
(1993) 09 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : O. Writ Petition No. 1041 of 1992

Parkasho Devi and Others	Vs	APPELLANT
State of J. and K. and Others		RESPONDENT

Date of Decision : 03-09-1993

Acts Referred:

Constitution of India, 1950 — Article 14
Jammu and Kashmir Land Acquisition Act, 1990 — Section 4(1), 5A

Citation : AIR 1993 J&K 77

Hon'ble Judges : M.L. Kaul, J

Bench : Single Bench

Advocate : R.S. Thakur, for the Appellant; S.K. Anand, Government Advocate and A.V. Gupta, for the Respondent

Judgement

M.L. Kaul, J.—This writ petition has arisen out of the Award No.SDM/R//2132-36 dt. 10-10-1992 passed by respondent No. 2, under

the Land Acquisition Act, 1990, whereby land measuring 5 kanals and 11 marlas in khasra No. 225/min situated at Kun-drorian, Tehsil Reasi, has

been ordered to be acquired for public purposes in regard to the construction of Miscrowave station at Katra village Kun-drorian Tehsil Reasi, by

the Telecommunication Department, Government of India.

2. According to the writ-petitioners the proceedings with regard to the acquisition of the aforesaid land has not been taken within the provisions of

Land Acquisition Act, 1990 (hereinafter referred to as 'Act'), hence the present writ petition has been preferred for seeking quashment of the

Notification u/s 4(1) of the Act, and all other proceedings consequent thereupon leading to and inclusive of the award dt. 10-10-1992, in respect

of the aforesaid land.

3. The main contention raised by the petitioners was that the Notification issued in the matter, which as per the enclosures placed by the respondent with their objections, issued on 10-3-1992, was not made public by beat of drums through the local Panchayat or the Patwari. Also it was contended that the petitioner was not provided with a chance to file objections to the acquisition of the land and the Collector did not provide them of any opportunity of being heard, as such the subsequent proceedings for the acquisition of land were violative of the Constitution and be quashed.

4. In the objection filed on behalf of the respondents, it was contended that Notification u/s 4(1) of the Act, was issued on 10-3-1992 and the same was got published in newspapers 'Daily Excelsior' and 'Kashmir Times' on 12-3-1992. It was further contended that the preliminary notification issued on 10-3-1992 was endorsed by the process-server Patwari Halqa concerned and the petitioners refused to receive the notice and even sign the same. In pursuance of the notification, the petitioners also filed unattested affidavit on 27-3-1992 and the same, attached with the objections as Annexure R-4, were treated as objections. These objections were sent to the Indenting Department, but the Indenting Department did not accept the objections of the petitioners, as such the objections filed by them were disposed of u/s 5 and 5(a) of the Act and further proceedings were initiated.

5. Heard learned counsel for the parties and also bestowed my thoughtful consideration over the record on the file. On the consensus of the learned counsel for the parties it was resolved that the writ petition be disposed of at this stage without formally admitting it to hearing, for the learned counsel for the respondents did not want to file any counter, then the objections already filed on their behalf.

6. Although various contentions have been raised by the petitioners in their Writ petition, yet while arguing, the learned counsel for the petitioners concise his argument to two points. First, that the preliminary notice issued by the Land Acquisition Officer within the contemplation of Section 4 of the Act was not made public, as was required under Clause (1-A) of Section 4 of the Act, which states that the Collector shall notify it through a public notice to be affixed at convenient places in the said locality and shall also

cause it to be known by beat of drum and through the local

Panchayats and local Patwaries. Secondly, it was also contended by Mr. Thakur, that every objection under Subsection (1) of Section 5(a) of the

Act, is to be considered by the Collector and he shall give the objector an opportunity of being heard, either in person or by a Pleader and shall

after hearing all such objections and after making such further enquiry, if any, as he thinks necessary, submit the case for the decision of the

Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision

of the Government on the objections shall be final.

7. Learned counsel for the respondent rebutted this argument of the learned counsel for the petitioners on the ground that on reverse of the notice

issued by the Collector u/s 4 of the Act, it is found that the Patwari has affixed the copy of the notice on the spot and the writ petitioners were

informed about such notification, but they refused to receive the notice and informed him that they had already filed their objections in the matter.

8. I he argument of the learned counsel for the respondents receive support from the copy of unattested affidavit, attached with the objections of

the respondents, showing that this affidavit was filed on 14-3-1992 by the petitioners in the form of objections, as contemplated u/s 5-A of the

Act, before the Land Acquisition Officer, i.e. Sub-Divisional Magistrate (Collector) Reasi.

Thus it appears that the petitioners were in know of the acquisition proceedings on 14-3-1992, when such a copy of notification within the

provisions of Section 4(1) of the Act, was served to them by the Patwari Halqa.

9. Section 4(1) of the Act envisages that whenever land in any locality is needed or is likely to be needed for any public purpose, the Collector

shall notify it through a public notice to be affixed at convenient places in the said locality and shall also cause it to be known by beat of drum and

through the local Panchayats and Patwaries.

10. A bare perusal of Section 4(1) of the Act clearly shows that in order to comply with the statutory requirements set out therein, a notice is to be

made public by affixing it at convenient place in the locality in which the land proposed to be acquired, is situated. This is a mandatory provision,

wherein besides the notification being made in a Govt. Gazette, is also to be

made public by beat of drum. The only visible and demonstrative purpose behind publication of the notice u/s 4(1) of the Act in the locality where the land proposed to be acquired is situated, is to give the persons interested in the land, due opportunity to submit their considered objections against the proposed notification. The requirement of Section 4(1) vis-a-vis publication of the notice in the locality where the land sought to be acquired is situated, is only to make effective the provisions of Section 5-A of the Act and that such a minor defect cannot invalidate the Notification issued u/s 4(1) of the Act.

11. In the case on hand, such a requirement is met by the mere fact that the Patwari Halqa went with the notice to the petitioners for effecting their service and they refused to receive it and instead the Patwari concerned was told that the petitioners had already filed their objections in the matter.

This shows that the requirement of publication of notification, as required u/s 4(1) of the Act, by affixing it at convenient places in the locality and

also being it made known by beat of drums, is met out and the purpose of Section 4(1) of the Act is solved, for the petitioners, whose land was to

be acquired and were interested persons in the land in question, got an opportunity to file the objections u/s 5-A of the Act. Hence the first

argument of the learned counsel for the petitioners that the notification is vitiated, for it has not been made public within the terminology of Section

4(1) of the Act, is not sustainable.

12. The other argument of the learned counsel for the petitioners that the petitioners were not heard by the Collector before the declaration was

issued within the contemplation of Section 6 of the Act, and thus the mandatory requirement as laid down u/s 5-A of the Act was not complied

with by the Collector.

13. It is now the admitted case of the parties that the objections in the form of an un-attested affidavit, were filed by the petitioners and it is to be

seen whether the petitioners were provided with an opportunity to be heard, within the contemplation of the provisions of Section 5(A) of the Act,

or not.

14. Evidently the petitioners have not been heard within the requirement of Section 5-A (2) of the Act, which provides that every objections under

Sub-section (1) shall be made to the Collector in writing, and the Collector shall

give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the government, together with the record of the proceedings held by him and a report containing his recommendations on the objections.

15. It is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing, land acquisition authorities should not, having regard to Articles 14 and 19 of the Constitution of India, burke an enquiry u/s 17 of the Act. This view has been taken in State of Punjab and Another Vs. Gurdial Singh and Others, by the Apex Court in the case titled : State of Punjab v. Gurdial Singh.

16. In the case on hand it is found that the objections within the contemplation of Section 5-A of the Act in the form of an unattested affidavit, were filed by the petitioners with the Land Acquisition Officer saying that the land in question was the only source of livelihood to them and it was a cultivable land upon which crops were grown by them and they were instead ready to do away with some other land situated in the vicinity of this land comprised under khasra No.818/246 min. This was the objection by the petitioners raised to the acquisition of the land in question and it was to be taken into consideration by the Land Acquisition Officer before the Award could be passed for such land. Instead the Acquisition Officer has made note of the letter of Indenting Department, which reads as under :-
Kindly refer your letter No. SDM/R/39-40 dated 8-4-1992. None of the objections are acceptable to us as an indenting department. As such it is further requested that arrangement may kindly be made so that possession of the land in question may be handed over to undersigned at an early date please.

17. It was on this letter that the Land Acquisition Officer, S.D.M. Collector Reasi, formed an opinion that the Government should issue the orders

u/s 17 of the Land Acquisition Act showing that they have dispensed the right of the petitioners as envisaged u/s 5-A of the Act.

18. In the case on hand it was the duty of the Collector to formulate his opinion upon the objections filed by the petitioners so as to see whether

the contentions raised therein were relevant or not and he could not be governed by the requirement of the Indenting Party who too, in no manner,

have stated that the other land was not acceptable to them, for it was not technically or otherwise usable for their purpose. It appears that from the

letter quoted above, written by the Indenting Party to the Collector, the Collector has abandoned his mandatory duty, as envisaged u/s 5-A of the

Act in favour of the Indenting Party and has relied upon their aforementioned letter that the contentions raised by the petitioners in their objections,

were not acceptable to them. The Collector had to form his opinion after hearing the petitioners personally or through a Pleader to be engaged by

them and had to make a full-fledged enquiry upon every issue raised by the petitioner in their objections and thereupon he had to submit the case

to the Government along with the record of the proceedings, Instead of doing so, the Collector has merely submitted a letter to the Government,

asking that the declaration within Section 6 of the Act be issued after abandoning the rights of the petitioners, as envisaged u/s 5-A of the Act and

as contemplated u/s 17 of the Act.

19. As held by the Supreme Court above, it was compulsory upon the Collector to provide reasonable opportunity to the petitioners to be heard

with regard to the taking of their property, who are very smaller people and have no source of livelihood except those 5 kanals and 11 marlas of

land, contemplated to be acquired by the respondents for a public purpose which is cultivable and crop growing. A very serious duty as such was

cast upon the Collector to look into the grievances of the petitioners, who, being smaller people, have no other source of income to sustain

themselves except the crops grown in this land. As that has not been done, therefore, all the proceedings with regard to the acquisition of land

except the service of notice upon the petitioners u/s 4 of the Act being violative of Sections 14 and 19 of the Constitution of India are quashed.

20. The writ petition is accordingly disposed of with connected CMPs, with a direction to the respondents that the Collector shall provide an

opportunity to the petitioners to be heard in person or through a lawyer within the contemplation of Section 5-A of the Land Acquisition Act and, thereafter, proceed in the matter afresh in accordance with law after conducting an enquiry within the ambit of Section 5-A of the Act, if satisfied that the said land is required to be acquired for a public purpose, can then recommend the case to the Government for a fresh declaration to be issued u/s 6 of the Act. The petitioners shall cause their appearance before the Collector on 20th September 1993, and in default of their presence the Collector shall be at liberty to proceed in the matter, even in absence of the petitioners in accordance with law.