

(2009) 10 J&K CK 0027

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 336/1998, CMP Nos. 1246 Of 2007, 570/99 & 769 Of 2009 and OWP No.398/1998, CMP Nos. 913 Of 1998 and 914 Of 1998

Skuast & Anr.

APPELLANT

Vs

Collector & Ors.

RESPONDENT

Date of Decision : 26-10-2009

Acts Referred:

Land Acquisition Act, 1990 — Section 11, 18, 4, 48, 52

Citation : (2009) JKJ 446 Supp

Hon'ble Judges : J.P.Singh, J

Bench : Single Bench

Advocate : A.Chesti, M.Ashraf Bhat, Z.A.Shah,Sr., M.Y.Bhat, Advocates appearing for the Parties

Judgement

1. Land measuring 898 Kanal 08 Marias situated at Villages Shahama and Buserbugh in District Srinagar was notified for acquisition by the

Collector, Additional Deputy Commissioner, Srinagar, under Section 4 of the State Land Acquisition Act vide No. 95867/LAC dated

02.03.1985, pursuant to the indent of the SherIKashmir University of Agricultural Sciences and Technology, Srinagar, a body corporate,

constituted as such under the SherIKashmir University of Agricultural Sciences and Technology Act, 1982.

2. Following the prescribed procedure including that of Declaration under Section 6 of the Act, by the State Government, the Collector made its

Award on July 12,1988 under Section 11 of the State Land Acquisition Act, 1990 (1934 A.D), hereinafter referred to as the ""Act;/, for short.

3. The land owners, do not appear to have been satisfied with the determination of the Market value of the acquired land by the Collector, fixing

Rs.17,000/ per kanal for Proprietary Cultivable Land, Rs.12,000/ for Proprietary Uncultivable Land and Rs.10,000/ for Kahcharai and Shamlat

lands.

4. They, therefore, requested the Collector for Reference under Section 18 of the Act, which acceding their request, he made to District Judge,

Srinagar.

5. Relying on the evidence of the land owners/interested persons, the District Judge, determined the Market value of all types of the acquired land,

at Rs.35,000/ per kanal vide its Award of November 04,1996, in exparte.

6. The SherIKashmir University of Agricultural Sciences and Technology, hereinafter to be referred as the ""UNIVERSITY"", for short, came to

know about the passing of the Award by the Court only during the Execution Proceedings taken out by the land owners, and accordingly

approached the learned District Judge seeking impleadment and hearing in the case.

7. Holding that the Award made by it on November 04,1996 had become final, the learned District Judge declined the petitioners' request for

impleadment and hearing the University as unwarranted, vide its order of March 19,1998.

8. The PetitionerUniversity has filed these two Writ Petitions OWP Nos. 336/1998 & 398/1998, seeking quashing of the learned District Judge's

Award made on November 04, 1996 in File No.1/Reference and Order of March 19, 1998 passed in the Execution Proceedings, impleading the

land owners besides the Collector as party respondents in these petitions, subject matter whereof, pertains to the land acquired for the University

as mentioned at the threshold.

9. Relying on U.P.Awas Evam Vikas Parishad versus Cyan Devi and others, reported as AIR 1995 SC, 724, petitioners' learned counsel submits

that the District Court's Award, made without notice and opportunity of leading evidence to the petitionerUniversity, was void ab initio and

violative of the provisions of the Act which was thus liable to be set aside and quashed.

10. Per contra, learned Senior Counsel appearing for the land owners, while not disputing that the District Judge had not issued Notice to the

petitioners before determination of the Market value of the acquired land,

submitted that the Decree impugned in the Writ Petitions, being appealable under Section 52 of the Act, the petitioner's Writ Petitions, were not maintainable, because of the petitioner's omission to avail of the statutory remedy of appeal under the Act. He further submitted that the petitioner was not a necessary party to the proceedings and having opted not to appear in the Reference Court, it was not entitled to question the Award/Decree which was not, otherwise void, as projected by the petitioner. To support his submissions, learned Counsel too relied on *LLP.Awas Evam Vikas Parishad's case (supra)*.

11. In view of the admitted case of the parties that the petitioner University, for whom the land has been acquired, had not been heard by the Court

before passing the Award, and other submissions made by learned counsel for the parties at the Bar, the issues which fall for determination in these

Petitions are as follows:

1. Whether the Court, hearing a Collector's Reference under Section 18 of the Act, for determining the Market value of the land acquired for a

Local Body, is obliged to issue Notice and provide opportunity to lead evidence to the Body, before the determination of the Market value and

compensation for the acquired land?

2. Whether a Local Body for whom the land is acquired under the Act, is a necessary party to the proceedings before the Court?

3. What is the status of an Award made by the Court without hearing the Local Body?

4. Whether Judicial Review of the Reference Court's Award/Decree under the Act and Orders passed during Execution of the Award, is

permissible under Article 226 of the Constitution of India and Section 103 of the Constitution of Jammu and Kashmir, when the petitioner does not

avail of the statutory remedy of Appeal under the Act?

12. Before considering the issues aforementioned, reference needs to be made to the provisions of Section 48 of the Act, which are germane for

determining the above referred issues. Section 48 reads thus:

48. Acquisition of land at cost of a local body, persons or body of persons

(1) When the provisions of this Act are put in force for the purpose of acquiring land and at the cost of any fund controlled or managed by a local

body or of any person or body of persons, whether corporate or not, the charges of and incidental to, such acquisition shall be defrayed from or by such fund or such person or body of persons.

(2) In any proceedings held before a Collector or Court in such cases the local authority or the person or the body of persons concerned may appear and adduce evidence for the purpose of determining the amount of compensation. Provided that, no such person or a body of persons shall be entitled to demand a reference under section 18.

13. The above quoted Section of the State Act is in para materia with the provisions of Section 50 (2) of the Act which had fallen for consideration of Hon'ble Supreme Court of India in U.P.Awas Evam Vikas Parishad's case (supra).

14. As both the learned counsel have relied on U.P.Awas Evam Vikas Parishad's case to support their respective submissions, so the position in law, settled by the Supreme Court of India in the above referred case needs to be noticed for determination of the issues raised in the case.

15. The law declared by Hon'ble Supreme Court of India is reflected in the order passed by it, by majority, which reads thus:

ORDER OF THE COURT (PER MAJORITY) Leave granted.

1. Section 50 (2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference Court and adduce evidence for the purpose of determining the amount of compensation.

2. The said right carried with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending on the date on which the matter of determination of compensation will be taken up.

3. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.

4. In the event of denial of the right conferred by Section 50 (2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226

of the Constitution.

5. Even when the notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local

authority on grounds on which judicial review is permissible Article 226.

6. The local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as party in those proceedings

wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also

adduce evidence in this regard.

7. In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal. The local authority

can file an appeal against the award in the High Court after obtaining leave of the court.

8. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court the

local authority should be impleaded as party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court

as well as in this Court.

9. Since a company for whom land is being acquired has the same right as a local authority under Section 50(2), whatever has been said with

regard to a local authority would apply to a company too.

10. The matter which stand finally concluded will, however, not be reopened.

We, therefore allow the applications submitted by the Board for being impleaded as a respondent in the appeals filed by the land owners in this

Court and direct that the Board be also impleaded as a respondent in the appeals filed by the land owners in the High Court. The judgment of the

Allahabad High Court dated December 21,1990 in First Appeal Nos. 584,585 and 642 of 1985 and the judgment of the said High Court dated

April 18,1991 in First Appeal Nos. 586,587 and 641 of 1985 as well as the order dated January 20, 1993 on the review applications filed against

the judgment dated April 18,1991 are set aside and the said appeals are remitted to the High Court for decision in accordance with law. The

appeals are disposed of accordingly. There will no order as to costs. ""[Emphasis supplied]

16. Section 48 of the State Act being in para materia with the provisions of Section 50(2) of the Act on which Hon'ble Supreme Court has

declared law, the issues arising in these writ petitions are, therefore, answered as follows:

17. Although, in view of the above quoted legal position, the petitioner corporation, being a local body in terms of the provisions of the Act, may

not be a Necessary Party to the proceedings before the Reference Court and was only a Proper Party, having statutory right to appear and

adduce evidence for proper determination of the amount of compensation of the acquired land, yet the Reference Court was obliged to issue

notice to it before determining the amount of compensation, for meaningful compliance of the provisions of Section 48 (2) of the Act, for, the right

possessed by the petitionerUniversity under Section 48 (2) of the Act, to adduce evidence before the Court for determination of appropriate

compensation, may not be capable of its exercise, in the absence of any Notice by the Reference Court to the Local Body intimating it about the

pendency of the Reference for considering enhancement of the compensation, assessed by the Collector, for the land acquired for the Local Body.

18. In view of the judgment delivered by the Constitution Bench of Hon'ble Supreme Court of India, settling the law on the issues raised in the

case, no further deliberation on the issues may thus be required.

19. Thus, going by the law laid down in the judgment (supra), Issue Nos. 1 and 2 are answered by holding that although the PetitionerUniversity,

was not necessary a party to the proceedings, yet the Reference Court hearing the Collector's Reference under Section 18 of the Act was obliged

to issue Notice and provide opportunity to the PetitionerUniversity, a Local Body under the Act, to lead evidence in the case for determining the

Market value and compensation of the acquired land, as contemplated by the provisions of the Act.

20. The Reference Court has issued the Award in question, without issuing Notice and providing opportunity to lead evidence to the

PetitionerUniversity, which course, is in violation of the provisions of Section 48 (2) of the Act and the law declared by Hon'ble Supreme Court of

India in U.P.Awas Evam Vikas Parishad's case.

21. The Reference Court's Award is, therefore, is rendered void, in that, any

judgment, order, decree, or award etc., made, without following the law declared by the Supreme Court of India, would be unconstitutional, being in violation of the provisions of Article 141 of the Constitution of

India, which mandate the law declared by the Supreme Court of India to be binding on all Courts within the territory of India.

22. The Award, thus being unconstitutional, the omission of the Petitioner University to question it in appeal, would not, in my opinion, operate as an impediment for this Court to exercise jurisdiction under Article 226 of the Constitution of India read with Section 103 of the Constitution of

Jammu and Kashmir, for, having come to know that District Court's Award was in violation of the law declared by the Supreme Court of India,

this Court, as of necessity, is required, to exercise jurisdiction under Article 226 of the Constitution of India to upset the Award issued in violation

of Article 141 of the Constitution, to uphold the Constitution of India, ensuring that the law declared by the Supreme Court of India was followed

by all Courts.

23. Issue No. 4 is accordingly answered by holding that the petitioners' Writ Petitions seeking quashing of the Award and the consequent order

passed while executing the Award, regardless of petitioners' omission to have resort to the remedy of appeal, would be maintainable.

24. The issues arising for determination in the case having thus been answered by holding that the District Judge's Award of November 4, 1996 and

Order dated March 19, 1998 are unconstitutional and bad in law; these Petitions, therefore, deserve to be allowed.

25. Accordingly, allowing these Petitions, the District Judge, Srinagar's Award of November 4, 1996 and Order dated March 19, 1998 are

quashed, remanding the Reference to learned Principal District Judge, Srinagar for its consideration afresh in accordance with law.

26. Parties through their learned counsel are directed to appear before the learned Principal District Judge, Srinagar on November 10, 2009.