

(2001) 05 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 550 Of 2000

Union of India

APPELLANT

Vs

Mohammad Sultan Malik

RESPONDENT

Date of Decision : 15-05-2001

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 21

Citation : (2001) KashLJ 653

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : G.R.Tantray, G.Mustaffa, A.M.Dar, Advocates appearing for the Parties

Judgement

Syed BashirudDin, J.—Heard.

2. Union of India, through Defence Estates Officer Srinagar, the indenting Department, acquired 9 Kanals and 17 Marias of land under Survey

No. 134 situated at Sonawar, Srinagar through State Acquisition Collector Respondent No. 1. After the Collector made the award, reference

under section 18 of the land Acquisition Act was made to District Judge, Srinagar way back in March, 1991. The reference court enhanced the

compensation and passed a decree in terms of Award in Feb. 98. The claimant, Respondent No. 1, filed an Execution Petition in the Court for

realisation of awarded decretal compensation for the land. The decree has been partly satisfied by making part payment. However, for the

remaining unpaid amount of Rs. 15,51,975/ the executing court of 4th Addl. District Judge, Srinagar after giving opportunity to respondents to

comply with the decree and make the payments, finally attached the amount from the Accounts Head of the Office of Defence Estate Officer,

Shivpora, Srinagar. The Defence Estates Officer later on issued two cheques and the Nazir of the Court is under orders to take and present

cheques before the Bank and to deposit the amount in the Court for disbursement to the claimant to satisfy the decree in the said execution

proceedings. As a step in aid of execution for ensuring satisfaction of the decree, a nonbailable warrant was also issued against respondent No. 2

(Defence Estates Officer) for producing the said officer before the court on 12.06.99. These orders of attachment and deposit of the amount in

court, the issuance of bailable arrest warrant against respondent to the award/execution proceedings and arraying Defence Estates Officer as party

to the Execution proceedings, are challenged in the writ petition on the ground that the attached amount could not have been siphoned off from the

funds of Defence Estates Officer to satisfy the decree. Besides, there was no decree against the writ petitioner and decree was against only the

Collector Land Acquisition. Only the amount for rental and other expenses for management purpose could have been taken to satisfy the decree

and not the salary amount in the accounts of the petitioner. The executing court ought not to have ordered execution when the CIA is pending

against the very judgement and award of 4th Additional District Judge, Srinagar before High Court.

3. In reply, acquisition of land, initiation of acquisition proceedings by the Collector Land Acquisition Srinagar, at the instance of Defence Estates

Officer Kashmir, Circle Srinagar, award on Collector and final award of reference under Section 18 of the Land Acquisition Act by the District

Judge Srinagar are not in dispute. It is also admitted that an appeal against the judgement and decree in terms of award is pending before High

Court. The respondents, however contest the stand of the petitioners that a writ petition could lie either under Article 226 or 227 of the

Constitution of India. It is contended that on merits of the fact situation and circumstances of the case, the matter cannot be examined by this court

under writ jurisdiction, as same is not substitute of appeal or revision. The matter is already pending in appeal before the proper forum, therefore

going to factual and other aspects of the award and judgement in the writ jurisdiction, when the statutory appeal is pending is not justified.

4. It is further contended that the entire acquisition proceedings right from the year 1978 have been initiated through the Defence Estates Officer

Kashmir. Circle, Srinagar as the officer of indenting department of Ministry of Defence of the Union of India. The Defence Estates Officer has

been party to the reference proceedings under Section 18 of the Land acquisition Act. He has filed objections before the District Court and he had

appeared in the proceedings. The writ petitioner Defence Estates Officer at no point took any objection before any forum that it is not a party

representing Union of India to the proceedings. In the main judgement and the decree of the District Judge, the Defence Estates Officer is a party.

In the Judgement and decree reference is made to the Defence Estates Officer is a party. In the judgement an decree reference is made to the

Defence Estates Officer as a party (AnnexureL). The issuance of warrant against the Defence Estates Officer and attaching the decretal amount in

the proceedings of execution of the decree are the prescribed modes for satisfying a decree. The cheques were produced in court. Satisfaction of

the decree is evaded on one pretext or the other. There is no stay in Appeal. So long the operation of the judgement and decree or execution

proceedings are not stayed, the court below in putting the decree in execution, has not acted in a course not approved by law.

5. It is manifest that an appeal is pending against the judgement and decree in terms of award in question and the judgement and decree has not

been stayed. There is no restraint on execution of the decree. Taking out the proceedings for execution of the decree is not legally vitiated. The due

party payment to be made under the decree has to be paid to the claimants. The writ petitioner is the indenting department for which the land has

been acquired by Respondent No. 1, Collector Acquisition. The land is in possession and ownership of the Union of India through Defence

Estates Officer. The acquisition proceedings have been initiated through Defence Estates Officer by Union of India. In reference under Section 18

of the land Acquisition Act, it is again the Defence Estates Officer who has filed objections on behalf of Union of India. The Union of India has filed

appeal through the Defence Estates Officer. Defence Estates Officer is a party to the proceedings and decree against Union of India is through

Defence Estates Officer. In these circumstances, it does not lie in the mouth of the Defence Estates Officer who has filed writ on behalf of the

Union of India to say that the Defence Estates Officer is not a party to the award judgement and decree. So long the amount under the judgement

and decree is not paid, the Defence Estates Officer is under legal obligation to satisfy the decree and pay the decretal amount. Issuing bailable

warrant for arrest and attaching the amount or direction the Nazir to encash the cheques for disbursement to the claimant or among claimant(s) are

the prescribed mode's for execution of the money decree as laid down in order XXI CPC. To say that the amount lying with the Defence Estates

Officer has been siphoned off for satisfaction of the decree without authorisation of law is to say too much. Even the writ petitioners appears to be

confused while at page

5 of the writ petitioners, it is stated that the amount attached was for the rental expenses for the building occupied by the forces and for salary of

members of the Defence Estates Department, the petitioner yet at page

6 in para (iii) the writ petitioners avers:

... The court below sought to attach the payment and amount which was mandate for department of Defence Estates Officer for rental and other

management purposes including the salary of the employees...

6. Obviously, the petitioner, decree holder appears confused knowing well that the decretal liability is to be met by the Union of India in respect of

the land acquired for defence purpose. There being no stay to execution of the decree, there is no legal bar to lay out execution. The impugned

orders are passed within jurisdiction. The orders cannot be said to be legally infirm.

7. The writ petitioner has already availed the alternative remedy of appeal, writ jurisdiction cannot be invoked while simultaneously pursuing appeal

before the forum. In the overall facts and circumstance of the case, writ petition is dismissed in limine. Srinagar,