

(2024) 02 J&K CK 0035
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 2901 Of 2022

Pawan Kumar Sharma

APPELLANT

Vs

UT Of Jammu And Kashmir And Others

RESPONDENT

Date of Decision : 27-02-2024

Acts Referred:

National Highways Act, 1956 — Section 3D, 3G, 3H, 3H(3)

Citation : (2024) 02 J&K CK 0035

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Pawan Kr. Kundal, Sagira Zaffer, Monika Kohli, Rahul Pant, Anirudh Sharma

Final Decision : Dismissed

Judgement

Vinod Chatterji Koul, J

1 The petitioner has claimed the following reliefs in this writ petition:

(i) Mandamus commanding and directing the respondent No.2 and 3 to release the land compensation of the land measuring two marla falling under khasra No. 140/37 situated on national highway at village patli Morh District Samba which is owned by the petitioner and given on lease to respondent No.4; and,

(ii) Prohibition commanding and restraining the respondents No.2 and 3 from releasing the land compensation in favour of respondent No.4 which respondent Nos. 2 and 3 are going to release in favour of respondent No.4 by exceeding their power.

2 The aforesaid reliefs are being claimed by the petitioner on the plea that he is owner in possession of the land falling under khasra No. 37 min Khata No. 21 and Khewat No. 2 situated at village Patli Samba. Out of the said khasra number, it is next stated, petitioner has given one kanal of land to respondent No.4 on lease; regarding which a lease deed was also duly executed by him before Sub-

Registrar, (CJM), Samba. Respondent No.4 after obtaining the land on lease made improvements in it and raised construction in front portion of the land to run his commercial activity. National Highway Authority of India started a project for construction of Delhi-Amritsar-Katra expressway and widening the National Highway and in this regard, respondent No.2 issued a public notice on 16.04.2022 for acquisition of the land at different locations including the land at village Patli and the land of the petitioner to the extent of two marla was also mentioned. After the settlement proceedings at village Patli, new khasra number was allotted to his land as khasra No.140 which was shown in the notice issued by respondent No.3. Respondents No.2 and 3 prepared the award of the land to the extent of two marla which was shown at S.No.13 of the list against khasra No.140 wherein the name of the petitioner has been mentioned along with the name of respondent No.4. The award was prepared by respondent Nos.2 and 3 in the name of respondent No.4. The petitioner submits that respondent No.4, being the tenant of the land, cannot receive the compensation with regard to the land in question. Petitioner filed three representations/applications for release of compensation before the official respondents, but his applications have not been decided.

3 Petitioner is aggrieved of the hostile and arbitrary action of respondents No. 2 and 3.

4 Respondent No.4, in his objections, disputes maintainability of writ petition. He submits that petitioner has not approached this Court with clean hands and has suppressed the material facts by not bringing to the notice of the Court that the petitioner had entered into an agreement to sell with respondent No.4 on 17.07.1997 after receiving total sale consideration agreed for sale of the said land. The possession was handed over to him at the time of execution of the agreement to sell. It is submitted that in the said agreement to sell, the petitioner had agreed that he will not have any interest, right or title over the land in question. Since sale deed could not be executed immediately, so petitioner executed power of attorney in favour of his friend, namely, Ajay Kumar Gupta, which was registered before the Registering Authority. Respondent No.4 was in urgent need of the land as he had to establish industry and to obtain loan from financial institution, as such, petitioner through his attorney executed perpetual lease in favour of Pharose Remedies Ltd, of which respondent No.4 is Managing Director. In the lease deed, all kinds of permissions have been given by petitioner to lessee including power to mortgage leasehold rights and it was also provided that in the event land or any part thereof is acquired by Government or any Authority, lessee shall have full authority to claim compensation. Respondent No.4 submits that property in question has been mortgaged to financial institution from whom he has obtained the loan. It is submitted that the documents which have been placed on record, i.e., agreement to sell, irrevocable power of attorney, papers with regard to mortgage of the land with the financial institutions and also the lease deed, have not been denied by petitioner who admits their execution.

5 I have heard learned counsel for the parties and have also taken into consideration the submissions made, grounds taken in the petition, objections filed by respondent No.4 as also the documents which are being relied upon by the parties.

6 There is no dispute to the fact that land in question, subject matter of instant writ petition, is in possession of respondent No.4. Petitioner in writ petition admits execution of lease deed in respect of land in question in favour of respondent No.4. Thus, profitable it would be to reproduce relevant portion of the lease deed hereunder:

"That in the event of land or any part thereof being acquired by the Government or any other authority, the lessee shall have full authority to stake such claim and claim such compensation as may be determined by such authority from the acquisition/ reacquisition authority, Government or any other authority under the order of the Government in respect of the building, machineries plants etc raised in the above said lease hold land besides the land beneath it".

7 Perusal of the aforesaid condition of the lease deed would abundantly make it clear that petitioner has agreed that in the event land in question is acquired, respondent No.4 shall be entitled to receive compensation not only for the structures but, besides such structures, for the land beneath as well, so this lease deed gives absolute right to respondent No.4 to seek compensation for the land as well as the structures which have been acquired by the official respondents for widening of the National Highway.

8 So far as issue with regard to maintainability of the writ petition is concerned, I am of the view that the writ is not maintainable as the issue regarding payment of amount raised in this writ petition is to be determined only by the Authority concerned in terms of the provisions of the National Highways Act, 1956. In this regard, it would be relevant to reproduce Section 3H of the National Highways Act, 1956 hereunder:

"3H. Deposit and payment of amount.

(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part

thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent, per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section

(5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of subsections (2) to (4) shall apply to such deposit."

9 From a perusal of subsection (3) of Section 3H of the Act, it clearly transpires that when several persons claim to be interested in the amount deposited under subsection (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

10 Coming to the facts of the instant case, petitioner admits execution of perpetual lease deed which makes it clear that he has agreed that it is respondent No.4 who is entitled to claim compensation for the land in question which may be awarded in the event it is acquired. Once, he has agreed to it, he cannot turn around and say that it is he who is entitled to claim compensation.

11 It is pertinent to mention here that petitioner cannot be permitted to both approbate and reprobate. On one hand he admits execution of perpetual lease deed, and on other hand he claims to be owner of the same property with respect whereof he has executed the lease deed in favour of respondent no.4, besides agreement to sell.

12 It is settled law that a person cannot be allowed to approbate and reprobate. No party can take stand as per convenience and a party cannot be allowed to withdraw from the admissions made by it in the pleadings in respect of the same subject matter.

13 The Courts must keep in mind that the Courts cannot be converted into a wrestling field, for trial of tricks where the Court has to act as an umpire. The Courts must effectively intervene and nip the evil of perjury and false statements in the bud. Where a party takes different stand in different Courts and/or say at different stages/places to defeat the effort of other party to get benefit therefrom such an effort must be curbed down by the Courts effectively by binding him with his earlier statement(s) and his plea of raising a dispute should not be heard nor entertained. If the parties are allowed to approbate and reprobate at their sweet will and convenience and take the Courts for a ride, the whole judicial system

shall fail. The Courts must effectively check such parties, who take inconsistent stand, according to their convenience. [See: K.S. Patcha v. Arun Sarna, 2008 SCC Online Del 884; and Prakash Chander Kaushik v. Vishal Timer Traders, 2017 0 Supreme (Del) 2724].

14 Law does not permit a person to both approbate and reprobate.

This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. [Vide: Verschures Creameries Ltd v. Hull and Netherlands Steamship Co. Ltd, (1921) 2 KB 608, 612 (CA); and R. N. Gosain v. Yashpal Dhir (1992) 4 SCC 683].

13 For the foregoing reasons and the laws discussed hereinbefore,

I hold the writ petition is not maintainable and is, as such, dismissed with connected CM(s). Interim direction, if any, shall stand vacated.