

(2022) 07 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 1517 Of 2015, Civil Miscellaneous No. 7905 Of 2019

Zaffer Altaf Bhat

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 08-07-2022

Acts Referred:

Citation : (2022) 07 J&K CK 0017

Hon'ble Judges : Sanjeev Kumar, J;M.A.Chowdhary, J

Bench : Division Bench

Advocate : B.A. Misri, T.M.Shamsi

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. The petitioner claims that he is owner of land measuring 14 Marlas under Khasra No. 523, situated at Ushkara Baramulla, and land was under the occupation of respondent No. 2, on payment of rental compensation. The petitioner submits that he received the rental compensation qua the aforesaid land up to 1985, and, thereafter, respondent No. 2, neither released his land under its occupation nor has paid the rent since 1985. The petitioner claims to have approached respondent No. 2 in the year 2014, through the medium of a letter dated 31st of July 2014. In this petition, the petitioner, therefore, prays for a writ of mandamus to direct the respondents to pay the arrears of rent from 1985 with interest at the rate of 18%. Simultaneously, the petitioner also seeks direction to respondent No. 3 and 4 to demarcate his land measuring 14 Marlas comprised under Khasra No. 532 so that he could raise fencing to prevent any encroachment.

2 On being put on notice the respondents 1 and 2 have filed their objections. The defense taken by the respondents 1 and 2 in their reply affidavit is that no land under Khasra No. 523 at Ushkara Baramulla, is under occupation of respondent

No. 2. With regard to land under their occupation under Khasra No. 532, it is submitted by the respondents that on the petitioner approaching respondent no. 2, the matter was taken up with the respondent no. 4 for joint verification and demarcation of the land under occupation of the Indian Army under Khasra No. 532. It is further submitted that the Government of India, Ministry of Defence, has accorded sanction for acquisition of land measuring 1231 kanals 1 ½ Marla vide No. PCA/50134/11/Q3I (North)/5682/D (Lands) dated 20th October, 1986, which was superseded by a later communication dated 29th March, 2000. The land acquired included an area of 1 Kanal and 12 Marlas out of Khasra No. 532 min, which has a total area of 2 Kanals and 16 Marlas. The compensation worked out for the acquisition was deposited by the respondent no. 2 in the office of Deputy Commissioner and the same has been received by the petitioner in so far as his land measuring 1 Kanal and 12 Marlas is concerned. It is thus categorical stand of respondents 1 and 2, that other than the land measuring 1 Kanal and 12 Marlas under Khasra No. 532 min, they have not acquired any other land in the said Khasra Number that too, belonging to the petitioner.

3 On the intervention made by this Court in terms of order dated 6th October, 2021, the Deputy Commissioner has filed the compliance report and has made the position with regard to the land under survey No. 532 abundantly clear. The relevant extract of the report submitted by the Deputy Commissioner, Baramulla is reproduced hereunder:

"That in compliance supra order the constituted team submits its report vide No. The/Bla/OQ/1344-46 dated 01.11.2021 whereunder they reported that the team visited the spot and demarcation of the survey No. 532 land measuring 2 Kanal and 16 Marlas situated in Ushkara Baramulla, has been conducted during the process of the demarcation it has been found that the land measuring 1 Kanal and 12 Marlas is acquired by the defence and is under the occupation of the Indian Military and land measuring 2 Marlas has been come under the road, remaining 1 Kanal and 2 Marlas of land is under the possession of Baramulla Public School and falls within their premises. (Copy annexed as Annexure R2)

It is apt to mention here that as per revenue records land measuring 1 Kanal and 4 Marlas under survey No. 532 is recorded in the name of Ali, Khaliq, Sons of Ahmad half in equal shares and Mst. Taja Begum W/O Ghulam Rasool half share as vendee.

4 From bare reading of the report submitted by the Deputy Commissioner, Baramulla, it is evident that the team constituted by the Deputy Commissioner has conducted the spot verification and demarcation of the land under Survey No. 532, containing land measuring 2 Kanal 16 Marlas situated in Ushakara Baramulla, and during the process of demarcation it has been found that respondent no. 2 has acquired only land measuring 1 Kanal and 12 Marlas, whereas rest of the land, that is 2 Marlas, has come under construction of road and 1 Kanal and 2 Marlas is under the possession of Baramulla Public School. It is thus made clear that Army has only acquired 1 Kanal and 12 Marlas, for which

the petitioner has already been paid the compensation. The plea of the learned counsel for the petitioner that the rest of the land was also in possession of the respondents 1 and 2 prior to 1985, and, therefore, it was incumbent upon respondents 1 and 2 to surrender and return the land not acquired by them to the petitioner, is not substantiated by any revenue record. As a matter of fact, the report of the revenue authorities dated 24th March, 2015, appended by the petitioner as Annexure "A" in his petition clearly shows that there is no record of payment of any rental compensation qua the subject land any time prior to or after the year 1985. In the face of aforesaid position obtaining in revenue records, it is difficult for this Court to accept the contention of learned counsel for the petitioner that the rest of the land which is now under the occupation of Baramulla Public School to the extent of 1 Kanal and 2 Marlas and that which has come under road construction i.e. 2 Marlas falling in Survey No. 532, was earlier in the possession of the respondents 1 and 2 and for which the petitioner had been receiving rental compensation till 1985. There is categorical denial by respondents 1 and 2 in this regard.

5 Having considered the matter in its entirety and having heard learned counsel for the parties, we are of the considered view that the petitioner has no case to maintain this petition. The land which is in possession of respondents 1 and 2 has been formally acquired and requisite compensation paid to the petitioner. The rest of the land falling in survey no. 532, which is 1 Kanal and 14 Marlas, is either subsumed in construction of road or in occupation of Baramulla Public School. This may be an independent cause of action for the petitioner to seek retrieval of this land. The grievance of the petitioner as against the arrayed respondents is, therefore, misconceived.

6 The writ petition is found without any merit, and the same is accordingly dismissed.