
(2017) 03 SC CK 0066

In the Supreme Court Of India

Case No : Civil Appeal No. 3887 of 2017 (Arising Out of SLP (C) No.25741 of 2014)

Ram Singh

APPELLANT

Vs

Jammu Development Authority

RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

Jammu and Kashmir Land Acquisition Act, 1990 — Section 9, Section 9A
Land Acquisition Act, 1894 — Section 16, Section 4, Section 9

Citation : (2017) 2 RCRCivil 621 : (2017) 2 RecentApexJudgments(RAJ) 535 :
(2017) 3 Scale 505 : (2017) 13 SCC 474

Hon'ble Judges : R.K. Agrawal, J;Abhay Manohar Sapre, J

Bench : Division Bench

Advocate : Dr. K.B. Sounder Rajan, Sudarshan Rajan, Ms. Shriya Raj Chauhan, Dinesh Kumar Garg, Advocates, for the Appellants; Shoeb Alam, Ms. Fauzia Shakil, Ujjwal Singh, Mojahid Karim Khan, Ashok K. Mahajan, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Abhay Manohar Sapre, J. - Leave granted.

2. This appeal is filed by the writ petitioners against the final judgment and order dated 10.07.2014 passed by the High Court of Jammu and Kashmir at Jammu in LPAOW No. 40 of 2010 whereby the High Court while allowing the appeal filed by the Jammu Development Authority-respondent No.1 herein, set aside the judgment and order dated 25.02.2010 passed by the Single Judge in OWP No. 459 of 2004 and, in consequence, dismissed the writ petition filed by the appellant.

3. We herein set out the facts, in brief, to appreciate the issues involved in this appeal.

4. The appellants are refugees/displaced persons of 1947, who had migrated to India from Pak Occupied Kashmir (in short, "POK"). The land in question was

allotted to them for their rehabilitation under the provisions of the Jammu and Kashmir State Evacuees" (Administration of Property) Act, Svt. 2006 (1949 A.D.) [hereinafter referred to as "the Act of Svt. 2006"].

5. Appellant No.1 was allotted land measuring 15 Kanal and 14 Marla under Survey Nos. 3 & 6 whereas Smt. Sukhi (now dead), the predecessor of appellant Nos. 2-4 was allotted land measuring 6 Kanal 2 Marla under Survey No.4 situated at Channi Rama, Tehsil Jammu, District Jammu (J&K). At the time of allotment, the entire land was like a rocky trench which could not be put to any productive use. According to the appellants, they made it cultivable to earn their livelihood.

6. In the year 1975-1976, Jammu Development Authority-respondent No.1 herein, decided to acquire a large area of land for developing a housing colony at Channi under the name of Trikuta Nagar Housing Colony, Jammu.

7. On the requisition of Jammu Development Authority (respondent No.1)- the Authority, land measuring 2398 Kanal 2 Marla situated in village Channi Himat, Channi Rama, Rakh Bahu of Tehsil and District Jammu was notified by the Collectorate under sub-Section(1) of Section 4 of the Land Acquisition Act Svt. 1990 vide No. LA/504-11 dated 17.07.1975. Copy of this notification was sent to the Tehsildar, Jammu for vide publicity in the concerned villages through field staff.

8. In response to the said notification, objections from 146 persons were received by the Collectorate. After considering the objections raised by the interested persons, vide letter No. LA/1133 dated 23.12.1975, the Secretary to Government Revenue Department was requested to get the land measuring 1690 Kanal 12 Marla notified under Sections 6, 7 and 17 of the Land Acquisition Act. The remaining land measuring 707 Kanal 10 Marla proposed to be acquired by the Collectorate was not required by the ordering department, Jammu.

9. As per the rules, notice under Section 9 & 9A of the Jammu and Kashmir Land Acquisition Act was published in the Government Gazette dated 15.04.1976 for information of all the interested persons, who were asked to attend the office on 17.04.1976 personally or by authorized representatives to state the nature of their respective interests in the land and particulars of the compensation for such interests.

10. The Collector, Land Acquisition (PWD), Jammu made the Award being No. LA No.1286-88 dated 31.03.1984.

11. Statement indicating the quantum of compensation paid to each interested person along with area under acquisition in each case of village Channi Rama, Tehsil and District Jammu was issued on 27.05.1984. (Page 70 of SLP paper book)

12. Ram Singh-appellant No.1 herein was paid compensation of Rs. 1,00,686.72 for land measuring 12 kanal.

13. On 22.07.1987, appellant Nos. 2 & 3 made an application to the then Housing Minister, J & K Government, Srinagar praying to regularize 2 Kanal of land, which was in the name of their mother, Smt. Sukhi, widow of Ram Singh as they have constructed hutments on the said plots and are residing there.

14. On the application, the Minister called for a report and ordered to take no action in the meantime.

15. On various occasions, the Director Land Management, Jammu Development Authority directed the appellants to appear before him for the settlement of the case regarding allotment of plot at Trikuta Nagar Housing Colony, Jammu and the appellants appeared before him and requested him for regularization of the land, where their houses are constructed and they are residing. According to the appellants, all the time Director assured them that they will be allowed to retain the land which was in their possession and they will not be evicted from their houses.

16. It is the case of the appellants that after the acquisition of the land when Trikuta Nagar Housing Colony was developed, officials of the Authority-respondent No.1 came in 2004 and threatened the appellants with possession. The appellants then requested all authorities to prevent the officers from disturbing the appellants.

17. Aggrieved by the action of the Authority, the appellants filed writ petition being Writ Petition No. 459 of 2004 before the High Court for a direction to the respondents to refrain from dispossessing or disturbing their possession over the land measuring 3 Kanal 14 Marla under Khasra No.3, and land measuring 5 Kanal 2 Marla under Khasra No.4, Village Chhani Rama, Tehsil Jammu. Since there was some disputes regarding the actual land which was in possession of the appellants, the High Court (Single Judge) by order dated 24.11.2008 appointed Ms. Shivani Jalali, Advocate, as local Commissioner to visit the land and to find out as to how much land was in possession of the appellants. Ms. Shivani Jalali submitted the report on 30.12.2008 stating that the land, which is in actual possession of appellant No.1, situated in Khasra No.3 is 4 Kanal whereas the land in actual possession of the mother of appellant Nos.2-4 is 3 Kanal. By judgment dated 25.02.2010, the Single Judge of the High Court allowed the petition filed by the appellants herein.

18. Against the said judgment, the Authority filed an appeal being LPA(OW) No. 40 of 2010 before the Division Bench of the High Court.

19. By impugned judgment dated 10.07.2014, the High Court allowed the appeal and, in consequence, dismissed the appellants' writ petition.

20. Against the said judgment, the appellants(writ petitioners) have filed this appeal by way of special leave before this Court.

21. Heard Mr. Dinesh Kumar Garg, learned counsel for appellant No.1, Dr. K.B. Sounder Rajan, learned counsel for appellant Nos.2-4, Mr. Adarsh Sharma,

learned counsel for respondent Nos. 1 & 3 and Mr. M. Shoeb alam, learned counsel for respondent Nos. 2 & 4.

22. Having heard learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeal.

23. In our considered opinion, the writ Court(Single Judge) was not right in allowing the writ petition whereas the appellate Court (Division Bench) was right in allowing the appeal of respondent No. 1 and, in consequence, was right in setting aside of the order of the writ Court by dismissing the appellants' writ petition by impugned order.

24. In short, the question which fell for consideration before the writ Court was whether the appellants(writ petitioners) are entitled to claim a writ of prohibition against the respondents - JDA and State Authorities restraining or/and prohibiting them from interfering in their alleged possession over the land in question together with tenements standing thereon which, even according to the writ petitioners, was acquired long back by the State for public purpose under the provisions of the State Land Acquisition Act. In other words, the question to be considered in the writ petition was whether the appellants (Writ Petitioners) could be held to be in lawful possession of the land in question and, if so, whether they were entitled to claim a writ of prohibition against the State authorities restraining them from dispossessing the writ petitioners from the land and, if so, on what grounds.

25. The writ petitioners asserted in the writ petition that despite the land in question along with adjacent land having been acquired for a public purpose and award determining the compensation having been passed long back in the year 1984, the State/JDA did not take possession of one portion of land and tenements standing thereon which remained in possession of the writ petitioners and hence the writ petitioners are entitled to retain the possession of the land so also the tenements standing thereon as owners.

26. The respondent - Authority opposed the case of the writ petitioners and stated inter alia that the State has already taken possession of the entire acquired land including the land in dispute immediately after the land was acquired in accordance with law on 16.04.1976 and got the necessary documents executed to prove the taking of the possession from the land owners including writ petitioners. It was also stated that even the award was passed on 31.03.1984 and compensation determined stood deposited.

27. The writ Court, however, did not accept the stand taken by the respondents (State) and allowed the writ petitions and granted reliefs claimed therein. However, the appellate Court allowed the appeal and dismissed the writ petitions. This is what the appellate Court held,

"15. Writ court did not give closer look to the record available on file to find out whether possession of entire land was taken over by appellant Authority as

insisted in reply to writ petition. Had writ court scanned record minutely, it would have dawned on it that possession of entire land was taken over by appellant Authority though in symbolic manner and permission, if any, given to respondents to continue with possession of their Kacha houses for a while, was temporary in character and their possession was permissive in nature and held on behalf of appellant Authority.

16. It is well settled that when a large area of land is acquired for public purpose, it may not be always possible to take over actual and physical possession of acquired land. In such a case documents executed by authority, involved in acquisition of land, in favour of representative of indenting department regarding delivery of possession would be sufficient and satisfy requirements of Section 16, J&K Land Acquisition Act. Acquired land/property, with such symbolic delivery of possession would vest in indenting department notwithstanding the fact that one or more estate holders/property owners re-enter acquired land or 12 continue to be in possession with tacit approval with an understanding that erstwhile owner will leave part of acquired property retained by him after sometime.

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18. In the present case, as record would reveal, after acquisition proceedings were finalised, Award made document titled "statement of handing-over taking-over possession of the land" was reduced to writing on 16th April 1976, by Collector Land Acquisition, PWD, Jammu and appellant Authority through Naib Tehsildar. The document recorded that 14 Kanals & 14 Marlas out of Survey No.03 Min (15 Kanals & 14 Marlas) was handed over to appellant Authority and 01 Kanal shown to be under structures. Similarly out of 10 Kanals & 06 Marlas comprising Survey No.04 Min, 08 Kanals was recorded to have been handed over to appellant Authority and 02 Kanals & 06 Marlas shown to be under structures.

19. It is necessary to point out that respondent no.2 was in possession of land comprising Survey No.04 Min, as allottee only to the extent of 06 Kanals & 02 Marlas, rest of land i.e. 04 Kanals 04 Marlas, as per record, is in possession of Man Singh son of Attar Singh. The area of land i.e. 02 Kanals & 06 Marlas shown to be under structures does not, therefore, relate only to land i.e. 06 Kanals & 02 Marlas in possession of respondent no.2, shown in the record as 14 Mst.Lakhmu widow of Ram Singh through Rashpal Singh son as Sukhi widow of Ram Singh. The record further reveals that assessment was made even of the structures existing on spot and respondent no.1's structure (Kacha house) assessed as Rs. 2690/-. This by itself indicates that possession of entire acquired land was taken over by appellant Authority and possession of any part thereof was permissive in character, leaving it open to appellant Authority to seek its return, get back possession or seek respondents' eviction from such part of acquired land."

28. We are in complete agreement with the findings of the appellate Court quoted supra as, in our view, the aforementioned findings are rendered in

confirmity with law calling no interference by this Court.

29. This Court had the occasion to examine the question in the case of Balmokand Khatri Educational & Industrial Trust, Amritsar v. State of Punjab & Ors., AIR 1996 SC 1239 as to how the possession of the acquired land should be taken by the State and what evidence is considered enough to prove that possession of the acquired land has been taken by the State from the land owners. The relevant para on this question reads as under:

"4. It is seen that the entire gamut of the acquisition proceedings stood completed by April 17, 1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchanama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession."

30. When we examine the findings of the appellate Court recorded in Paras 18 and 19 quoted above in the light of law laid down by this Court in the case of Balmokand Khatri (supra), we find no good ground to reverse such finding. It is, in our view, recorded in conformity with the law laid down supra.

31. In our considered opinion, the filing of the writ petition by the appellants was wholly misconceived so was the reliefs claimed therein. It is not in dispute that the land in question was the subject matter of acquisition proceedings and eventually resulted in passing an award for payment of compensation. It is also not in dispute that compensation was deposited by the State. In these circumstances, even if the writ petitioners asserted their so-called possession over the land in question subsequent to completion of the acquisition proceedings, their possession on the land was not legal possession in the eyes of law but it was an illegal and unauthorized possession over the acquired land. The State has filed documentary evidence, which in clear terms, establish that the State took possession of the entire acquired land including land in question on 16.04.1976. It was done as per the law laid down in the case of Balmokand Khatri(supra) and, in our view, the Division Bench rightly relied on the law.

32. In these circumstances, in our view, if any one claimed to have entered in possession of the acquired land including the writ petitioners, their possession could neither be regarded as being legal nor it could create any right to enable the writ petitioners to claim back such land or to retain it as owners. The State/JDA alone was deemed to be continued to remain in its legal possession in whom the title of the land stood vested by virtue of the provisions of State Land Acquisition Act. The writ petitioners could, therefore, neither claim nor exercise any of their so-called rights to re-enter on the land for want of any title and interest in them.

33. In our considered view, the only right or relief, which the writ petitioners were entitled to exercise/claim from/against the State/JDA was to ask the State to determine and pay compensation for the loss of their land which, as mentioned above, was already found determined by the Collector by an award passed in relation to the acquired land. If the writ petitioners were not satisfied with the determination of compensation made by the Collector, their remedy lay in pursuing the matter for re-determination of compensation by the reference Court and then by the High Court in appeal. We are, however, not concerned with this issue because it is not the subject matter of this appeal and nor the writ petitioners questioned the legality or/and correctness of the acquisition proceedings. Even otherwise the writ petitioners (appellants) could not be allowed to challenge the acquisition proceedings after a lapse of almost 3 decades in these proceedings.

34. It is, however, stated that the State/JDA has already deposited the compensation amount determined by the Collector pursuant to the award long back. If that be so, we permit the appellants herein (writ petitioners/land owners) to withdraw the said amount, if, not already withdrawn or/and accepted.

35. Subject to grant of aforesaid liberty, we find no merit in the appeal which fails and is accordingly dismissed.