

(2016) 3 JKJ 570

Jammu & Kashmir High Court

Case No: OWP No.789 of 2003, MP Nos.1 of 2015, 956 of 2003 & 1022 of 2003

Ravail Chand

APPELLANT

Vs

State Jammu and
Kashmir

RESPONDENT

Date of Decision: March 17, 2016

Acts Referred:

- Jammu and Kashmir Land Acquisition Act, 1990 - Section 18

Citation: (2016) 3 JKJ 570

Hon'ble Judges: Mr. Mohammad Yaqoob Mir, J.

Bench: Single Bench

Advocate: Mr. U.K. Jalali, Sr. Advocate with Ms. Shivani Jalai, Advocates, for the Petitioner; Mr. L.K. Moza, AAG Mr. Gagan Basotra, Advocate. Mr. Adarsh Sharma, Advocates, for the Respondent

Final Decision: Dismissed

Judgement

S. No.,Name of Village,Area

1),Chhani Rama,127 kanals 12 marlas

2),Rakh Bhau,231 kanals 01 marlas

,Total,358 kanals 13 marlas

payment of compensation in relaxation of Land Acquisition Rules, based on which the compensation was worked out on the basis of rates as fixed",,

in the award vis-a-vis land measuring 358 kanals and 13 marlas.,,

11. The petitioner had received amount of compensation of land measuring 36 kanals and 17 marlas, as is clear from the receipt signed by the",,

petitioner on the acquaintance roll, which reveals that the amount of Rs.72,677.33 paise as compensation for the land measuring 36 kanals and 17",,,

marlas was received under protest.,,

12. The Collector in terms of Section 18 of the Land Acquisition Act had made reference to the Court of District Judge, which was assigned to the",,,

Court of Additional District Judge, Jammu for disposal.",,,

13. The petitioner had contested the said reference; his statement had been recorded by the Additional District Judge, as is referred to in the",,,

judgment of the Additional District Judge, Jammu dated 2nd of January, 1981, wherein the petitioner has stated that he was in possession of 42",,,

kanals of State land situated in Rakh Bhau, which has been acquired by the Government. The cost of the land was Rs.20/22 thousand per kanal",,,

but the Government had assessed compensation at the rate of Rs.3,000/- per kanal. He had further stated that when the land was acquired from",,,

him, its cost was Rs.10,000/- per kanal, but the Government had fixed its compensation at Rs.600/- per kanal. Out of which, he was entitled to",,,

Rs.200/- only as â...“rd share.,,

14. The learned Additional District Judge, Jammu decided the reference vide his detailed judgment dated 2nd of January, 1981 holding therein that",,,

the cost of the land is fixed at Rs.3,675/- per kanal. The petitioner has been held entitled to compensation @ Rs.1,225/- as â...“rd share per kanal to",,,

which the amount of Jabrana at 15% and interest at 4% had also been allowed.,,

15. The said judgment of the Additional District Judge, Jammu dated 02-01-1981 passed on the reference of the Collector was challenged",,,

by medium of Civil 1st Appeal No.13/1981, titled Collector v. Karim Baksh and Ors. Same was decided by the Division Bench of this",,,

Court on 3rd of December, 1984, where under the judgment of Additional District Judge, Jammu has been upheld and appeal dismissed.",,,

16. The contention of the learned counsel for the petitioner is that the award, as was issued by the Collector, was regarding land measuring 358",,,

kanals and 13 marlas (127 kanals and 17 marlas at Chhani Rama, 231 kanals and 01 marla at Rakh Bhau) whereas balance land of 70 kanals",,

and 04 marlas were not included in the award in view of the letter of the Divisional Commissioner dated 11-02-1971, as the mutations attested in",,

favour of the petitioner and others vis-à-vis 70 kanals, were challenged, but finally the said mutations were upheld by the High Court while",,

disposing of Writ Petition and then the LPA. Subsequent thereto, the Collector was required to pass the award. In absence of award, the question",,

of reference vis-à-vis the land of the petitioner measuring 36 kanals and 17 marlas could not arise.,,

17. The reference by the Collector was unwarranted and then decision by the learned Additional District Judge on such reference was without,,

jurisdiction. When it is so, the order of the Additional District Judge passed on reference will not bind the petitioner. The proceedings were void",,

and without jurisdiction, as such, would not operate against the interest of the petitioner. In support of these submissions, learned counsel placed",,

reliance on the judgments: (2014) 2 SCC 465, reported as Shivshankar Gurgar v. Dilip; (2011) 11 SCC 198, reported as Sarup Singh and",,

Another v. Union of India and Another; (2006) 10 SCC 96, reported as A. Jithendernath v. Jubilee Hills Coop. House Building",,

Society and Another; (2004) 7 SCC 388, reported as Ramesh Dutta v. State of Punjab and Other; and (2003) 5 SCC 561, reported as",,

Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. v. Allahabad Vikas Pradhikaran and Another.,,

18. Learned counsel submitted that in the given circumstances, 12 kanals and one marla of land out of 36 kanals and 17 marlas, which was in",,

possession of the petitioner shall be allowed to be retained and regarding balance land of 24 kanals and 16 marlas, due compensation may be",,

ordered to be paid to him after initiating fresh acquisition proceedings.,,

19. Learned AAG stated that award has been passed regarding the entire land. Rates fixed were worked out and due compensation was also,,

assessed. The payment was not made vis-a-vis 70 kanals and 04 marlas because there was objection about the ownership of the petitioner. After,,

the matter was settled, the award automatically operates against petitioner vis-a-vis his land measuring 36 kanals and 17 marlas.",,

20. Learned counsel for the JDA (Indenting Department) submitted that basically the petitioner had no case at all because land has been acquired,,

which included 36 kanals and 17 marlas of the petitioner. The petitioner has received the amount of compensation under protest and thereafter,,

along with others at his behest also, the Collector had made the reference to the District Court under Section 18 of the Land Acquisition Act.",,

21. Before the Court of learned Additional District Judge, Jammu, the petitioner actively participated and contested. The judgment passed by the",,

learned Additional Judge was then upheld by the Division Bench of this Court while dismissing the appeal. Can it be open to the petitioner now to,,

claim that there is no award operating against him? He himself has accepted the position as it obtained, i.e., in view of the subsequent order passed",,

by the Government where under in relaxation of Sub Rule (IV) and (II) and Rule 45 of the Land Acquisition Rules, the payment of â...“rd of",,

compensation to the 35 families at Rakh Bhau, Chhani Rama and Thangar was sanctioned vide Government Order No.REV-25/LA of 1974",,

dated 31-01-1974. In the list of 35 families, petitioner also figures. When it is so, there was no question of issuing separate award.",,

22. Notification under Section 4 was issued; proceedings under Sections 6 and 7 were held and amount of compensation has been received by the,,

petitioner under protest. So, there was no question of separate award.",,

23. Learned counsel Mr. Basotra appearing for respondents-6 and 8 submitted that 13 kanals of land had been allotted by the Government to the,,

JDA against cost. The land has been allotted only after adhering to the norms.,,

24. The first star question is as to whether any award was issued vis-a-vis 36 kanals and 17 marlas of land of the petitioner? The question pales,,

into insignificance because of the later development. Admittedly, the petitioner was in possession of State land regarding which ownership rights",,,

were conferred on him vide Government Order No.LB-6/C of 1958, based on which the mutation was attested in his favour. The mutations were",,,

noticed to be illegal and it is in the same background, the mutations were directed to be challenged by the Divisional Commissioner and at the same",,,

time, Collector had been advised not to make payment for the said land and it is in the same background, Collector, while making the award, had",,,

said that the payment of compensation is not to be made to the petitioner and others, who were owners of the 70 kanals of land. Later on",,,

Government took the decision, whereby in relaxation of the Rules sanctioned payment of â...rd of compensation to such families, who were",,,

conferred ownership rights vis-a-vis State land. Same position is clear from the Government Order No.REV-25/LA of 1974 dated 31-01-1974.,,,

25. The petitioner has not denied the receipt of compensation amount of Rs.72,677.33. The receipt whereof has been signed by him, as is clear",,,

from the copy of the acquaintance roll placed on the record. It is also recorded that he has received the payment of compensation under protest.,,

Thereafter, he has been a party to the reference, as has been made under Section 18 of the Land Acquisition Act by the Collector. Then he had",,,

contested the matter before the Additional District Judge, Jammu, who passed the judgment where under compensation has been enhanced. His",,,

statement had also been recorded by the Additional District Judge, Jammu, as is referred in the judgement dated 2nd of January, 1981. The said",,,

judgment had been challenged by the medium of appeal, which appeal has been decided by the Division Bench of this Court on 3rd of December",,,

1984.,,,

26. For the stated facts and reasons, the petitioner cannot claim that no proper award was made vis-a-vis his land. In the writ petition, he has",,,

prayed for issuing a writ of mandamus so as to command respondents not to take into consideration the judgment passed by the learned Additional,,

District Judge, Jammu, when same has been upheld by the Division Bench of this Court. Can such a relief be granted? Answer has to be in",,,
negative.,,

27. Land has been acquired. Compensation rates have been fixed, based on which the total compensation had been worked out regarding 358",,,

kanals and 13 marlas of land, whereas only total compensation was to be worked out vis-a-vis balance land of 70 kanals which included 36 kanals",,,

and 17 marlas of land of the petitioner. Notification under Section 4 and then proceedings under Sections 6 and 7 of the Land Acquisition Act are,,

not denied. In effect, it is deducible that the award had been made. The contention of the learned counsel for the petitioner that the reference, then",,,

judgment of the learned Additional District Judge will not bind the petitioner, because both reference by the Collector under Section 18 of the",,,

Land Acquisition Act as well as the judgment of Additional District Judge are without jurisdiction is not acceptable because the judgment had been,,

upheld by the Division Bench of this Court while dismissing Civil I-1st Appeal No.13 of 1981. So, there is no scope to hold that the reference or",,,

the judgment passed by the learned Additional District Judge, affirmed by the Division Bench of this Court, is without jurisdiction.",,,

28. The judgments relied upon by the petitioner in support of his contentions that the reference under Section 18 of the Land Acquisition Act, then",,,

judgment of the Additional District Judge on the reference will not bind the petitioner as being without jurisdiction, for afore stated reasons, pale",,,

into insignificance.,,

29. In the case in hand, the petitioner had accepted the amount of compensation under protest and then had also been party to the reference and",,,

also party before the Court of Additional District Judge, who had decided the reference and then he was also party before the Division Bench",,,

when the appeal against the judgment of the learned Additional District Judge was heard and decided. How can now the reference made under,,

Section 18 of the Land Acquisition Act and the judgment of Court of Additional District Judge be said to be void and without jurisdiction.,,

30. Petitioner is bound by his own acts of being party to the award, reference order, judgment of the Court of Additional District Judge and",,

judgment rendered by Division Bench upholding the judgment of the learned Additional District Judge, Jammu. No case whatsoever is made for",,

grant of relief as prayed for in the writ petition.,,

31. When the petitioner received the amount of compensation under protest, how can he seek relief for restraining respondent- 6 from entering into",,

the land when the land had been acquired and given to the Indenting Department (JDA), who, in turn, had given 13 kanals to the respondents",,

against cost of Rs.1,68,75,000/-.".,,

32. The second prayer made by the petitioner is that the respondents shall be restrained from taking into consideration the order passed by the,,

learned Additional District Judge, Jammu on the reference under Section 18 of the Land Acquisition Act.".,,

33. Learned Additional District Judge after hearing both the parties decided the rate of compensation. Same has been upheld by the Division,,

Bench of this Court, how can such a relief be granted.".,,

34. The third relief as sought by the petitioner is to quash the allotment made in favour of respondent-6. The petitioner is not right to say so,,

because the land had been acquired and given to the Indenting Department (JDA). They are within their right to allot the land to any person(s). So,,

at the instance of the petitioner, the right of the Indenting Department on the land cannot be interfered with.".,,

35. Another prayer made in the writ petition is to prohibit the respondents from making allotment of 36 kanals and 17 marlas of land in village,,

Rakh Bhau covered by Survey No.83 Min. to any person including respondent-6 is totally unwarranted, because the land had been taken over by",,

the Indenting Department, the petitioner had been paid compensation though he had received it under protest. The rate of land has been finally",,

settled by the judgment of the Court of Additional District Judge and upheld by the Division Bench while disposing of the Civil I-1st Appeal in,,

favour of the petitioner vide judgment dated December 03, 1984.",,

36. It has not been brought to the notice as to whether the amount of compensation in accordance with the judgment of the learned Additional,,

District Judge, Jammu, in addition to what amount he has received under protest, had been paid to him or not. In case same has not been paid in",,,

terms of the judgment of the learned Additional District Judge for which the petitioner is entitled to vis-a-vis land measuring 36 kanals and 17,,

marlas, the amount be assessed, calculated and paid to the petitioner within four weeks",,,

37. For the above stated reasons and circumstances, the writ petition is found devoid of merit, as such, dismissed. No order as to costs.",,

(Mohammad,,