

(2021) 04 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No. 1534 Of 2017, IA No. 1 Of 2017

Shanti Devi

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 09-04-2021

Acts Referred:

Land Acquisition Act, 1894 — Section 6, 9, 31
Constitution Of India, 1950 — Article 226

Citation : (2021) 04 J&K CK 0015

Hon'ble Judges : Puneet Gupta, J;Dhiraj Singh Thakur, J

Bench : Division Bench

Advocate : Sudershan Sharma, S. S. Nanda, Rajdeep Singh Thakur

Final Decision : Dismissed

Judgement

1. The petitioner prays for issuance of writ of certiorari for quashing the final award dated 11.05.2013 passed by the Collector Land Acquisition (ACR) Ramban in regard to the land measuring 03 kanals 05 marlas situate at Village Kundi, Tehsil and District Ramban.

2. The case set up by the petitioner is that out of 07 kanals 11 marlas falling under Khasra No. 313 at Village Kundi, she and respondent No. 10, who are real sisters would be entitled to inherit half of the land and that with a view to deprive the petitioner, respondent No. 10 had got a mutation attested in her favour on false and flimsy grounds. It is stated that the mutation was subsequently set aside and the petitioner held entitled to half of the property as co-sharer. In that background, it is urged that even when the petitioner was entitled to receive the compensation, her name was missing in the award.

3. Objections have been filed to the writ petition, on a perusal whereof it can be seen that 03 kanals 05 marlas of land, out of 07 kanals 11 marlas falling under Khasra No. 313 in Village Kundi was acquired for construction of Karol-Kumate road under the PMGSY Scheme. The notifications in regard to acquisition under

the provisions of Land Acquisition Act are stated to have been issued in the year 2007-08 and the final award passed on 11.05.2013. It is stated that respondent No. 10 was in cultivating possession of 03 kanals 05 marlas of land in Village Kundi. It is also stated that according to the report of Tehsildar, Ramban, the petitioner was never in cultivating possession of the said land.

4. It is further stated that as per the Circular No. 3 dated 26.08.1969, the compensation has to be made only in favour of the person, who is the owner as well as is physically cultivating the land in question.

5. It is further stated that the dispute raised by the petitioner is actually with regard to the apportionment of compensation, the same could have been agitated in terms of Section 31 of the Land Acquisition Act and that the present proceedings were on the face of it misconceived.

6. It is not denied that the process of acquisition had started as early as in 2007-08, when the notification under Section 4(1) had issued, followed by declaration under Section 6 and notice under Section 9 of the Land Acquisition Act. It is not the case of the petitioner that the notice under Section 9 was never issued. Needless to say that in response to Section 9, the petitioner could have as well laid a claim for compensation in regard to the land in question, which the petitioner appears not to have done, finally leading to the passing of the award dated 11.05.2013. The present petition has now been filed in the year 2017 after a delay of more than four years. On the face of it, the petition is barred by delay and laches.

7. A similar issue arose for consideration by the apex Court in "Municipal Corporation of Greater Bombay Vs The Industrial Development Investment Co. Pvt. Ltd. & Ors." reported in 1997 0 AIR(SC) 482, wherein in paragraph 20, it was held:-

"20. It is thus well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of High Court was not right in interfering with the discretion exercised by the learned single Judge dismissing the writ petition on the ground of laches."

8. In "Mushtaq Ahmed & another Vs State & ors" reported in 2014(1) JKJ 436, one of us (Thakur-J), following the ratio of the aforementioned judgement had dismissed the petition, challenging the award under the Land Acquisition Act on

grounds of delay and laches. No satisfactory explanation is rendered in the instant petition to explain as to why the petitioner kept quiet for so many years from the date of issuance of notification under Section 9 and thereafter the passing of the final award dated 11.05.2013. The provisions of the Land Acquisition Act provided a complete code in itself for redressal of the grievances of the petitioner in regard to the entitlement to receive compensation as also the issues with regard to the apportionment of compensation.

9. In the present case, the petitioner has failed to take recourse to the remedies under the Land Acquisition Act. In our opinion, as the final award stands already passed in the year 2013, compensation already disbursed and possession taken and considering the ratio of the judgement in Municipal Corporation of Greater Bombay's case (*supra*), this petition is held to be barred by delay and laches and is, accordingly, dismissed along with connected application.