
(2008) 04 J&K CK 0033
In the Jammu And Kashmir High Court

Union of India (UOI)	Vs	APPELLANT
Bachan Singh and Others		RESPONDENT

Date of Decision : 23-04-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2008) 2 JKJ 481

Hon'ble Judges : Bashir. A. Kirmani, J

Bench : Single Bench

Judgement

Bashir A. Kirmani, J.—After acquiring around 300 kanals of land for laying Railway line in village Omala, Tehsil/District Udhampur,

Collector respondent No. 7 awarded compensation to land owners at various rates varying from 5000/- to Rs. 25000/- per kanal for

culturable/orcharad/Abi land/land under structure Banjar/Gair mumkin at Rs. 25000/-, 20000/-, 15000/-, 10,000/-, 5000/- and Rs. 13,000/-per

kanal respectively. Aggrieved thereby respondents No. 1 to 6 sought reference of the matter to concerned District Judge, u/s 18 of Land

Acquisition Act who after entertaining the same disposed it of by enhancing the quantum of compensation to Rs. 50,000/- per kanal for culturable

land, Rs. 45,000/- for Banjar Qadim and Rs. 40,000/- for Gair mumkin land thereby raising it manifold alongwith solatium and interest at the

statutory rate. Aggrieved by learned District Judge's order one of the land holders, namely, Chanchela Devi respondent No. 5 instituted appeal

No. 01/2007 in this Court with prayer for enhancement of the quantum of compensation where after present appeal No. 12 of 2007 was instituted

by appellant Union of India through its Deputy Chief Engineer against enhancement of compensation ordered by District Judge. Being time barred

the appeal is prefaced with petition¹ No. 5172007 for Condonation of delay hotly contested by other side and comes up for disposal after hearing.

2. Main ground pleaded to support the prayer for Condonation of delay is that appellant Union of India was not a party before reference court

who as such had no knowledge of the proceedings/final award, which coupled with the routine lethargy attributable to concerned officers/officials

in such matters resulted into delayed institution of the appeal after 117 days of permissible time which as such requires to be condoned. This is

rebutted by other side by maintaining that Public Prosecutor of concerned court (District & Sessions Court Udhampur) had been appearing for

appellant Union of India through Deputy Chief Engineer of Railways at Udhampur and as such petitioner cannot claim ignorance about pendency

and disposal of reference before and by District Judge. During course of submissions while petitioners have been appearing for them was a party

nor was he ever authorized to appear on behalf of Railways before learned District Judge, while Union of India was not a party to the reference.

This contention is repelled by other side with equal vehemence by maintaining that the power of attorney furnished by a concerned P.P. before

reference court bears the seal and signature of Deputy Chief Engineer, Railway Udhampur who acted and participated on behalf of the Union of

India as well and as per his statement on trial court file also adopted Collector's objections for Railway also and contended that in these

circumstances lack of knowledge pleaded by appellant/Union of India/Railway only appears to be concocted.

3. I have heard learned Counsel and considered the matter. Before anything else it requires to be said that technicalities of procedural delay apart,

appellant's claim of total ignorance regarding pendency of reference and its disposal does not appear to be convincing for the simple reason that

Deputy Chief Engineer of Railways who allegedly gave the power of attorney to concerned PP being their important functionary should have

informed his Chief Engineer about it during all the years as the only right person to be informed. In any case the counsel's fee must have been paid

by railways Deptt, through him after proper approvals only which renders their ""no knowledge"" slogan misplaced. But the matter does end there.

During course of business ordinarily the reference court should have assured presence of all parties before him, particularly the Chief Engineer, because its order had to have the potential of reviewing the settled claims of other land holders. In addition thereto it was not Deputy Chief Engineer of Udhampur but Jammu who was arrayed as respondent No. 2, before the reference court and who admittedly never appeared or was even summoned in the matter which suggests an element of negligence on part of the PP who instead of causing wrong appearance should have sought instructions from the competent person before appearing. Same is true about the presiding officer also who's conduct evidently is no different. All this sufficiently indicates that the appellant Union of India and the concerned quarter of railways have suffered unheard. Otherwise also the settled position that where interests of Government of India are involved in litigation ordinarily it is the concerned ministry who should be asked defend them rather than an officer of the level of Deputy Chief Engineer. All these facts taken cumulatively do create a positive case in favour of the condonation plea.

4. Other dimension of the matter is that reference court has multiplied the original amount of compensation to raise it from an average of Rs.

15,000 to Rs. 35000/per kanal which if claimed for the whole acquired land has the potential of creating a fiscal liability of more than three crore

rupees on Union of India which also tilts the balance in favour of condoning the delay because the public money can't be left to be claimed

undefended. Another aspect of the matter is that since respondent No. 5 too has filed an appeal where Union of India and Deputy Chief Engineer

Jammu are parties in the array of respondents and hearing whereof would automatically entitle Union of India to address on the question of

adequacy of compensation, which in any case is going to be the subject matter of this appeal because in effect it only appears to be a cross-

appeal. This fact also recommends Condonation of delay to facilitate hearing of both the appeals on merits.

5. Accordingly the C.O.D No. 51/2007 is allowed and the delay of 117 days involved in institution of this appeal is condoned subject to costs of

Rs. 10,000/-to be paid by the Deputy Chief Engineer, Railways Udhampur, who as per stand taken by Union of India appeared before reference

court incompetently, exposing them to a huge liability. He shall deposit the amount in Registry of this Court within four weeks from now failing

which the same shall be recoverable from his salaries through concerned Drawing Officer.

6. Before parting with the matter and in view of what has transpired above, I feel that the concerned Public Prosecutor, who is stated to have

conducted the matter on behalf of Railways before reference court apparently without assuring himself about identity of his client also appears to

be accountable for his conduct. Accordingly, a copy of this order be communicated to Registrar General of this Court, who would put the

concerned Public Prosecutor on notice for clarifying his position/conduct in the matter and follow it up in accordance with relevant rules.

7. The Condonation of Delay petition No. 51/2007 stands accordingly disposed of. Appeals CIA No. 01/2007 and 12/2007 be listed for

threshold hearing in First week of June, 2008. Meanwhile, as agreed to by appearing counsel since enhancement of original compensation is the

only debate in this matter, the original amount of compensation in terms of Collector's award dated 02.06.1995, which has been previously

released in favour of respondent beneficiaries to the extent of 2/3 stands released in full to them with whatever interest it might have earned.

8. COD disposed of. Appeals be lifted as directed.