.09.2006, 27.7.2006,,

7, Ramban, 309 14, 04.04.07, 23.8.2007,,

8, Seri, 271 09, 28.4.2007, 14.8.2007, 03.09.07,

9, Maroog, 129 19, 28.4.2007, 25.7.2007, 08.08.07,

10, "Gund

Adalkot", 82 16, 17.1.2008, 06.06.08, 27.12.08, "Notification under

section 17 issued

by the Govt. vide

No.

Rev(LJ/202/2008

dated 4.7.2008

11,Krawah,21 06,19.7.2007,06.06.08,27.10.08,"Notification under
section 17 issued
by the Govt. vide
REV

(LaJ/204/2008
dated 4.7.2008,
final award issued
vide No. 1874-
76/ACQ/NH-AL
dated 9.2.2010

12,Gund Tethar,153 14,17.1.2008,06.06.08,27.8.08,"Notification under
section 17 issued
by the Govt. vide
Rev.

(LAJ/203/09
dated 4.7.2008
S. No.,Village,"Area
Kanal
Marlas","Date of
Notification
u/s 4(1)","Date of
notifications
u/s 6 & 7","Date of
notification
u/s 9 & 9-
A",Remarks

1,Kundi,46 7-1/2,19.09.2006,25.07.2007,08.08.07,"Award not
passed.

19. In view of the preceding analysis, the proceedings in respect of the lands
involved in OWP No. 533/2016 and OWP No. 151/2016 are held",,,,,,

to be valid as the awards in the aforesaid cases have been filed within a period of two years from date of declaration under section 6 of the Act.,,,,,,

However, the proceedings in respect of lands involved in OWP No. 477/2010 and 1301/2016 have lapsed as awards have not been passed" ,,,,,,

within a period of two years from the date of declaration under section 6 of the Act, except the lands situate in village Neera and Krawah in" ,,,,,,

respect of which awards have been passed within two years from the date of notification under section 6 of the Act. In respect of lands of villages, " ,,,,,,

namely, Gund Akalkot and Gund Tethar since declarations under section 6 of the Act were issued on 06.06.2008 and interim order was granted" ,,,,,,

by a Bench of this Court on 03.05.2010, therefore, the period within which stay has remained in operation is to be deserves excluded. The" ,,,,,,

respondents are at liberty to proceed with the land acquisition proceedings in respect of aforesaid villages in accordance with law.,,,,,,

20. In view of law laid down by the Supreme Court in the case of Bhimandas Ambwani (supra), it is directed that date of issuance of notifications" ,,,,,,

under section 4 (1) of the Act shall be treated as date of this order in respect of lands involved in OWP No. 477/2010 and OWP No. 1301/2016.,,,,,,

except lands in villages Neera, Krawah, Gund Akalkot and Gund Tethar and Land Acquisitions Officer is directed to conclude the proceedings" ,,,,,,

within a period four months from today. Needless to state that the aforesaid directions are confined to the petitioners in this bunch of writ petitions.,,,,,,

and Land Acquisition Officer shall be entitled to appropriate the amount if any paid to the petitioners while passing the awards.,,,,,,

21. With the aforesaid directions, the writ petitions are disposed of." ,,,,,,