

(1996) 02 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 262 of 1982

Sara

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 26-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Constitution of Jammu and Kashmir, 1956 — Section 103
Land Acquisition Act, 1990 — Section 18

Citation : (1997) SriLJ 33

Hon'ble Judges : A.Q.Parray, J

Bench : Single Bench

Advocate : G.N.Hagroo , Amin Khan, Advocates appearing for the Parties

Judgement

1. By way of this writ petition, petitioner has asked for a writ of mandamus, directing the respondent No. 2 to make a reference to the civil court

regarding fixation of compensation as the petitioner disputes the rate of compensation to have been fixed by respondent No. 2 by virtue of his

award dated 12121981 and a writ of certiorari for quashing the order, where under respondent No.2 has rejected the application of the petitioner

for making such reference under Section 18 of the Land Acquisition Act.

2. In brief, the moot point which is called for determination in this petition is whether Collector is empowered to reject an application for reference

to a civil court under section 18 of the Land Acquisition Act in proceedings under Land Acquisition Act?

3. The facts in brief which have given rise to the present petition are that land measuring 49 kanals and 12 marlas were at one stage offered by the

petitioner on private negotiation to be taken by the Border Security Forces for

construction of their residential quarters and in the meantime, when the matter was being processed, it was desired by the Government that as because the intending Department is a nonState Subject, so after doing needful, they had proposed that instead of having the land on private negotiations, the land should be acquired under the relevant provisions of Land Acquisition Act after issuing notifications as envisaged under Section 4 of the Land Acquisition Act, inviting objections regarding proposed acquisition and also to issue notification under Sections 6 and 7 and then to prepare an award under Section 25 of the Land Acquisition Act. This process seems to have been undertaken by the Collector under the Land Acquisition Act and it was after the whole process was undertaken that on 16121981 petitioner received the compensation under protest. The final award seems to have been passed by the Collector (SubDivisional Magistrate, Sopore) on 12121981 and at the time of pronouncement of the award, the petitioner has moved and application on 16121981, stating acquired and the compensation being paid to her is very paltry, as such, she is accepting the same under protest and as such, her case be referred to the civil court, meaning thereby that the compensation is being received by her under protest and let her case be referred to a civil court for reference under Section 18 of the Land Acquisition Act.

4. The provisions of Section 18 of the Land Acquisition Act of the State reads as under .

Section 18. Reference to Court:~(I) Any person interested who has not accepted the award made, where written application to the collector,

required that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land,

the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested;

2) The application shall state the grounds on which objection to the award is taken;

Provided that every such application shall be made,...

a) If the person making it was present or represented before the Collector at the time when he made his award within six weeks from the date of

Collector's award;

b) In other cases, within six weeks of the receipt of the notes from the collector

under section 12, SubSection (2), or within six months from the date of the Collector's award, whichever period shall first expire.

5. A plain reading of the provisions of Section 18 of the Land Acquisition Act manifestly lays down that whenever any person who is interested in not accepting the award to have been made by the Collector by following due process under the Land Acquisition Act and for acquisition of land, the party who is joining the issue can nodoubt take compensation under protest. The party may be joining the issue regarding measurement of the land, amount of compensation etc. and all such questions are to be agitated by the claimant by making an application in that behalf to the Collector asking him to refer the matter to the civil court for passing award.

6. Though the provisions of Section 18 of the Land Acquisition Act do say that the person who wants that the matter be referred to the civil court, has to state the grounds therefore, but merely in case the petitioner shows that she is not satisfied with the amount of compensation, that is sufficient compliance of the provisions of Section 18 of the Land Acquisition Act and a duty is caste upon the person of the Collector to refer the matter to the concerned District Judge for passing an award. However, the reference is to be made or objections are to be filed within six weeks from the date of Collector's award or within six weeks of the receipt of the notice from the Collector as provided under SubSection (2) of Section 12 of the Land Acquisition Act or within six months from the date of Collector's award, whichever period shall first expire.

7. In the case in hand, I do find that the award has been passed by the Collector on 12121981 and the application has been moved by the petitioner before the Collector on 16121981 and she is reported to have received the compensation on 26121981. So this was sufficient compliance by the claimant petitioner and statutory duty was caste upon the Collector to have acted upon such request. When the request of the petitioner has not been adhered to and the Collector arbitrarily and without assigning any cogent, muchless good reasons rejected her application on 10051982, the petitioner had filed the present petition before this court. The petition seems to have been admitted on the very first date of motion on 10061982 and respondents were put on notice but they did not file any counter worth the name. Today, the case has come up for final

hearing.

8. Mr. Mohammad Amin Ahanger, Government Advocate, started arguing off the record that as because it was a case of private negotiations, so

the provisions of Land Acquisition Act in particular were not strictly applicable in the proceedings and as such provisions of Section 18 of the Land

Acquisition Act have no application whatsoever.

9. It is highly regretable to note that when the records were confronted to Mr. Amin by Mr. Hagroo, learned counsel for the petitioner, wherein

notifications under section 4 of the Land Acquisition Act and other notification under sections 6, 7 and 9 of the Act seems to have been issued by

the Government and duly published in the Government Gazette regarding the acquisition of the land for the intending Department and passing of the

tentative award first and then the final award, which was got finally approved by the competent authorities, was made on 12121981. Thus it was

only after 12121981 that the cause of action had accrued to the petitioner to have approached to the Collector asking for referring the matter to

the civil court for adjudication regarding amount of compensation, though she had received the amount of compensation under protest. The reasons

for not referring the matter and arbitrariness of the Collector is not the proper and legal disposal of the application made by the petitioner before

him.

10. Whether the compensation was sufficient or was more than sufficient, that was none of the business of the Collector to have adjudicated upon.

His business was only to forward the final award alongwith application and relevant papers to the concerned District Judge for his adjudication

regarding the rate of compensation. This is the purport of Section 18 of the Land Acquisition Act. The statutory duty which was caste upon the

Collector has not been adhered to by the Learned Collector. Thus there was no other remedy available to the petitioner except to approach this

court in its extraordinary writ jurisdiction, praying for a writ of mandamus to be issued to the Collector for exercising his powers vested in him

under Section 18 of the Land Acquisition Act and to make a reference to the concerned District Judge for making an award. In case, the Statutory

functionary fails in discharge of his duties as provided under law, he can be directed by this court to exercise such discretion judiciously and in

accordance with law and he can be called upon to adhere to the statutory provisions as in the present case.

11. Thus after hearing learned counsel for the parties at length and persual of the records, I do find that the petitioner has succeeded in the petition.

The petition is accordingly allowed and by a writ of mandamus respondent No. 2 is directed to make a reference to the concerned District Judge

and consequently the order of rejecting her application for making such reference on 1051982 is quashed by a writ of certiorari. The petitioner is

also entitled to the costs of Rs.2000/, The reference shall be made within sixty days from the date of receipt of order.