

(2014) 03 J&K CK 0007
In the Jammu And Kashmir High Court
Case No : LPAOW No. 58/2010

Union of India

APPELLANT

Vs

Jia Lal

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Citation : (2014) 2 JKJ 311

Hon'ble Judges : M.M. Kumar, C.J; Muzaffar Hussain Attar, J

Bench : Division Bench

Advocate : K.K. Pangotra, ASGI, Advocate for the Appellant; Gagan Basotra, Sr. AAG, H.A. Siddiqui, AAG, Seema Shekhar, AAG and Nirmal Kotwal, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

M.M. Kumar, C.J.—The instant appeal under Clause 12 of the Letters Patent is directed against the judgment and order dated 05.05.2010

rendered by a learned Single Judge of this Court while disposing of OWP No.863/2004, holding that the petitioners-respondent Nos.1 and 2

would be entitled to payment of compensation in lieu of acquisition of their land to be acquired in accordance with the provisions of State Land

Acquisition Act, 1990 (1934 A.D.), (for brevity 'the Act') by the appellants and respondent nos. 3 to 6. Feeling aggrieved, the Union of India and

its functionaries have filed the instant appeal claiming that the liability to pay compensation cannot be fastened on them as they had neither acquired

the land nor they have authorized the State authorities to acquire land for them. Brief facts of the case as depicted in the writ petition filed by

petitioner-respondent Nos.1 and 2 are that Jia Lal claimed to be owner in possession of proprietary land measuring 16 marlas falling in khasra

No.435 of village Chinchora Tehsil Bhaderwah. He further claimed that shamlat land measuring 17 marlas falling in Khasra No.435/1 of the same

village was also in his possession. The possession of the aforesaid land was taken over by the State of Jammu & Kashmir, Department of Roads

and Buildings, Defence Estate Officer Northern Command, Chief Engineer (R&B), Jammu and others. However, no compensation was paid to the

petitioner-respondent Nos. 1 and 2. After construction of the road it was transferred by the State Government to Defence Department of Union of

India-appellants and further land was taken from their possession for widening of the road. Thus a total land measuring 2 kanals 01 marla

belonging to petitioner-respondent nos. 1 and 2 was taken over by the appellants and respondent Nos.3 to 6. There are further allegations of

divesting the petitioner-respondent Nos.1 and 2 from possession of more land belonging to petitioner-respondent No.2 (through LRs) for the

purpose of widening the road by the appellant and respondent Nos.3 to 6. In that regard reliance has been placed on the certificates issued by the

S.D.M-cum-Collector, Land Acquisition, Bhaderwah (Annexure-A, B & C). It has also come on record that notification u/s 4 of the Act was

issued on 23.08.1995 by S.D.M-cum-Collector, Land Acquisition, Bhaderwah. The claim of the petitioners-respondent Nos. 1 and 2 is that they

have been making repeated representations for payment of compensation and solatium in accordance with law but no steps have been taken. On

the contrary notification issued on 23.08.1995 has been withdrawn on 31.10.1998. In the aforesaid facts and circumstances, the writ petitioner-

respondent Nos.1 and 2 made the following prayers:-

IN THE PREMISES, it is respectfully prayed that respondents 2,5,6 and 7 may kindly be directed to pay the present market rate compensation

with 15% Jabrana for one kanal three marlas of land belonging to petitioner and under the possession of petitioner No. 1 taken over the

construction of Bhaderwah-Jai Road by the respondents.

(b) direct respondents 1,3 & 4 to pay compensation at the present market rate with 15% Jabrana for additional shamlat land measuring eight

marlas falling in Khasra No.435/1 village Chinchora Tehsil Bhaderwah which were taken over and used for widening the road after it was

transferred to Union of India in 2001;

(c) direct respondents 2, 5, 6 and 7 to pay the compensation at the present market rate with 15% Jabrana for two kanals and ten mis. of land

falling in Khasra No.435 village Chinchora (which belongs to petitioner No.2) to taken over by the respondents and since used for constructing

Bhaderwah-Jai road before its transfer to Union of India in 2001;

(d) direct respondents 1, 3 and 4 to pay compensation at the present market rate with 15% Jabrana to petitioner No.2 for additional land

measuring thirteen marlas belonging to petitioner No.2 falling in Khasra No.435 village Chinchora which was taken over and used for widening

Bhaderwah-Jai Road by these respondents after the road was transferred to Union of India by the Jammu & Kashmir Government in 2001;

(e) direct that current market rate of compensation of the land shall be determined by Collector Land Acquisition Bhaderwah for the suit land.

(f) Issue any other directions to the respondents which the Hon'ble Court may deem fit in the light of the facts and circumstances of the case."

2. In the objections filed by the Executive Engineer (R&B) Department nothing has been disclosed and the whole objections would read as under:-

The respondent humbly submits as under:-

1/ The contents are not denied.

2-6/ In reply to the contents it is stated that for the construction of the Bhaderwah-Jai Road through village Chinchora process for acquisition of

the land was initiated through Collector (SDM) Bhaderwah. During the pendency of acquisition proceedings, the construction of the road was

handed over to the army authorities. The PWD department was not provided the funds for the acquisition or construction of road. In view of these

circumstances the District Superintending Engineer, PWD(R&B) requested SDM Bhaderwah vide letter No.4322-24 dated 13.10.1998 to de-

notify the land. Accordingly, the SDM Bhaderwah issued the de notification vide his No.143-47/LA dated 31.10.1998. The land belonging to the

petitioners was de-notified. The petitioners are not entitled to compensation from the Public Works Deptt. Compensation shall be the liability of the

Army Authorities. Copy of the de-notification dated 31.10.98 is attached as Annexure R-1.

7/ The contents need no reply.

3. It would be appropriate to notice that the State Government issued

notification u/s 4 of the Act on 23.08.1995 and khasra Nos.435 and 435/1

of village Chinchora Tehsil Bhaderwah District Doda have been included in the details of the land which was sought to be acquired. The recital in

the notification issued u/s 4 of the Act state that the Sub-Divisional Magistrate-cum-Collector Land Acquisition, Bhaderwah notify the land which

is likely to be needed for a public purpose namely construction of Bhaderwah-Jai road in village Chinchora Tehsil Bhaderwah. Objections to the

acquisition of the land were to be filed within 15 days from the date of publication of the notification in the Govt. Gazette. However, respondent

Nos.3 to 6 had withdrawn the notification and a de-notification was issued on 31.10.1998 which reads as under:-

Government of Jammu and Kashmir

Office of the Sub Divisional Magistrate, Bhadarwah.

Denotification

1. The District Superintending Engineer, (PWD R&B) Distt Doda vide his letter No. 4322-24 dated 13.10.1998 has requested to denotify the

land under acquisition in the Collectorate for construction of Bhadarwah-Jai Road in village Chinchora. He has further stated that the said road is

being handed over to the Army.

2. The notification u/s 4 of the Land Acquisition Act for above mention road was issued on 23.08.95 vide this collectorate No. 224-28/LAC since

then more than three years have been lapsed and the said acquisition has not moved from section 4 notification stage.

3. Therefore, in the light of the request made by the Superintending Engineer PWD who is the indenting department for denotification, [Shailendra

Kumar IAS Collector Land Acquisition (Sub Divisional Magistrate) Bhadarwah denotify the notification U/S 4 issued vide this Collectorate No.

224-28/LAC dated 23.08.95 of Bhadarwah-Jai Road in village, Chinchora.

Sd/-

Collector Land Acquisition,

Sub Divisional Magistrate,

Bhadarwah.

4. The basic reason for de-notifying the land as disclosed in the de-notification is that a period of more than three years had passed, therefore,

notification has lapsed.

5. The facts disclosed in the preceding paras show that the land belonging to the petitioners-respondent Nos.1 and 2 has been acquired and road

has been constructed thereon. According to the claim set up by the petitioners-respondent Nos. 1 and 2, the road exists since the year 1980.

There is nothing on record to suggest that the Union of India or its functionaries had ever taken any step for acquisition of the land by sending

requisition to the State Government and requiring the Collector of the area to act on their behalf. In the absence of any such material on record, it

cannot be inferred that the acquisition of land was by the Union of India-appellants or its functionaries. Moreover, notification u/s 4 was issued by

the State Government and its functionaries-respondent Nos. 3 to 6 which have lapsed on account of expiry of three years. Therefore, liability to

pay compensation along with all other benefits like solatium etc. had to be paid by them.

6. The learned Writ Court allowed the writ petition by directing all the respondents including the appellants to take appropriate steps for formal

acquisition of the land and for payment of compensation for the land acquired along with 15% solatium and interest as per law. The whole process

was required to be completed within a period of three months from the date when a copy of the order is served on the respondents.

7. The factual position as sketched in the preceding paras would show that Union of India would not be acquiring authority. The State of Jammu

and Kashmir through Department of PWD(R&B) as represented through respondent Nos.3 to 6 had in fact notified the land u/s 4 of the Act,

which has to be withdrawn for the reason that it has lapsed as a period of three years had expired. Therefore, by no stretch of imagination any

liability could be fastened on Union of India and its functionaries. The order of the learned Writ Court to the extent that the present appellants are

also made liable to pay compensation by acquiring the land would not be sustainable.

8. Keeping in view the aforesaid facts and circumstances, the instant appeal filed by Union of India is disposed of by issuing following directions:-

(a) The land belonging to petitioner- respondent nos. 1 and 2 is in possession of respondent nos. 3 to 6. Therefore, respondent Nos.3 to 6 are

directed to pay the rent of the land at the collector rate prevalent in the area to petitioner-respondent Nos.1 and 2 from the date possession of the

land was taken till date, within a period of two months, provided the petitioner-respondent Nos.1 and 2 are found to be the 'persons interested'

within the meaning of Section 3(b) of the Act.

(b) Respondent Nos. 3 to 6 are further directed to initiate the process of acquisition of land in question by issuing notification u/s 4 of the Act and

take the same to its logical end of announcing the award and then pay the compensation at the market rate in accordance with the provisions of the

Act. The whole process shall be completed within a period of three months from the date of receipt of this order and compensation shall stand

disbursed to the interested persons including the petitioner-respondent Nos.1 and 2 within that period.

(c) The petitioner-respondent Nos.1 and 2 would also be entitled to the arrears of rent in addition to the rent paid already in pursuance of direction

(a) above from 25.03.2014 till the date of notification u/s 4 of the Act because the award would take into account the compensation from the date

of notification issued u/s 4 of the Act.

(d) The appeal filed by Union of India and its functionaries is allowed holding that they are not liable to pay any compensation under the Act.

The appeal stands disposed in terms of the directions issued in preceding para.