
(2025) 03 J&K CK 0469
In the Jammu And Kashmir High Court
Case No : WP(C) No. 2292 Of 2022

Shafi Chopan

APPELLANT

Vs

UT of Jammu & Kashmir

RESPONDENT

Date of Decision : 06-03-2025

Acts Referred:

Citation : (2025) 03 J&K CK 0469

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Bodh Raj Sharma, Monika Kohli

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

1. With the consent of the learned counsel for the parties, this petition has been taken up for final disposal.
2. The petitioner has filed this petition for directing the respondents to release the compensation in his favour as already assessed by respondent No. 3 in accordance with the awards dated 29.07.2020 and 20.08.2020 in lieu of the land measuring 2 Kanals 5 Marlas (survey No. 340 min), 5 kanals (survey No. 341), 14 kanals 18 marlas (survey No. 343), 9 marlas (survey No. 350), 6 marlas (survey No. 351) and 14 kanals and 15 marlas (survey No. 354) situated at Village Sumber Tehsil and District Ramban, acquired by the respondents vide awards mentioned above.
3. It is stated that the father of the petitioner was in possession of aforesaid land and after the death of the father of the petitioner, the aforesaid land has devolved upon the petitioner and the petitioner was enjoying the possession of the land. It is stated that in terms of SRO 432 of 1996, the petitioner is entitled to ownership right in respect of the land mentioned above. It is further stated that above mentioned land was acquired by respondent No. 3 for the

construction of Sumber Station Yard work at Sumber and award dated 20.08.2020 has been passed by respondent No. 3 and an amount of Rs. 1,29,89,250/- has been assessed as compensation qua the land of the petitioner mentioned above. Further, the Collector has also passed award in respect of fruit bearing and non-fruit bearing trees amounting to. Rs. 8,69,694/-. Thus, the petitioner claims that he is entitled to an amount of Rs. 1,38,58,694/- as compensation as mentioned above.

4. The petitioner has further submitted that he has visited the office of respondent No. 3 for release of the compensation assessed in terms of awards dated 29.07.2020 and 20.08.2020 but the same was not released in his favour. The petitioner has relied upon the judgment of the Hon'ble Division Bench of this Court in "Krishan Singh and Anr. Versus UT of J&K" JKJ Online 74173.

5. The respondents have filed the response, stating therein that pursuant to the indent submitted by the Deputy Chief Engineer, Construction Northern Railway, Banihal, the final award in respect of the acquisition of the land situated at Village Sumber at the rate of 4.5 lacs per kanal for Abi type of land and Rs. 3.00 lacs per kanal for khushki type of land was issued on 20.08.2020. It is further stated that the contention of the petitioner that he is owner of the land measuring 35 kanals and 5 marlas is baseless and far away from reality because as per the revenue record, the said land is the State land and is under unauthorized possession of the petitioner. The petitioner has failed in getting the mutation attested in his favour under Government Order No. S-432 and hence not entitled for compensation, which is owned by the State but is in unauthorized possession of the petitioner. It is further averred that the compensation of the land acquired by the respondents has been disbursed among the land owners and the allegations levelled against the respondents by the petitioner regarding distribution of compensation in pick and choose manner is contrary to the record. It is further stated that the judgment relied by the petitioner in the petition, titled, Krishan Singh vs. UT of J&K (supra) has been challenged before the Apex Court.

6. Mr. Bodh Raj Sharma, learned counsel for the petitioner has argued that in the apportionment statement of the acquired land, the official respondents have themselves shown the petitioner entitled to compensation and once they have not challenged the award in question, the respondents cannot deny the compensation payable to the petitioner, notwithstanding the fact that he is in unauthorized occupation of the State land. He has further argued that against the judgment of the Division Bench as mentioned above, SLP was preferred by the respondents, however, the same has been dismissed by the Hon'ble Supreme Court vide order dated 21.11.2024.

7. On the contrary, Ms. Monika Kohli, Sr. AAG has vehemently argued that the petitioner is in illegal possession of the State land, as such, he is not entitled to any compensation.

8. Heard learned counsel for the parties and perused the record.

9. A perusal of the record reveals that the petitioner was in illegal possession of the State land measuring 35 Kanals 5 Marlas comprising survey numbers as mentioned above. Award reveals that the aforementioned land stands acquired vide award dated 20.08.2020 and the statement of compensation reveals that total compensation assessed in favour of the petitioner by the respondent No. 3 is Rs. 1,38,58,694/-.

10. The Hon'ble Division Bench of this Court in "Krishan Singh and Anr. (supra) in paras 6, 7 and 8 has observed as under: -

"6 From a perusal of the award` passed in the instant case and the apportionment statement prepared by the Collector Land Acquisition, Gool, it is abundantly clear that the compensation has been worked out by the Collector in the name of the appellants, who have been found to be in cultivating possession thereof. No doubt, the State is the owner of the State land, but as is held by the Hon'ble Supreme Court in the case of Sharda Devi (supra) that the Government, not being a person interested within the meaning of Section 3(b) of the Act, has no right to compensation payable for the land owned and possessed by it. To be precise, the State land cannot be made subject matter of acquisition at the instance of and for the benefit of the Government. Otherwise also, the award passed by the Collector Land Acquisition, Gool in the instant case has become final and the respondents have not challenged the same. It, thus, does not lie in the mouth of the respondents to say that the appellants, though named in the apportionment statement to receive the compensation, should be denied the compensation on the ground that they are not the owner of the land acquired, but were only found to be in cultivating possession.

7 This Court considered similar question in case titled "Krishana vs. State of Jammu and Kashmir and ors" (OWP No. 1101/2016) and, after relying upon several judgments of this Court as well as the Apex Court, concluded that the person in possession of the land is a "person interested" and entitled to compensation of the acquired land as per the final award, even though he may not be owner of the property and the land is a State land. It is not in dispute that the appellants have been in long continuous possession of the land and have, therefore, acquired sufficient interest in the land to claim compensation.

8 For facility of reference, the observations of this Court in paragraph 22 of the judgment rendered in the case of Krishana (supra) are reproduced hereunder:

"This is exactly the position in the present case, where while making the award, the Collector itself determined the compensation in respect of the aforesaid State land recognizing the tenancy/possession of the petitioner. Therefore, the compensation that has been determined under the award in respect of the land in question is for the person interested namely, the petitioner. Thus, it can safely be concluded that the petitioner is the person interested entitled to the compensation of the acquired land as per the final award dated 20.03.2012 to

the tune of Rs. 85,388/-, Even though he may not be the owner of the property and the land is that of the State simply on the basis even though he may not be the owner of the property and the land is that of the State simply on the basis of his long possession which is not in dispute”.

(emphasis added)

11. It is worthwhile to mention here that the aforesaid judgment of the Division Bench of this Court was challenged before the Hon^{ble} Supreme

Court but the SLP was dismissed vide order dated 21.11.2024. In this case also, the respondent No.3 has assessed the compensation payable to the petitioner and the award has not been challenged by the U.T Of J&K on the ground that the petitioner is in illegal occupation of land and as such, is not entitled to any compensation. In fact, there is admission on the part of the respondents that the petitioner was in illegal possession of the land acquired by the respondents and the revenue record placed on record by the petitioner establishes the possession of the petitioner. Once the award is not challenged and the same has attained finality, the petitioners cannot be denied the compensation assessed by no one else but the Collector.

12. The petitioner has not placed on record the award dated 29.07.2020, though he is seeking compensation on account of that award also and the respondents also have not placed the same on record. Though the petitioner has placed on record assessment of fruit bearing trees by the Chief Horticulture Officer, Ramban and assessment of non-fruit bearing trees by the Divisional Forest Officer Mahore Forest Division but this court leaves it open for the respondent No.3 to assess the compensation for the fruit and non-fruit bearing trees, if not already assessed.

13. In view of the above, the present petition is disposed of by directing the respondent No.3 to release the compensation in favour of the petitioner(s) assessed by the respondent No.3 in lieu of the land in possession of the petitioner, within the period of 8 weeks, failing which the petitioner(s) shall be entitled to interest @ 6 percent per annum from the date of filing of the petition till the actual compensation is paid to the petitioner(s). Further, the respondent No.3 is directed to determine the compensation payable on account of fruit and non-fruit bearing trees and pay the same along with interest @ 6 percent from the date of filing of the petition till the amount is paid to the petitioner.

14. Disposed of.