

(2004) 04 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 624 Of 2003

Sunder Singh

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 19-04-2004

Acts Referred:

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 8

Citation : (2004) 2 JKJ 226

Hon'ble Judges : Sudesh Kumar Gupta, J

Bench : Single Bench

Advocate : V.R. Wazir and K.S. Puri, for the Appellant; P.N. Raina, Anshuja Sharma and A.H. Qazi, AAG, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gupta, J.—The petitioner has approached the Court seeking the quashment of order dated 01.11.2002 passed by respondent No. 2

(Dy. Commissioner, Jammu) whereby the petitioner and proforma respondents have been declared to be not entitled for sharing the amount of

land compensation, by issuance of writ of certiorari; and further commanding the respondent-authorities to release the amount of compensation in

favour of the petitioner and proforma respondents in accordance with their shares as indicated in the award and apportionment statement attached

thereto.

2. According to the averments made in the petition, petitioner and proforma respondents claim to be co-sharers alongwith other contesting

respondents with regard to the land containing khasra Nos. 467, 468, 460, 461, 465 min which has been acquired by Army under the J&K

Requisitioning and Acquisition of Immovable Property Act, 1968 (in short RAIP

Act) and the compensation of the same has been deposited with the Collector by the indenting department. It is further contended that share of petitioner and other co-sharers is indicated in notice 'J' at Sr.No. 69 to 72. The apportionment statement attached to the award reflects exactly the same position as is reflected in the award annexure 'A'. The final assessment report issued by the Dy Commissioner (Collector) Jammu, on 24.05.1993 in respect of items 69 to 72 claiming to have recorded the names of the parties in ownership column, but in the cultivation column the names of the respondents are recorded. While issuing the assessment report, the Collector made a mention that the payment shall be made strictly in accordance with the provisions of the Agrarian Reforms Act, 1976 and guidelines issued by the Administrative department under No. Rev(LB)-10/80 dated 23.02.1980. The same apportionment already made continued in respect of the aforesaid items at the time of releasing the rental compensation after the requisitioning of the land on 14.01.1974, when the petitioner and other co-sharers were not being paid the amount of compensation, commenced proceeding before the Collector in seeking to restrain the contesting respondents from seeking the compensation under the J&K Requisitioning and Acquisition of Immovable Property Act, 1968. The matter was, however, transferred to Additional Dy. Commissioner, Jammu, who vide his order dated 16.03.94 directed that all the recorded shareholders are entitled for compensation as per the recorded share without consideration of recorded 'Hissadari possession'.

Aggrieved by this order, the contesting respondents preferred an appeal before the Divisional Commissioner, Jammu and the order of the Additional Dy. Commissioner, Jammu, was set aside. The matter, however, did not end up here and further a revision was preferred by the petitioner and proforma respondents before the Financial Commissioner/ Commissioner Agrarian Reforms, Jammu, the highest authorities in the revenue matters. While disposing of the said Revision, the Financial Commissioner, Jammu up held the findings of the Divisional Commissioner, Jammu, and the order passed by the Additional Dy. Commissioner that every share holder notwithstanding recorded in 'Hissadari possession' is entitled for rental compensation, was quashed and the appeal of the petitioner to restrain the contesting respondents from receiving the rental

compensation under the provisions of RAIP Act, 1968 stood rejected.

Further plea of the petitioner before the Financial Commissioner seeking correction of entries in the Jamabandi in terms of Section 32 of the land

Revenue Act also did not succeed. So, ultimately, the Financial Commissioner in his order dated 6.6.2000 returned the findings that the petitioners

are not entitled for any compensation of the said land. It is further stated that the petitioner also filed an application before the Dy. Commissioner,

Jammu(The Competent Authority under the RAIP Act) for referring the case to an Arbitrator in terms of Section 8(1) (b) and (f) in asserting

entitlement alongwith the proforma respondents for the full compensation of the land measuring 133 kanals 3 marlas acquired by the Army and till

then compensation be not paid to the respondents. This application, however, stood rejected by the Competent Authority vide its order dated

19.11.98. This order of rejection dated 19.11.98 passed by the Competent Authority for referring the case to an Arbitrator u/s 8 (1) (b) and (f) of

RAIP Act, became the subject matter of challenge in OWP No. 539/99 in this Court. A co-ordinate Bench of this Court vide its order dated

7.9.2001 disposed of the writ petition in the following manner: --

At this stage, the parties have expressed their willingness to abide by the award and appointment statement made thereunder. As such, the

Collector concerned will examine the award and pay compensation accordingly. In case any party has been paid in excess amount, that would be

retrieved, and in case any party has received less amount, that party would be paid accordingly. This would be done strictly in terms of the award

and the apportionment statement dated 24.5.1993, prepared by the Deputy Commissioner(Collector) who has passed the award.

In view of the above stand, the parties are also agreed that a suit would not lie against the award of the Collector, Land Acquisition. In these

circumstances, the writ petition filed by Puran Singh shall stand allowed with an observation that any challenge made to the award in a Civil Court,

shall not be entertained. Civil suit shall stand dismissed.

Disposed of accordingly.

3. The Deputy Commissioner (Collector) Jammu, (The competent Authority under RAIP Act, 1968) examined the award in compliance to the

court direction referred to above, found that the petitioner and proforma

respondents have no right to get the compensation of the acquired land of

Khewat No. 39 and ordered that all the payment shall be made to the contesting respondents after keeping in view the guidelines and instructions

issued by the Government vide No. LB-10 of 1980 dated 23.02.1980, in terms of Agrarian Reforms Act, 1976, the correctness of which has

been impugned in this writ petition.

4. The stand of the respondents in their detailed objections is that the land covered under khasra Nos. 460, 461, 465, 467 and 468 in village

Maheen Sarkar has all along remained exclusively under their possession and Hissadari of Hari Singh S/O Pinju and Kaku S/O Devi Ditta (Devi

Singh) as owners in equal shares to the exclusion of petitioner and proforma respondents. The possession, however, continued with the contesting

respondents uninterruptedly since 1994, as is reflected in the revenue record. The respondents further asserted to have been receiving the rental

compensation till the requisition was followed by acquisition under the RAIP Act, 1968 and award passed in their favour indicating the amount of

compensation apportioned amongst the contesting respondents. It was further contended that the land of each party under their 'Hissadari kasht',

as incorporated in the jamabandi of the year 1994-95 BK, is an evidence of the fact that private partition of the joint holding has been given effect.

Further plea of the respondents is that the petitioner and proforma respondents' ancestors have already taken 144 kanals 16 marlas of land out of

khewat No. 38 as against the actual share of land measuring 98 kanals and 16 marlas. Further, that the petitioner had already taken share in

partition from khewat No. 38 with 46 kanals which has been compensated by giving 33 kanals 6 marlas of land in addition to 99 kanals 17 marlas

falling in their own share in khewat No. 39. Thus, the total land, which came to the share of the respondents-ancestors, was only 185 kanals 19

marlas. The petitioner and the proforma respondents have never objected to the receipt of the rental compensation by the respondents ever since

the requisition of land in 1974. Even the requisition and acquisition proceedings have taken within the knowledge of the petitioner and the proforma

respondents. It is further pleaded by the respondents that the award in the case has since become final and the payment of compensation is to be

released as per the award and the apportionment statement annexed thereto.

That the claim of the petitioner, in respect of compensation of the acquired land by the Army on the alleged basis of recorded Hissadari in the revenue record, cannot be accepted in view of the judgment of the Divisional Commissioner and the Financial Commissioner(Rev)/ Commr. Agrarian Reforms J&K, Jammu, in holding that Sunder Singh is recorded as Co-sharer in the ownership column, but not in the cultivation column and, thus, not entitled to receive any compensation in respect of land acquired by the Army under RAIP Act.

5. Heard learned counsel for the parties and also perused the record meticulously. It may be pointed out at the first flush that the compensation consists of recurring payment e.g., 'rent' in case of requisition and 'price' in case of acquisition u/s 8 of the RAIP Act. The land in dispute is under requisition long ago and the rental compensation was being received by the respondents uninterruptedly. The payment of rental compensation has never been challenged.

6. Mr. V.R. Wazir, learned counsel for the petitioner, submitted that the Deputy Commissioner, Jammu, was required only to disburse the amount of compensation in accordance with shares and the apportionment statement. The finding returned by the Dy. Commissioner, Jammu, that the petitioner and the proforma respondents have no share in the amount of compensation, is in violation of the order passed by the High Court and without any competence or authority of law. That the Deputy Commissioner was required to decide the matter strictly in accordance with the directions of the High Court vide its order dated 7.9.2001 independent of findings of the revenue officers in respect of the dispute between the parties pertaining to the apportionment and entitlement to receive compensation as co-sharers in respect of the land acquired by the Army. Mr. Wazir, Learned Counsel for the petitioner further submitted that the Jamabandi for the year 1994-95 BK is not admissible as the later jamabandi has since become available for the year 2054-55 BK. It was further submitted that the private partition Has been not also attested on the ground that no confirmation has been sought u/s 118 of Land Revenue Act, nor any application has been initiated before the Revenue Officer for partition. The main plank of the petitioner and others' contention is that they are to be paid compensation as per their share being recorded shareholders in

the ownership column. On going through the apportionment statement, it is trotted out that Sunder Singh and others have been recorded in the

ownership column as co-sharers. They are, however, not reflected in the cultivation column.

7. It is not in dispute that rental compensation was being received by the contesting respondents right from the date of requisition of the land, i.e.

14.1.74, uninterruptedly, and without any objection from petitioner and proforma respondents. The apportionment statement annexed with the

award is in continuity to the apportionment statement made by the Competent Authority since the date of acquisition. The Divisional Commissioner

and the Financial Commissioner, while adjudicating upon the apportionment, have in unequivocal terms determined that the petitioner and pro-

forma respondents are not entitled for any compensation as their names do not stood reflected in cultivation column of the apportionment

statement. It may further be pointed out that out of total area of land measuring 330 kanals 15 marlas in both the kewat Nos. 38 and 39, the share

of the petitioner and others and the respondents is 132 kanals-02 Marlas and 198 kanals-15 marlas respectively. The total recorded share of

petitioner and others in both the khewats, they are in possession of 144 Kls-16 Mls which is 12 Kanals 14 marlas in excess of their recorded

share. Whereas, the respondents on the other hand against total recorded share of 198 kanals 13 marlas of land, are in possession of 185 kanals

12 marlas, which is less by 12 kanals 14 marals. Since the respondents are not found in possession of land more than the recorded share in the

aforesaid khewats, they are entitled to the release of the entire compensation of land acquired by the Army to the exclusion of the petitioner and

others. As regards the plea raised by Mr. Wazir Learned Counsel for the petitioner, that since the jamabandi for the year 2054-2055 BK is

available, the jamabandi for the year 1994-95 loses its relevance and significance, it is submitted by Mr. Raina Learned counsel for the

respondents that no jamabandi after 1998 has been duly prepared and attested in Village Maheen Sarkar. He further submitted that copy of the

Jamabandi purported to be for the year 1998-99 BK lying with the patwari Halqa (Parat Sarkar of which is nowhere existing), is neither duly and

correctly prepared nor authenticated or attested in the prescribed manner. In such event the copy of the latter jamabandi, if any, is part of patwar,

has no legal sanctity as original jamabandi (parat Sarkar) is neither existing nor reported to have been prepared and attested. Further submission of

Mr. Raina is that there is continuous entries in the Khasra Girdawai right from 1994 BK till date of the respondents, in cultivation column. There is

also report of revenue agency regarding the non-existing of parat sarkar. The contention of Mr. Wazir in this context cannot be accepted being

devoid of legal force.

8. All this clearly shows that the land remained in continuous possession of the contesting respondents as a result of family partition, and which was

requisitioned for Indian Army under RAIP Act, 1968 and its possession was taken from the contesting respondents. It is further proved from the

record that the rental compensation assessed and determined by the competent authority under the Act had been continuously received by the

contesting respondents to the knowledge of the petitioner and proforma respondents. Requisition of the land was followed by the acquisition under

the Act and the award in respect of the compensation for the land acquired was passed by the Competent Authority in favour of the contesting

respondents, who alone are entitled to receive the compensation, as their names, to the exclusion of the petitioner and proforma respondents,

figure in the cultivation column of the final apportionment statement The final apportionment statement was in continuity to the apportionment

statement by the competent authority in the year 1974, when the rental compensation was assessed and processed by the competent authority and

received by the contesting respondents.

9. The Collector has examined the award in compliance to the directions of the Court in OWP No. 539/99 and OWP No. 167/99 and rightly

found the petitioner and proforma respondents to have neither any right nor any entitlement to the compensation of the acquired land, and ordered

that whole of the payment of compensation be made to the contesting respondents in terms of the award and the apportionment statement thereto.

The order impugned passed by the Dy. Commissioner(Collector) Jammu dated 01.11.2002, in my opinion, neither suffers from any frailty nor legal

infirmary. The petitioner, therefore, failed to make out any justifiable cause or carve out a prima-facie case in his favour to invoke the writ

jurisdiction of this court in exercise of Article 226 of the Constitution of India

read with Section 103 of the Constitution of Jammu and Kashmir.

10. In the result, there is no merit in this petition and is, accordingly, dismissed at preliminary stage of admission.