

(2024) 05 J&K CK 0043

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 124, 831 Of 2018 (O&M)

Shafiq Ahmed

APPELLANT

Vs

State Of Jammu And Kashmir And Others

RESPONDENT

Date of Decision : 10-05-2024

Acts Referred:

Land Acquisition Act, 1990 — Section 4, 4(1), 6, 7

Citation : (2024) 05 J&K CK 0043

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Sunil Sethi, Waheed Choudhary, Monika Kohli

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. The petitioners in OWP No. 124/2018 have stated that the petitioner Nos. 1 and 2 are owners in possession of the land measuring 2 kanals and 8 marlas comprising khasra No. 1156 (08 marlas) and khasra No. 1179 (2 kanals) situated at Village Rampur, District Rajouri, as they were conferred the ownership rights under the J&K State Land (Vesting of Ownership rights to the Occupants) Act, 2001 (for short the Roshni Act?), vide order dated 08.04.2008, pursuant to which the mutation was attested in favour of respondent Nos. 1 and 2. The petitioner Nos. 1 and 2 also claim to be the owners in possession of land measuring 1 kanal comprising khasra Nos. 1156 and 1179 situated at Village Rampur, District Rajouri also under the Roshni Act. The petitioner Nos. 1 and 2 further claim to be the owners in possession of 6 marlas of land comprising khasra No. 1158 and 1164 situated at Village Rampur, Rajouri. The petitioner Nos. 3 and 4 in turn claim to be the owners in possession of 15 marlas of land comprising khasra No. 1177 situated at Rampur, District Rajouri. It is urged by the petitioners that the respondents have wrongly and forcibly fenced the abovementioned land measuring 4 kanals and 9 marlas (2 kanals 8 marlas comprising khasra Nos. 1156 and 1179, 4 marlas comprising khasra No. 1158, 2

marlas comprising khasra No. 1164, 1 kanal comprising khasra No. 1156 and 1179 and 15 marlas comprising khasra No. 1177) situated at Village Rampur, District Rajouri and have sought the indulgence of this court for directing the respondents to allow the petitioners to enjoy the peaceful and uninterrupted possession of the aforesaid land being owners thereof

2. The respondents have filed their response stating therein that the land comprising khasra No. 1156 min (8 marlas) and khasra No. 1179 min (2 kanals), total measuring 2 kanals and 8 marlas situated at Rampur, District Rajouri is recorded as "Ghair Mumkin Darya/Khol" in "Missal-e-Haqiyat 1961-1962"(Record of rights, 1961-1962). The land in question was a part of enquiry initiated by the District Administration regarding illegal mutations/ownership rights obtained by some influential persons. In the case of the petitioners, the ownership rights were found to have been conferred in favour of the petitioner Nos. 1 and 2 (Shafiq Ahmed and Aftab Ahmed) under the Roshni Act and illegal mutation, bearing mutation No. 3125 dated 09.09.2009, has been found to be attested in their favour. In fact, the Roshni Act was not applicable to certain lands, which were recorded or used as pathway, grazing ground, graveyard, cremation ground, camping ground or khol (irrigation channel/canal). Therefore, the respondent No. 2 vide its order dated 22.11.2017, taking sue moto action, cancelled the mutation No. 3125 attested by the Tehsildar Rajouri in respect of land measuring 02 kanals and 8 marlas comprising khasra No. 1156 min and 1179 min. The order was issued as an outcome of enquiry after detailed verification and report by the Tehsildar, Rajouri followed by the recommendations of the Assistant Commissioner, Revenue, Rajouri following due process of law. It is also stated that the Chief Executive Officer, Municipal Committee, Rajouri vide its communication dated 29.12.2017 had placed an indent before the respondent No. 2 thereby requisitioning 10 kanals of land for construction of parking stand/lot. On receipt of aforesaid communication, answering respondent Nos. 2 to 4 in order to regulate the vehicular traffic tribulation and to get rid of the menace of traffic jam due to lack of parking facility in the District, undertook a project for establishment of parking lot at District Rajouri within the municipal limits. After identifying the suitable patch of land measuring 10 kanals 03 marlas and 08 sarsai comprising khasra Nos. 1154 (14 marlas), 1155 (14 marlas), 1156(11 marlas 6 sarsai), 1157 (08 marlas), 1158(03 marlas 08 sarsai), 1159 (03 marlas), 1160 (02 marlas 6 sarsai), 1161 (03 marlas), 1162 (01 marlas), 1177(01 marlas 3 sarsai) and 1179 (07 kanals 01 marlas 03 sarsai) situated at Village Rampur, Rajouri for aforesaid purpose, a notification was issued under section 4(1) of the Land Acquisition Act, 1990 vide notice dated 01.01.2018 for calling objections in respect of the aforementioned land and was published in two daily news papers of the erstwhile State. As no objections were received in the office of answering respondents, the respondent No. 2 vide its communication dated 19.01.2018 requested the Divisional Commissioner, Jammu for getting the declaration issued under section 6 and directive under section 7 of the Land Acquisition Act for acquiring the land measuring 10 kanals and 03 marals and 8

sarsai situated at Village Rampur, District Rajouri from the Government for construction of parking lot by Urban Development Department. The Divisional Commissioner, Jammu vide its communication dated 15.02.2018 requested the Financial Commissioner (Revenue) Jammu for getting the declaration issued under sections 6 and 7 of the Land Acquisition Act for the above mentioned land from the competent authority. It is further submitted that the petitioners were at liberty to raise any objection before the answering respondents but in absence of any valid claim to make out their case, the petitioners instead of raising objections opted to approach the Court in a clear attempt to escape the likely legal action against them along with officials for wrongful mutation under the Roshni Act. It is also averred that khasra No. 1164 is not involved in the land acquisition proceedings and that the petitioners can claim compensation only for the proprietary land, if any, found involved in the acquisition.

3. While the writ petition OWP No. 124/2018 was pending before this Court, the petitioner Nos. 1 and 2 filed another writ petition bearing OWP No. 831/2018 for quashing of the order dated 22.11.2017 whereby taking suo moto action, mutation No. 3125 attested by the respondent No. 3 in respect of the land measuring 2 kanals 8 marlas comprising khasra No. 1156 (8 marals) and khasra No. 1179(02 kanals) situated at Village Rampur, District Rajouri was cancelled by the respondent No.2. It is urged by the petitioners that the order impugned dated 22.11.2017 has been issued by the respondent No. 2 without affording any opportunity of hearing to the petitioners. The respondent No 2 has filed the response and has reiterated the stand taken in the previous writ petition bearing OWP No. 831/2018 filed by the petitioners.

4. Mr. Sunil Sethi, learned Senior Counsel appearing for the petitioners has vehemently argued that mutation No. 3125 was cancelled without affording any opportunity of hearing to petitioner Nos. 1 and 2, as such, the order impugned is not sustainable in the eyes of law. Mr. Sethi further submitted that the land of the petitioners has been consumed by the respondents for constructing parking lot but still the respondents can pass fresh order after hearing the parties.

5. Per contra, Ms. Monika Kohli, learned Senior AAG appearing for the respondents has vehemently argued that no rights could have been vested in favour of the petitioners under Roshni Act in respect of land measuring 2 kanals 8 marlas comprising khasra No. 1156 min (08 marlas) and 1179 min (02 kanals) situated at Rampur, District Rajouri as the land was recorded as "Ghair Mumkin Dharya/khol" in the record of rights 1961-62 She has further submitted that the Division Bench has already ordered the cancellation of all the orders passed under the Roshni Act after declaring the Roshni Act ultra vires, as such, both the writ petitions are misconceived.

6. Heard and perused the record.

7. So far as claim of petitioner No. 1-Shafiq Ahmed and petitioner No. 2-Aftab Ahmed in OWP No. 124/2018, in respect of land measuring 8 marlas comprising

khasra No. 1156 and 02 kanals comprising khasra No. 1179 situated at Rampur, Rajouri is concerned, it needs to be noted that the ownership rights in respect of land mentioned above were conferred under the Roshni Act, which was not only subsequently repealed but also quashed by the Division Bench of this Court. The sole contention of the petitioners is that no opportunity of hearing was afforded to the petitioner No. 1 and 2. The petitioner Nos. 1 and 2 have not been able to demonstrate before this Court that the land measuring 8 marlas comprising khasra No. 1156 min and 2 kanals comprising khasra No. 1179 min, total 2 kanals and 8 marlas situated at Rampur Rajouri was not recorded as "Gair Mumkin Darya/khol in the record of rights for the years 1961-62. Otherwise also the Division Bench of this Court has declared the Roshni Act ultra vires and the respondents have already taken the possession of the land measuring 2 kanals and 8 marlas. The petitioner Nos. 1 and 2 have no right whatever to claim ownership or possession of the land measuring 2 kanals and 8 marlas comprising khasra No. 1156 and 1179 situated at Rampur, Rajouri. Affording any opportunity of hearing to the petitioners at this stage, would be an exercise in futility, as the result of any such opportunity of hearing would remain the same. (See Para 39 of "State of Uttar Pradesh v. Sudhir Kumar Singh, 2020 SCC Online SC 847")

8. The petitioner Nos. 1 and 2 have further claimed to be the owners in possession of the land measuring 2 marlas comprising 1164 of Village Rampur, Rajouri. The respondents are candid in their response that khasra No. 1164 is not involved in the land acquisition proceedings.

9. The petitioner Nos. 1 and 2 also claim to be the owners of 4 marlas of land comprising khasra No. 1158, whereas land measuring 3 marlas and 8 sarsai comprising khasra No.1158 is the subject matter of the acquisition proceedings.

10. Similarly, petitioner Nos. 3 and 4 in OWP No. 124/2018, namely, Talat Mehmood and Khalid Mehmood claim to be the owners of the land measuring 15 marlas comprising khasra No. 1177 situated at Village Rampur, Rajouri and as per the notification placed on record by the respondents issued under section 4 of Land Acquisition Act, the land measuring 1 marla and 3 sarsai comprising khasra No. 1177 situated at Rampur is the subject matter of acquisition proceedings for raising the construction of parking lot.

11. There is nothing on record to demonstrate that the ownership rights of the land measuring 1 kanal comprising khasra No. 1156 and 1179 situated at Rampur, Rajouri, were conferred in favour of petitioner Nos. 1 and 2 at any point of time under the Roshni Act.

12. It is not clear as to whether any land of the petitioners comprising survey Nos. 1158 and 1177 situated at Village Rampur Rajouri has been utilized by the respondents for the construction of parking lot or not.

13. In view of above, the respondent No. 2 shall examine as to whether any part of the land measuring 4 marlas comprising khasra No. 1158 situated at Rampur owned by the petitioner Nos. 1 and 2 falls within the acquired land and if it is

found that the land of the petitioners is included in the acquired land, then the petitioner Nos. 1 and 2, shall be paid the compensation in accordance with law. Likewise the respondent No. 2 shall also examine as to whether any land of the respondent Nos. 3 and 4 comprising Khasra No. 1177 situated at Rampur falls within the acquired land and in the event it is found that any part of the land measuring 15 marlas comprising khasra No. 1177 situated at Rampur, Rajouri owned by the respondent Nos. 3&4 falls within the acquired land, the petitioner Nos. 3 and 4 shall be paid the compensation in accordance with law. However, both the writ petitions filed by petitioner Nos. 1 and 2 in respect of land measuring 2 kanals and 8 marlas comprising khasra Nos. 1156 and 1179 situated at Rampur, District Rajouri and the land measuring 1 kanal comprising khasra Nos. 1156 and 1179 situated at village Rampur, District Rajouri, are dismissed.

14. Disposed of.