

**(2005) 05 J&K CK 0013**  
**In the Jammu And Kashmir High Court**  
**Case No : CIA No. 09 of 2003**

|                             |    |            |
|-----------------------------|----|------------|
| State of Jammu & Kashmir    | Vs | APPELLANT  |
| Sh. Mustaq Ahmad and Others |    | RESPONDENT |

**Date of Decision :** 25-05-2005

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 51, 53  
Land Acquisition Act, 1990 — Section 11, 12(2), 18, 3, 30

**Citation :** (2006) 1 JKJ 43

**Hon'ble Judges :** Nirmal Singh, J

**Bench :** Single Bench

**Advocate :** A.H. Qazi, AAG, for the Appellant; Mohd Arif, for the Respondent

**Final Decision :** Dismissed

## Judgement

Nirmal Singh, J.—Notification u/s 4(1) of the Land Acquisition Act, 1990 (hereinafter referred to as the Act) was issued for acquiring the

land measuring 8 kanals 7 marlas and 1 kanal 19 marlas bearing Kh.Nos. 08 min and 509 min situate at village Rampur, Rajouri, for public

purpose, namely, construction of I.T.I. Hostel.

2. Objections were invited with regard to the acquisition of the land but no one filed any objections. Thereafter, Notification under Sections 6 and

7 of the Act was issued vide No. 238 RD dated 06.10.1988 and No. 98 RD of 1989 dated 13.03.1989. The interested persons claimed

compensation @ Rs. 80,000/- per kanal. However, the learned Collector awarded Rs. 30,435/- per kanal with 15% Jabarana. The land owners

accepted the compensation under protest. The petitioners, Shan Mohd, Syed Mohd and Mohd Aziz sons of Slah Mohd moved a petition u/s 18 of

the Act for referring the matter to the learned District Judge for determination of

value of the land. On receipt of the reference, learned District

Judge issued notice to the State through Collector, who pleaded that the compensation assessed is correct. However, during the pendency of the

reference, four more persons interested in the property, namely, Abdul Qayoom, Abdul Rehman, Mohd Iqbal and Nassarullah sons of Mirza

Mohd Khan also moved an application for impleading them as party-petitioners. The learned District Judge, Rajouri vide order dated 22.05.1996

accepted the application and impleaded the above said persons as petitioners.

3. After recording evidence of the parties, learned District Judge, Rajouri assessed the compensation @ Rs. 80,000/- per kanal with solatium @

15% and it was also ordered that the interested persons shall also be entitled to interest @ 6% from the date of Notification u/s 6 of the Act.

Aggrieved by the judgment of learned District Judge, present appeal has been preferred.

4. Mr. A.H. Qazi, learned AAG has contended that u/s 18 of the Act, learned District Judge has no jurisdiction to entertain the application under

Order 1 Rule 10 for impleading the respondents 5 to 8 i.e., Abdul Qayoom, Abdul Rehman, Mohd Iqbal and Nassarullah sons of Mirza Mohd

Khan as petitioners, even though the provisions of CPC are applicable. He contended that u/s 18 of the Act, any person interested who has

refused to accept the award passed u/s 11 of the Act cannot straightway come to the Court for determination of the dispute with regard to the

value of his land or on his application he cannot be impleaded as party, if some other co-owner or co-sharer has moved a reference u/s 18 of the

Act. He submitted that this Court has already held in Des Raj and Others Vs. Mansa Ram, that the District Judge has no power to implead any

person as party to the proceedings pending before it if the interested persons have not made reference u/s 18 of the Act.

5. I have given my thoughtful consideration to the submissions and perused the record.

Section 51 of the Act reads as under:

51. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the law in force in Jammu and Kashmir State

for the time being relating to the procedure in civil actions shall apply to all proceedings before the Court under this Act.

6. Perusal of Section 51 shows that the provisions of CPC will apply to all the proceedings before the court under this Act provided these are

inconsistent with anything contained in the Act. Therefore, provisions of Order 1 Rule 10 are applicable under this Act. The respondents who were

impleaded as party-petitioners, they are co-sharers in the land in dispute and when one of the co-owners has made a reference to the learned

District Judge for determination of the compensation of the acquired land, the other co-sharers are interested persons, therefore they can be

impleaded as party to the proceedings pending before the learned District Judge. Section 18 of the Land Acquisition Act reads as under:

18. Reference to Court -- (1) Any person interested who has not accepted the award may, by written application to the Collector require 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

the Collector's award;

(b) In other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2), or within six months from the date of the

Collector's award, whichever period shall first expire.

Interested person has been defined in Section 3(b) of the Act, which reads as under:

3(b). the expression ""person interested"" includes all persons claiming an interest in compensation to be made on account of the acquisition of land

under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;

7. From the above definition, the persons interested include all persons claiming interest in compensation, so reference made by one co-sharer/co-

owner will be on behalf of all the persons claiming interest in the compensation.

In Babulal Mehtar and Another Vs. Fakira Mehtar and Another, it has been held

as under:

By virtue of the provisions of Section 53 the provisions of Order 1, Rule 10 apply to the proceedings before the Court on a reference u/s 18 or

Section 30 and the Court has power at any stage of the proceedings either upon or without the application of either party to add a person as a

party to the proceedings if it appears to the court to be just to do so and more particularly if the court finds that presence of such a person may be

necessary in order to adjudicate upon and settle the questions involved in the case.

In A. Viswanatha Pillai and others Vs. Special Tahsildar for Land Acquisition No. IV and others, it has been held as under:

A co-owner is as much an owner of the entire property as a sole owner of the property. It is not correct to say that a co-owner's property was not

its own. He owns several parts of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner

in the property. That position will undergo a change only when partition takes place and division was effected by metes and bounds. Therefore, a

co-owner of the property is an owner of the property acquired but entitled to receive compensation prorata. The State would implead no waiver

nor omission by other co-owners to seek reference nor disentitle them to an award to the extent of their legal entitlement when in law they are

entitled to. Since the acquired property being the ancestral coparcenary and continued to be kept in common among the brothers and the income

derived therefrom was being shared in proportion of their shares by all the brothers it remained as joint property.

8. In view of the settled proposition of law the learned District Judge has not acceded his jurisdiction by impleading respondents 5 to 8 as

petitioners in the proceedings.

9. The next contention raised by the learned Counsel for appellant is that the learned District Judge has assessed the compensation without any

evidence. He contended that it is the duty of the claimant to prove by documentary evidence that the value of the adjacent land is the same by

producing sale deeds. He further contended that even the value of the adjacent land couldn't be the same. It is for the court to find out whether the

potentiality of the acquired land and adjoining land is the same.

10. I have considered this submission of the learned Counsel for the appellant and find the same without any substance. The learned District Judge has assessed the market value of the land in question on the basis of the assessment made for acquisition of adjacent land belonging to one Bhagat Ram. It is pertinent to mention here that Bhagat Ram's land and the land of the respondents herein is adjacent to each other. Bhagat Ram's land was acquired by Animal Husbandry Department for the construction of hospital whereas the land of the respondents herein has been acquired for construction of ITI Hostel. In case of Bhagat Ram, the learned Collector awarded compensation @ Rs. 30,435 per kanal with 15% solutium and the same was approved by the learned District Collector, Rajouri. Feeling aggrieved by the same Bhagat Ram filed an appeal before this Court. This Court determined the market value of the land @ Rs. 80,000/- per kanal. It is admitted that the State has not preferred any appeal or revision against the order passed by this Court in Bhagat Ram's case, so the compensation awarded in Bhagat Ram's case has become final. The learned District Judge awarded compensation at the same rate as was awarded in case of Bhagat Ram. The learned District Judge has assessed the compensation in both the cases while taking into consideration location, potentiality of the land.

11. Mr. Qazi, learned Counsel for the appellant submitted that the land owners have examined PW-Amar Nath who has deposed that his land was also acquired which was commercial one whereas the land of the respondents is for residential purpose. This submissions raised by the learned Counsel for the State is without any foundation. The learned District Judge has not taken Amar Nath's evidence into consideration. The learned District Judge has assessed the value on the basis of the compensation assessed in Bhagat Ram's case. When potentiality of the land belonging to the respondents herein and Bhagat Ram is the same, there is no justification to award different rates for the land belonging to Bhagat Ram and the land belonging to the respondents herein.

In M/s. Printers House Pvt. Ltd. Vs. Mst. Saiyadan (Deceased) by L. Rs., and others, , it has been held as under:

15. As the price fetched under a genuine sale-deed could form the basis for determining the market value of the acquired land, the market value

determined by an award made under the Act for an earlier acquired land, by either the Land Acquisition Officer or the Court could also form the basis for determining the market value of subsequently acquired land.

12. The learned District Judge after relying upon the above said judgment has rightly assessed the compensation, however, the learned District Judge has wrongly awarded interest from the date of issuance of Notification u/s 4 of the Act. Interest has to be awarded as per Section 35 which reads as under:

Payment of interest -- when the amount of such compensation is not paid or deposited or before taking possession of the land, the collector shall pay the amount awarded with interest thereon at the rate of (four per centum) per annum from the time of so taking possession until it shall have been so paid or deposited.

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of ten per centum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited the date of such expiry.

13. In view of the statutory provisions, interest has to be awarded from the date of taking over the possession. For the reasons mentioned above, this appeal is dismissed having no merit, however, the land owners are held entitled to interest from the date of taking over the possession from them and not from the date of issuance of notification as awarded by learned trial court.

14. The parties to bear their own costs. Record be sent down forthwith.