

(2021) 02 J&K CK 0029

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 157 Of 2019

State Of J&K

APPELLANT

Vs

Gul Mohammad Bhat And Ors

RESPONDENT

Date of Decision : 19-02-2021

Acts Referred:

Jammu And Kashmir Land Acquisition Act, 1934 — Section 11, 18, 32, 35

Citation : (2021) 02 J&K CK 0029

Hon'ble Judges : Sanjay Dhar, J;Tashi Rabstan, J

Bench : Division Bench

Advocate : B. A. Dar, J. H. Reshi

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) The instant appeal under Clause 12 of the Letters Patent is directed against the judgment dated 18.01.2019 passed by learned Single Judge in OWP

No.243/2016 titled State of J&K vs. Gul Mohammad Bhat & Ors.

2) Genesis of this appeal owes its origin to land acquisition proceedings initiated by respondent No.12 on the basis of indent placed by appellant herein

for construction of Fire & Emergency Services Complex at Anantnag. The respondent No.12, the Collector, after completion of acquisition

proceedings in terms of the provisions contained in the Jammu and Kashmir Land Acquisition Act, 1934 (for short "the Act"), passed the final

award dated 27th of January, 1999, thereby acquiring land measuring 10 kanals situated at Village Sarnal Anantnag. The award was passed for an

amount of Rs.17.25 lacs @Rs.1.50/ lacs per kanal with Jabirana @15% and the appellant herein was directed to deposit the award amount within 30

days from the date of issuance of award.

3) According to the appellant, the award amount was deposited by it before respondent No.12 within time for its disbursement to the lawful owners of

the land in question. The respondent No.12 is stated to have deposited the said amount with the J&K Bank, T.P. Branch, Anantnag, with a request to

the Manager to transfer the award amount in the individual accounts of the land owners as per their shares.

4) It appears that the land owners i.e. respondents 1 to 11, did not feel satisfied with the award and, accordingly, made an application before the

respondent No.12 under Section 18 of the Act seeking reference to the District Judge, Anantnag. During these reference proceedings, the

respondents 1 to 11 i.e. land owners filed an application under Section 35 of the Act, seeking a direction to the appellant to deposit the statutory

interest on the award sum. The application was resisted by the appellant herein on the ground that it had deposited the award amount well within time

and, as such, it was not liable to pay any interest.

5) It seems that the Reference Court passed order dated 27th of March, 2010, directing the respondent No.12 to deposit the statutory interest, where

after vide orders dated 02.01.2016 and 06.02.2016, coercive measures were ordered by the Reference Court against the appellant as the respondent

No.12 claimed that the appellant being the indenting department is liable to pay the statutory interest.

6) The aforesaid orders passed by the Reference Court from time to time with regard to recovery of statutory interest from the appellant and

respondent No.12 came to be challenged by the appellant by way of a writ petition bearing OWP No.243/2016 before this Court, primarily, on the

ground that the appellant had deposited the awarded amount well within time and merely because the respondent No.12, the Collector, had failed to

deposit the awarded amount in the Reference Court at the time of making the reference, the appellant cannot be burdened with the liability to pay the

statutory interest. It was further contended that if at all statutory interest is payable, the same is to be paid by the respondent No.12 and not by the

appellant herein.

7) The learned Single Judge, after hearing the parties and on the basis of the pleadings, framed the following three questions for determination:

(i) Whether the deposit of the awarded compensation in the bank account maintained by the Collector with direction to deposit the same in the saving accounts of interested persons is a valid deposit and complies with the mandate of Section 32 of the Act?

(ii) Whether the petitioner who had deposited the awarded compensation in terms of the award with the Collector within stipulated period can be burdened with liability of paying the statutory compensation in terms of Section 35 of the Act?

(iii) Whether the reference court is competent in law to direct the indenting department to deposit the statutory amount of interest on the awarded compensation?

8) Regarding the first question, the learned Single Judge came to the conclusion that the amount of compensation shall be deemed to have been

deposited on 23rd of February, 2013, when the said amount was actually transferred into the account of Reference Court and not on the date when it

was deposited by the respondent No.12 in the bank account asking the bank to transfer the same in the individual accounts of the land owners.

9) On the second question, the learned Single Judge, came to the conclusion that the appellant is liable to deposit the statutory interest in terms of

Section 35 of the Act on the award sum from 27th January, 1999 till 23rd of February, 2013 when the amount was actually deposited in the Reference

Court. The learned Single Judge, however, gave liberty to the State to recover the said amount from the concerned Collector who failed to deposit the

award amount in the Reference Court at the time of making the reference.

10) On the third question, the learned Single Judge concluded that the Reference Court is competent to direct the Collector to deposit not only the

compensation but also the statutory interest accrued thereon in terms of Section 35 of the Act.

11) The appellant has called into question the aforesaid findings of the learned Single Judge on the grounds that the same are contrary to factual and

legal position; that the learned Single Judge despite observing that the appellant had deposited the awarded compensation without un-necessary delay,

was not justified in burdening the appellant with the liability to pay the statutory interest; that the amount deposited by the appellant was transferred

under the directions of respondent No.12 to the individual accounts of the land

owners, as such, learned Single Judge was not correct in upholding the order of award of statutory interest in favour of the land owners.

12) We have heard learned counsel for the parties and perused the grounds of appeal, the impugned judgment and the record of the case.

13) The main and only ground urged by the learned counsel for the appellants during the course of arguments is that the appellant has, without any un-

necessary delay, deposited the award sum with the respondent No.12 and just because respondent No.12 has failed to deposit the said amount with

the Reference Court at the time of making the reference, the appellant cannot be penalized and burdened with the payment of statutory interest. It has

been further contended that the awarded compensation has been transferred to the individual bank accounts of the land owners and, as such, they are

not entitled to statutory interest.

14) Before dealing with the aforesaid contentions of learned counsel for the appellant, we need consider the import of relevant provisions of the Act

which govern the deposit of compensation and payment of statutory interest.

15) Section 32 of the Act, which stands quoted in the impugned judgment, provides that on making an award, the Collector is obliged to tender

payment of compensation awarded by him to the persons interested/entitled thereto according to the award unless such persons do not consent to

receive it or if there is any dispute as to the title to receive the compensation or as to the apportionment of it. The provision further provides that in the

later eventuality, a Collector has to deposit the amount of compensation in the Court in which reference under Section 18 is to be submitted.

16) Section 35 of the Act provides for payment of interest on the awarded compensation in a case where the amount of compensation is not paid or

deposited on or before taking possession of land. The rate of interest is 6% for the first year and for succeeding years, it is 10%

17) From the reading of provisions contained in Section 32 and 35 of the Act, it becomes clear that a Collector is duty bound to either pay the awarded

sum to the land owners upon making an award under Section 11 of the Act or in case they refuse to receive it or there is a dispute about the

entitlement or apportionment, he has to deposit the same in the Reference Court failing which interest in the manner provided in Section 35 is payable

by the Collector.

18) The first question that would arise is whether deposit of awarded sum by the indenting department with the Collector would satisfy the

requirement of Section 32 and the second would be whether the transfer of awarded compensation in the individual bank accounts of land owners in

the facts and circumstances of the instant case would disentitle them from claiming statutory interest.

19) So far as deposit of amount of compensation in terms of Section 32 of the Act is concerned, the said provision makes it very clear that the deposit

of the amount has to be with the Reference Court. Therefore, mere deposit of awarded sum by the appellant with the Collector would not absolve it of

its liability. It was the duty of the Collector to deposit the same with the Reference Court once the land owners, immediately after making of the

award, applied for making a reference thereby expressing their dissatisfaction with the award passed by respondent No.12. The material on record

would show that the award was made by respondent No.12 on 27.01.1999 and the application seeking reference under Section 18 of the Act, was

made by the land owners before the Collector on 20th of July, 1999.

20) It appears that the reference was made by respondent No.12 to Principal District Judge, Anantnag, somewhere in the year 2006 and even by that

time also neither the amount deposited by the appellant before respondent No.12 was deposited by it before the Reference Court nor was it deposited

in the individual accounts of the land owners. It seems that the respondent No.12, long after making reference under Section 18 to Principal District

Judge, Anantnag, instructed the Manager, J&K Bank, T. P. Branch, Anantnag, vide its letter dated 18.01.2007, to transfer the deposited amount in the

individual accounts of land owners, without the consent of land owners and ultimately the said amount was, under the direction of the Reference

Court, deposited by the concerned bank with the Reference Court after debiting the said amount from the individual bank accounts of land owners.

This was done on 23.02.2013. The fact that the land owners did not withdraw even a single penny from their bank accounts, which is reflected from

the bank statement placed on record by the writ petitioner with the writ petition, goes on to show that the land owners never accepted the payment.

21) The aforesaid circumstances lead us to an irresistible conclusion that in the instant case requirement of Section 32 with regard to deposition of

awarded sum was fulfilled only on 23.02.2013 and not before that date. The mere deposition of award amount by the appellant with the Collector does not satisfy the requirement of Section 32 of the Act nor does the transfer of said amount in the individual accounts of land owners without their consent amount to tender of payment to the land owners in terms of said provision, particularly when the land owners had immediately after the making of the award, made their dissatisfaction with the award known, by asking for reference under Section 18 of the act. Having said so, the consequences as contemplated in section 35 of the Land Acquisition Act have to follow and the land owners i.e. respondents 1 to 11 became entitled to payment of interest at the rates mentioned in the said provision from the date of making of the award till 23.02.2013.

22) The next contention that has been vehemently pursued by Mr. B. A. Dar, Sr. AAG, is that the appellant cannot be burdened with the liability to pay the interest for the fault committed by the respondent No.12, the Collector.

23) The argument is specious and without any merit for the reason that the appellant as well as respondent No.12 are functionaries of the Government. While making the award, the Collector acts as an agent of the Government and functions under its administrative control. Thus, the Government is vicariously liable for the acts and omission of the appellant as well as respondent No.12.

24) The argument that appellant and respondent No.12 are separate entities and, as such, the land owners cannot claim the amount of statutory interest from the appellant, is inherently fallacious. Two functionaries or departments of Government fighting with each other and laying the blame on each other is a course detrimental to public interest. These are all limbs of the Government and must act in co-ordination and not in confrontation without playing the blame game. The land owners cannot be deprived of their rightful claim of statutory interest because of the internal conflicts of the two departments of the Government.

25) The liability to pay the compensation in respect of acquisition of land is, primarily, that of the indenting department and any amount which is included in the cost of acquisition would have to be borne by the indenting department. Therefore, the appellant, which happens to be the indenting department in this case, cannot escape its liability to pay the interest to the land

owners in terms of Section 35 of the Act because the same is included in the cost of acquisition. Even otherwise, whether the statutory interest in this case held to be payable by appellant or by respondent No.12, in both the eventualities, the same has to be debited to the State exchequer.

26) So far as the acts of omission and commission on the part of respondent No.12 in the instant case are concerned, the same have been dealt with by the learned Single Judge in the impugned judgment and the matter has been left to the decision of the Chief Secretary of the Union Territory.

27) For what has been discussed hereinbefore, we do not find any ground to interfere with the findings and the conclusions drawn by the learned Single Judge in the impugned judgment, which is well reasoned and lucid. The appeal is, accordingly, dismissed.

28) No order as to costs.