

(2024) 03 J&K CK 0044

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 867 Of 2016

Nazir Hussain And Others

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 28-03-2024

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 6, 7, 9, 9A, 133A

Citation : (2024) 03 J&K CK 0044

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Rahul Raina, Monika Kohli

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1. The petitioner has challenged award dated 10.10.2013 in respect of the land measuring 27 kanals and 10 marlas under khasra Nos. 714, 717, 723 and 724 situated at Village Fatehpur, Tehsil and District Rajouri.

2. As per the case of the petitioners, they are owners in possession of the aforesaid land. The respondents vide notification issued Section 4(1) of the Land Acquisition Act issued on 02.01.2010 notified the aforesaid land for acquisition for the purpose of construction of Battalion Headquarter of J&K Police. It is alleged by the petitioners that the respondents have not followed the procedure prescribed under Section 4 of the Act inasmuch as the publication of the notification has not been undertaken in accordance with the law. It has been further submitted that as a result of this, the petitioners could not file the objections to the said notification and they were not heard. Thus, the declaration under Section 6 of the Act is illegal.

3. According to the petitioners, they came to know about the acquisition proceedings in December, 2013 when the notice under Section 9 and 9A of the Act was issued, whereafter, they filed a writ petition bearing OWP No.

1797/2013, which was disposed of by this Court on 27.12.2012 directing the respondents to adhere to the procedure envisaged under the Act. It has been further contended that while issuing notification under Section 9 and 9A of the Act, the requisite procedure has not been followed and in fact no such notice was served upon the petitioners. According to the petitioners, a notice was served upon them for appearing before the Collector on 20.04.2016 and by that time, the land had already been acquired by the respondents. Another contention that has been raised by the petitioners is that the land, which is subject matter of the impugned award, is agricultural land growing shalli crops and vegetables. Thus, without obtaining permission under Section 133 A of the Land Revenue Act, the award could not have been made.

4. Both the respondents i.e. Indenting Department as well as the Collector have contested the writ petition by filing their separate reply. The Collector in its reply has submitted that the Commandant JKAP 5th Battalion placed an indent along with funds availability certificate vide communication 13.12.2009 and on receipt for the said indent, notice under Section 4(1) of the Act was issued by the Collector on 02.01.2010 calling upon the interested persons to file objections to the proposed acquisition of land. It has been further submitted that the notice was served by the Tehsildar Rajouri upon the interested persons through Patwari Halqa who has reported that he has served the notice upon the interested persons but two persons refused to acknowledge the notice. It has also been submitted that the notice was published in two newspapers i.e. English newspaper Kashmir Times dated 10.01.2010 and Sher-e-Bharat, Urdu newspaper on the same date. Declaration under Sections 6 and directive under Section 7 of the Act was issued by the Collector in terms of the notification bearing No. 113/DCR of 2010 dated 23.02.2010.

5. According to the respondent-Collector, petitioner No. 2 and certain other land owners filed a writ petition bearing OWP No. 572/2010 before this Court challenging declaration issued under Section 6 of the Act dated 23.02.2010 as also the notices under Section 9 and 9A of the Act. On 28.10.2011, this Court allowed the writ petition, consequently declaration under Section 6 was quashed leaving it open to the Collector to act pursuant to the notification issued by him under Section 4(1) of the Act after hearing the petitioners.

6. It has been submitted by the respondent-Collector that pursuant to order dated 28.10.2011 passed by this Court, the petitioners in the said writ petition were called and heard, whereafter, their objections were found unsustainable. The case was submitted to the Government for issuance of declaration under Section 6 of the Act and directive under Section 7 of the Act in terms of communication dated 26.12.2012, whereafter the Government issued declaration under Section 6 and directive under Section 7 of the Act in terms of notification No. 18-RD of 2013 dated 22.04.2013.

7. It has been submitted that on 24.04.2013, notice under Section 9 and 9A of the Act was issued to the interested persons asking them to state nature of their

claim to the compensation. The notice was served upon the interested persons through Tehsildar Rajouri and as per the report of the Patwari dated 13.06.2013, the interested persons refused to acknowledge the receipt of the notice. It has been further submitted that pursuant thereto, final award was passed on 10.10.2013 and intimation was given to the indenting department who deposited the requisite land compensation. Upon receipt of land compensation, notices were issued to the land owners/interested persons for receiving the compensation, however, some of the land owners refused to receive the land compensation.

8. The indenting department i.e. Commandant JKAP 5th Battalion has in its reply submitted that the requisite amount of compensation stands deposited with the Collector for further disbursement to the land owners. It has been further submitted that the land in question is being acquired for public purpose and all the necessary procedures have been followed. The indenting department has submitted that the land in question is not growing any shalli crop and that the land being adjacent to the Battalion Headquarter Complex is best suited for the requirement of the indenting department.

9. I have heard learned counsel for the parties and perused the record of the acquisition proceedings produced by the learned counsel appearing for the Collector.

10. The main ground for laying challenge to the impugned award as has been projected by the petitioners is that notice under Section 4(1) of the Act has not been published in the manner provided in the said provision. According to the petitioners, the notification in question was not published in the newspapers nor the same was conveyed to the land owners by any revenue official or by beat of drums.

11. In the above context, it is to be noted that as per Section 4(1) of the Act, the notification under the said provision has to be publicized through a public notice to be affixed at convenient places in the said locality and it has also to be published in two daily newspapers having largest circulation in the said locality and out of these two newspapers, one has to be in regional language. It is further provided that the notice has to be caused to be known by the beat of drum and through local panchayat and Patwari.

12. In the instant case, a perusal of the record of land acquisition produced by the learned Sr. AAG appearing on behalf of the Collector, would reveal that notification under Section 4(1) of the Act has been published in English Newspaper Daily Kashmir Times on 10.01.2010 and Urdu Newspaper Sher-e-Bharat of the same date. The record further shows that a copy of the notice has been forwarded to the Tehsildar Rajouri for wide publicity in the locality through beat of drum, for pasting on spot and for service of notice upon interested persons. The Tehsildar vide endorsement dated 02.01.2010 has forwarded the said notice to concerned Patwari. The report of the Patwari on the said notice

reveals that he has effected personal service upon the land owners excepting two, who according to him, refused to acknowledge the receipt. Thus, there has been substantial compliance of the requirement of the publication of notification under Section 4(1) of the Act in this case.

13. Pursuant to the directions passed by this Court in OWP No. 572/2010 on 28.10.2011, fresh notices were issued to the land owners including petitioner No. 2, who was writ petitioner in the said case. The Deputy Commissioner Rajouri while recommending issuance of declaration under Section 6 and directive under Section 7 of the Act has, in his communication dated 26.12.2012 clearly noted the nature of objections that were filed by petitioner No. 2 and certain other land owners pursuant to the directions of this Court passed in the earlier round of litigation. After noting these objections, the Deputy Commissioner (Collector) has found that the objections of the land owners are untenable. Therefore, it cannot be said that the land owners were not intimated and heard pursuant to the issuance of the notification under Section 4(1) of the Act and before issuance of the declaration under Section 6 of the Act. The contention of the petitioners is, therefore, without any merit.

14. Another contention that has been raised by the petitioner is that even the service of the notice under Section 9 and 9A of the Act has not been effected upon the petitioners in accordance with the said provisions. As per provision contained in Section 9 of the Act, the Collector has to issue a public notice at a convenient place or near the land to be acquired stating therein that the Government intends to take possession of the said land and invite the claims from all the interested persons.

15. In the above context, a perusal of the record would show that after issuance of declaration under Section 6 of the Act, in terms of notification dated 22.04.2013, on 24.04.2013 notice under Section 9 and 9A of the Act was issued to the interested persons. A copy of the said notice was endorsed to Tehsildar Rajouri for wide publicity in the locality and it was provided that notice should be served upon the interested persons. The notice bears the endorsement of the concerned Patwari and as per the report of the Patwari, he has informed the land owners/interested persons but they refused to acknowledge the receipt of the notice. In view of the report of the Patwari, it is clear that the respondent-Collector has followed the procedure of intimating the land owners about the issuance of notice under Section 9 of the Act. Since the land owners from the very beginning were not willing to part with the land for its acquisition by the indenting department as such, it seems that on every step of the land acquisition proceedings, they refused to acknowledge the receipt of the notices but that does not mean that the petitioners were not aware about the acquisition proceedings. The fact that the petitioners invoked the writ jurisdiction of this Court at different stages of the acquisition proceedings, which they have admitted in their writ, petition shows that they were knowing about the acquisition proceedings and now they cannot be heard to say that they were

ignorant about the acquisition proceedings and that the impugned award is to be liable to be set side.

16. So far the contention of the petitioners that the land in question is an agricultural land and as such, the same cannot be acquired without the requisite permission under Section 133A of the Act is concerned, it would be for the indenting department to obtain the necessary clearances before taking up construction on the said land. The same cannot be a ground for quashing the impugned award.

17. For the forgoing reasons, I do not find any merit in this writ petition. The same is accordingly dismissed.

18. The record of acquisition proceedings be returned to the learned Sr. AAG.