

(2025) 09 J&K CK 0492
In the Jammu And Kashmir High Court
Case No : WP(C) No. 1148 Of 2025

Rajinder Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 11-09-2025

Acts Referred:

Jammu and Kashmir Land Acquisition Act, 1934 — Section 4(1)
National Highways Authority of India Act, 1988 — Section 13, 16, 16(2)

Citation : (2025) 09 J&K CK 0492

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Vivek Sharma, Vipin Gandotra, Monika Kohli, Pranav Kohli, Vastav Sharma

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1. The petitioner, through the medium of the present writ petition, has sought a direction upon respondent No. 1, prohibiting it from executing Lease Deed in respect of land measuring 4 kanals 15 marlas falling under khasra Nos. 75, 145 and 93 situated at village Chanderkot in favour of respondent No. 8; with a further direction that the official respondents should not allow respondent No. 8 or any other person to carry out construction of petrol pump or public amenities on the aforesaid land. The petitioner has also sought a direction upon the official respondents to execute Lease Deed in respect of the aforesaid land in his favour; with a further direction that the official respondents should not cause any obstruction or interference into the business of hotels and shops that is being operated by the petitioner under the name and style of M/s Kartar & Sons. An alternative prayer has been made by the petitioner that the aforesaid land, which has been acquired from him, be retrieved to him.

2. As per case of the petitioner, on the basis of the acquisition proceedings initiated by respondent No. 3-Collector Land Acquisition (Additional Deputy

Commissioner), Ramban, land measuring 184 kanals 19 marlas situated at village Chanderkot, tehsil & district Ramban was acquired by respondent No. 4-National Highways Authority of India (hereinafter to be referred to as 'NHAI') for four laning of the national highway. Land measuring 12 kanals 13 marlas, belonging to the petitioner falling under khasra Nos. 75, 145 and 93 situated at village Chanderkot, tehsil and district Ramban was also part of the acquired land. It has been submitted that award dated 04.07.2018 was passed by the Collector Land Acquisition, National Highways Authority of India (Additional Deputy Commissioner), Ramban (hereinafter to be referred to as 'Collector') whereafter four laning of the national highway was undertaken by the NHAI. It has been submitted that out of 12 kanals 13 marlas of land belonging to the petitioner that was acquired by the Collector, land measuring 4 kanals 15 marlas remained unutilized.

3. It has been submitted that because the aforesaid chunk of land has remained unutilized, the petitioner has a right of pre-emption and preferential right being owner of the adjoining property. It has been further submitted that the official respondents are in the process of executing a Lease Deed in respect of the aforesaid land in favour of respondent No. 8 for opening of petrol pump and public amenities.

4. According to the petitioner, he has represented before the official respondents seeking retrieval of the aforesaid chunk of land or to execute Lease Deed in his favour for construction of wayside amenities and public amenities because he has a preferential right over the same. It has been submitted that the petitioner is running a shopping complex under the name and style of M/s Kartar & Sons near the land in question and if a petrol pump or any other public utility is created on the land in question, it would seriously amount to interference into the peaceful operation of his business of hotel and shopping complex as the land in question is situated in front of the hotel and shopping complex belonging to the petitioner.

5. It has been submitted that respondent No. 4-NHAI is in the process of executing Lease Deed in favour of respondent No. 8 for opening of a petrol pump and if the said petrol pump is allowed to operate, the business of the petitioner would be badly affected. It has been further submitted that as per the report of the Tehsildar concerned, the land in question is being used for setting up langers for Amarnath yatris and that there are 150 bathrooms existing on the said land. It has been further submitted that as per the report of the Tehsildar, Ramban, the land in question is not feasible to open a petrol pump and other public amenities. It has been submitted that the petitioner had approached the official respondents with the representation for redressal of his grievance but no action has been taken. Hence, the present writ petition.

6. Respondents No. 1 and 4 have filed a joint reply in which it has been submitted that the land in question has been acquired by the NHAI for the purpose of widening of national highway in terms of final award dated 04.07.2018. It has been further submitted that 'public purpose' in this case

includes road widening and its further development which includes construction of wayside amenities/public amenities/rest area for truck drivers/other highway commuters etc. It has been further submitted that the petitioner has already preferred a petition before the District Judge for enhancement of compensation, therefore, besides his claim for enhancement of compensation, he has no right in respect of the land in question, which has been duly acquired for public purpose. It has also been submitted that the petitioner had started construction of shops/structures near the land in question in an illegal manner without permission from the NHAI, which was objected to by the official respondents. It has been submitted that construction of wayside amenities and other facilities are for the benefit of general public, which are created for public interest. Regarding allotment of the land in question in favour of the respondent No. 8 on lease hold basis, it has been submitted that same has been done after inviting tenders but the petitioner, without participation in the tender process, intends to get the said land on lease, which is impermissible in law.

7. Respondent No. 8 has also filed its reply to the writ petition. In its reply, it has been submitted that unutilized portion of the land, acquired from the petitioner, has been retained for wayside amenities and public utilities. It has been submitted that it cannot be stated that the said chunk of land had remained unused by NHAI, but it is a case where the said chunk of land has been used by NHAI for creating wayside amenities, which is included in the four laning of the national highway. It has been submitted that after having participated in the bidding process and after having emerged as the highest bidder, letter of award dated 29.01.2024 came to be issued by the NHAI in favour of respondent No. 8. Thus, according to respondent No. 8, it has been allotted the land in question after undergoing due process and, therefore, the petitioner does not have any claim over the said land in the absence of his participation in the bidding process.

8. I have heard learned counsel for the parties and perused record of the case.

9. The main argument that has been raised by the learned counsel for the petitioner in assailing the action of the NHAI of allotting the land in question to respondent No. 8 on lease hold basis is that the official respondents have deviated from the purpose for which the land in question was acquired and, therefore, the action of the official respondents is illegal. On this basis, it is being contended that the petitioner is entitled to recover possession of the land in question from the official respondents. To support this contention, learned counsel for the petitioner has placed heavy reliance upon the judgment of the Supreme Court in the case of *M/s Royal Orchid Hotels Ltd and Anr Vs. G. Jayarama Reddy & Ors*, 2011 (10) SCC 608. Learned counsel for the petitioner has contended that establishment of a petrol pump and other shops on the land in question does not come within the purview of public purpose and that the land could have only been used for widening of the national highway as is clear from the language of the Notification issued by the Collector under Section 4(1) of the Jammu and Kashmir Land Acquisition Act.

10. If we have a look at the Notification issued by the Collector under Section 4(1) of the Jammu and Kashmir Land Acquisition Act in the present case, it provides that the land in question along with the other acquired land was to be acquired for widening of national highway upto its four laning meaning thereby the land was acquired for the public purpose. It is a settled law that the State can exercise its power of eminent domain to compulsorily acquire land for public purpose notwithstanding the fact that rights of private parties might be interfered with. In other words, the private purpose must yield to the public purpose.

11. The question that is required to be determined in this case is as to whether establishment of a petrol pump and for that purpose leasing out a portion of the land in favour of a private individual would come within the purview of the 'public purpose'.

12. If we have a look at the provisions contained in Section 16 of the National Highways Authority of India Act, 1988 (hereinafter to be referred to as 'Act of 1988'), it provides that it shall be the function of the National Highways Authority of India to develop, maintain and manage the national highways and any other highways vested in or entrusted to it by the Government. Clause (f) of sub-section 2 of the said provision lays down that the authority for the discharge of its functions may provide such facilities and amenities for the users of the highways vested in it or entrusted to it as are in the opinion of the authority, necessary for the smooth flow of traffic on such highways.

13. From the above provision, it is clear that NHAI is obliged to develop, manage and maintain national highways vested in it and to construct wayside amenities near the national highways vested in it. As per the guidelines issued by the Ministry of Transport, Government of India vide Circular No. RW/NH-34032/4/91 dated 03.04.1998, the Authority has to develop the following facilities on national highways:

- (i) Parking lots
- (ii) Snack bar/restaurant
- (iii) Toilets
- (iv) Rest rooms for short stay
- (v) First aid
- (vi) Telephone booths
- (vii) Petrol pumps and minor repair shops
- (viii) Kiosks for sales of medicines/sanitary items
- (ix) Land for future expansion.

14. Thus, it is clear that NHAI, in whom the Jammu-Srinagar national highway

has been vested, is duty bound to provide wayside amenities of the type mentioned hereinabove. It is to be noted that in terms of Section 13 of the Act of 1988, any land acquired by the National Highways Authority for discharging its functions under the Act is deemed to be land needed for a public purpose. Since the NHAI, in terms of Section 16(2) (f) of the Act of 1988 is obliged to create wayside amenities, therefore, utilization of the land by NHAI for creating such amenities in the face of deeming provision of Section 13 of the Act becomes a public purpose. Thus, if the respondents No. 1 and 4 have decided to utilize the land, which has remained unused after the widening of the national highway for the purpose of establishment of petrol pump or for the purpose of creating any other wayside amenities, the same can, by no stretch of reasoning, be termed as a purpose other than public purpose.

15. The ratio laid down by the Supreme Court in the case of M/s Royal Orchid Hotels (supra) is not applicable to the facts of the present case. In the said case, the Karnataka State Tourism Development Corporation had acquired land for the purpose of Golf-cum-Hotel Resort near Bangalore Airport and out of this acquired land, the Corporation had transferred a portion of the land to a real estate developer for the purpose of implementing group housing scheme. The Supreme Court in the facts and circumstances of that case came to the conclusion that the Corporation did not have the jurisdiction to transfer the land acquired for a public purpose to the companies and thereby allow them to bypass the provisions of Part VII of the Act. The Court further held that diversification of the purpose for which land was acquired under Section 4(1) read with Section 6 clearly amounted to a fraud on the power of eminent domain.

16. The facts of the instant case are entirely different. It is not a case where NHAI has transferred the land to a private person for a purpose entirely alien to the development of national highway but it is a case where NHAI has leased out the land to respondent No. 8 for the purpose of developing a wayside amenity, namely, establishment of a petrol pump, which is included in the development of national highway. Thus, the ratio laid down in M/s Royal Orchid Hotels (supra) is not applicable to the facts of instant case.

17. The contention of the learned counsel for the petitioner that the petitioner has a right of pre-emption over the land in question is also without any substance because the Jammu and Kashmir Right of Prior Purchase Act stands already repealed and as such, the petitioner cannot claim any right on this basis, that too, by invoking writ jurisdiction of this Court.

18. Another contention raised by learned counsel for the petitioner is that the land in question could have been leased in his favour, if at all a petrol pump was to be established on spot. In this regard, it is to be noted that the land has been leased out to respondent No. 8 on the basis that he emerged as the highest bidder after participating in the tender process. The petitioner, without participating in the said process, cannot claim any right of allotment of the land in question.

19. For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly dismissed.