

(2022) 04 J&K CK 0064

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 328 Of 2011

Talib Din (Dead) Through His Heirs And Legal Representatives	APPELLANT
Vs	
State And Others	RESPONDENT

Date of Decision : 26-04-2022

Acts Referred:

Jammu And Kashmir Requisitioning And Acquisition Of Immovable Property Rules, 1959 — Rule 9(4)
Jammu And Kashmir Requisitioning And Acquisition Of Immovable Property Act, 1968 — Section 8(1)(a), 8(1)(b)

Citation : (2022) 04 J&K CK 0064

Hon'ble Judges : Pankaj Mithal, CJ; Moksha Khajuria Kazmi, J

Bench : Division Bench

Advocate : H.A.Siddiqui, Shamas Ud Din, S.S.Nanda, Anil Bhan

Final Decision : Allowed

Judgement

1. The land measuring 09 kanal 05 marlas covered under Khasra Nos. 84, 85, 86 and 87 of village Ismailpur Tehsil and District Samba was initially requisitioned and finally acquired under the provisions of 'The Jammu and Kashmir Requisitioning and Acquisition of Immovable Property Act, 1968 (for short 'the Act')'.

2. In respect to the said acquisition, the final assessment report was submitted on 24th July 2008 by the Deputy Commissioner, Samba, wherein at S. No. 148, the petitioner has been held entitled for compensation. In accordance with the said final assessment report/award, the petitioner received compensation of Rs. 4,57,334/- and till that time there was no dispute as to the entitlement and apportionment of the said compensation. Subsequently, it appears that respondent Nos. 6 and 7 represented to the authorities that they are the actual persons entitled for the compensation of the said land and it has wrongly been paid to the petitioner. Accordingly, the Additional Deputy Commissioner, Samba, on 15.02.2010, issued a letter to the Tehsildar, Samba to recover the

compensation paid to the petitioner.

3. The petitioner instead of challenging the aforesaid letter of recovery, vide application dated 14.03.2011 addressed to the Deputy Commissioner, Samba, demanded that since a dispute with regard to the entitlement and apportionment of compensation of the above land has been raised by respondent Nos. 6 and 7, the matter be referred to the arbitrator in terms of Section 8 (1) (b) of the Act read with Rule 9 (4) of 'The Jammu and Kashmir Requisitioning and Acquisition of Immovable Property Rules, 1959 (for short).

4. The petitioner, by means of this writ petition, seeks a direction in the nature of mandamus upon the respondents to refer the dispute as per his demand letter dated 14.03.2011 to an independent arbitrator in accordance with Rule 9 (4) of the Rules for the purposes of deciding the entitlement and apportionment of the compensation of the above land.

5. The submission of learned counsel for the petitioner is that once a dispute in this regard has been raised, it is incumbent upon the competent authority to submit to the Government a report setting forth the full facts of the case for appointment of an arbitrator.

6. Sh. Nanda, on the other hand, contends that the matter could not be referred to the arbitrator, as the petitioner has not deposited the compensation which he has withdrawn earlier.

7. On our asking, as to the provisions which requires for the deposit of the compensation withdrawn, as a condition precedent for making a reference, he could not cite any provision or any authority on the aforesaid point.

8. Sh. Anil Bhan, learned counsel appearing for respondent Nos. 6 and 7 also submits that as regards the entitlement or the right of the parties over the land, a dispute which was pending adjudication in the Civil Court has already been decided and there is no purpose in referring the matter to the arbitrator.

9. Having heard the counsel for the parties, we are of the opinion that as Rule 9 (4) of the Rules clearly provides that if there is any dispute as to the entitlement to receive compensation, the competent authority shall deposit in court the amount of compensation as determined by it under clause (a) of sub-section (1) of Section 8 and at the same time submit to the Government a report setting forth the full facts of the case with all connected papers and apply for appointment of an arbitrator, it is obligatory upon the competent authority to do and act as the Rule provides and mandates.

10. In view of the aforesaid provisions and the fact that a dispute has been raised with regard to the entitlement of compensation, the competent authority is obliged under law to submit a report to the State Government for appointment of arbitrator. There is no condition attached with making of such report and appointment of arbitrator that a person seeking reference to arbitration is supposed to deposit any amount as a condition precedent or the amount which

he may have withdrawn as per the assessment report or the award.

11. It is evident on record that the petitioner has applied for a reference of dispute regarding entitlement under Rule 9 (4) of the Rules vide application dated 14.03.2011 but till date no report has been submitted by the competent authority to the Government for the appointment of an arbitrator.

12. In view of the aforesaid facts and circumstances, it is plain and clear that the competent authority has failed to exercise jurisdiction vested in it under law in making a report to the Government for appointment of an arbitrator in terms of Rule 9 (4) of the Rules.

13. Accordingly, we issue a mandamus commanding the competent authority, i.e., Deputy Commissioner, Samba (respondent No. 3) to consider the application dated 14.03.2011 in accordance with Rule 9 (4) of the Rules and to take appropriate action for the submission of the report to the State Government for appointment of an arbitrator, most expeditiously, preferably, within a period of six weeks from the date a copy of this order is produced before him.

14. The writ petition stands allowed as above with no order as to costs.