

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on : 11.08.2021

Pronounced on : 15.02.2022

CJ Court

Case: OWP No. 2084 of 2018

Villagers of Kanli-Bagh Baramulla

...Petitioners(s)

Through: Mr. B.A.Misri, Advocate

v/s

Union Territory of J&K and Others

.... Respondent(s)

Through: Mr. D.C.Raina, Advocate General
with Ms. Asifa Padroo, AAG for
respondent Nos. 1 to 4
Mr. Sajad A. Geelani, Dy. AG for
respondent No. 5

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

J U D G M E N T

PANKAJ MITHAL, CJ:

01. The petitioners are residents of village Kanli Bagh, Baramulla. They have invoked the writ jurisdiction of this Court for the quashing of the entire acquisition proceedings in respect of about 150 kanals and 03 marlas of the land which was notified for acquisition for the public purpose of establishing a Housing Colony at Sangri in Baramulla.

02. The petitioners have also prayed that the tentative award dated 17.03.1998 be also quashed and a writ of mandamus be issued to the respondents to initiate fresh proceedings for acquisition of the aforesaid land and to pay compensation as per the prevailing market rate.

03. A further prayer has been made directing the respondents to pay rent @ ₹ 10,000/- per kanal per year for the aforesaid land as the possession of it was taken over pursuant to the notifications to acquire the above land.

04. In the writ petition, as no counter affidavit was filed by any of the respondents, the court in compelling circumstances issued an ad interim mandamus commanding the respondents, specially the Assistant Commissioner (Revenue), Baramulla to frame the final award in accordance with law in respect of the above acquisition within a period of one month or to show cause by filing counter affidavit within the same period.

05. Briefly stated, the petitioners have preferred this writ petition alleging that by a notification dated 03.02.1978, an area of 220 kanals and 18 marlas was notified for acquisition. Subsequently, vide corrigendum dated 20.01.1991/1992, the area was reduced to 150 kanals and 03 marlas. In respect of the said acquisition, a final declaration under Section 6 of the Land Acquisition Act (hereinafter referred to as 'the Act') was issued on 27.05.1978. The Collector, Housing and Urban Development Department, Srinagar prepared a draft award on 15.10.1982, in terms of which a tentative award was issued on 17.03.1998 directing for payment of compensation @ ₹ 5,000/- per kanal with 15% Jabrana (solutium). On the aforesaid amount, simple interest @ 4% was directed to be paid from July 1978 to July 1985/1995, probably for the period of possession but till date no final award has been pronounced as is

mandatory under Section 11 of the Act for completing the acquisition proceedings.

06. It is important to note that the petitioners have previously filed OWP No. 613 of 2003, villagers of Kanlibagh vs. State and Others, for issuing a writ in the nature of mandamus commanding the State respondents to initiate fresh acquisition proceedings in respect of the aforesaid land and to pay compensation to the petitioners at the prevailing market rate of ₹ 5.00 lakhs to ₹ 6.00 lakhs per kanal along with 15% solatium and 18% interest.

07. In the said writ petition, no response was filed by the State-respondents and the Court had to finally decide the said writ petition without having the version of the State vide its judgment and order dated 09.12.2009 with the direction to the State-respondents to look into the matter in accordance with the mandate of the statute occupying the field and consider the claim of the petitioners in the facts of the case in accordance with the mandate of the statute and to take a decision thereon within a period of two months from the date the copy of the judgment is served on the State-respondents.

08. When no consideration was accorded by the State-respondents to the grievance of the petitioners pursuant to the above directions, the petitioners initiated contempt proceedings.

09. In the said contempt petition No. 195 of 2010, statement of facts was filed on behalf of the respondents, wherein it was admitted that the aforesaid land was notified for acquisition in 1978 and a tentative award was issued on 17.03.1998 @ ₹ 5,000/- per kanal. The award has not been approved by the Divisional Commissioner and, as such, a request has again been made on 09.07.2011 to expedite the approval and as soon as the approval from the Government is received, necessary further action will be taken accordingly.

10. The said contempt petition was finally disposed of vide order dated 28.12.2017 in view of the statement made by the counsel for the State that the consideration order in terms of the judgment and order dated 09.12.2011 passed in OWP No. 613 of 2003 would be passed on or before 09.02.2018. The consideration order was passed highly belatedly on 15.03.2018 but again without relief to the petitioners despite accepting everything so as to await the approval to the award by the Government.

11. It is in above backdrop that the present writ petition has been filed wherein neither any counter affidavit has been filed nor the final award has been passed despite issuance of interim mandamus.

12. In the absence of the counter affidavit of the respondents, there is no defence of the State before us. Therefore, we made it clear to the learned counsel appearing for the respondents that we would be deciding the petition on the basis of the averments made in the writ petition and the documents enclosed with it.

13. The writ petition contains more or less all necessary documents including the stand which was taken by the State authorities in the contempt proceedings as also in the consideration order dated 15.03.2018 which was ultimately passed pursuant to the judgment and order dated 09.12.2009 passed in the earlier writ petition, OWP No. 613 of 2003 of the petitioners.

14. It is important to note that right to possess and occupy land/property used to be a fundamental right and is still a constitutional right akin to a fundamental right. It has been recognized even as a basic human right. In view of Article 300 A of the Constitution of India, no person can be deprived of his property otherwise by following the due process of law. Therefore, the non-

payment of the compensation as provided under the statutes amounts to depriving the person of his right to the property.

15. In the above backdrop, the only issue which crops up for our consideration is whether the respondents can sleep over the matter without pronouncing a final award depriving the petitioners from the right to receive fair and reasonable compensation for the acquired land.

16. There is no dispute to the fact that 150 kanals and 03 marlas of the land in the village was notified for acquisition on 03.02.1978 and was finally acquired on 27.05.1978 with the issuance of a declaration under Section 6 of the Act. In respect of the said acquisition, only a tentative award was made on 17.03.1998 but till date no final award has been pronounced with the result the villagers have not been paid the due compensation.

17. It is relevant to mention here that the possession of the land was taken over by the respondents and, as such, the villagers were divested of the land which came to be vested in the State. In the ordinary course, in view of Section 11 B of the Act, the land acquisition proceedings would have lapsed for want of final award within two years of the date of declaration, i.e., 27.05.1978 but for the fact that the urgency provisions were invoked and the possession of the land had been taken over on account of which the land had vested in the State. The land vested in the State cannot be divested and, as such, the proceedings for acquisition attains finality and would not lapse and permit de-notification of the acquisition proceedings. In such a situation, the respondents are left with no option but to make a final award as mandated by Section 11 of the Act.

18. The respondents cannot deprive the land holders from the right to receive fair and reasonable compensation for their acquired land indefinitely by not making a final award. It is for this reason that the court while disposing

of the earlier writ petition of the petitioners instead of directing to initiate fresh acquisition proceedings and for payment of compensation @ ₹ 5.00 lakhs to ₹ 6.00 Lakhs per kanal as prayed therein, directed that the respondents would look into the matter and would act in accordance with the mandate of statutes so as to take a final decision within a time bound period.

19. In pursuance of the said order, the consideration order has been passed on 15.03.2018 by the Deputy Commissioner, Baramulla. The said order clearly states that the land was notified for acquisition and was finally acquired with the issuance of declaration under Section 6 of the Act. Since the urgency provisions were invoked, notice for possession was given even before the award was made. It also states that as per the tentative award, part payment of the compensation to the extent of 75% has been made by the Collector Land Acquisition (Housing and Urban Development Department) to the tenure holders. Accordingly, as the final award has not been made, the Collector, Housing and Urban Development Department, Srinagar is directed to frame the final award as per the Act and the same may be submitted before the competent authority for approval. The above task should be completed within a period of seven days. The relevant part of the above order is reproduced herein below :-

“In view of the above circumstances and in compliance of the Hon’ble High courts orders, Collector Housing and Urban Development Department, Srinagar is hereby directed to frame the Final Award as per the Land Acquisition Act and same be submitted before competent authority for approval with reference to the approval of the tentative award by the competent authority as 75% compensation has been paid by the Collector Housing and Urban Development Department, Srinagar to the land

owners. The task should be completed within a period of 07 days.”

20. It may be noted that despite the above order, no final award has been framed and has been approved by the competent authority.

21. The letter of the Deputy Commissioner, Baramulla addressed to the Divisional Commissioner, Kashmir dated 27.03.2010 enclosed as Annexure ‘F’ to the writ petition also narrates the entire facts as have been stated earlier. In the penultimate paragraph it states that the land acquired stands taken over by the indenting department decades ago under the provisions of Section 17 of the Act and 75% of the payment has been released and paid to the owners but under protest. The acquisition stands completed except for issuance of the final award for which the matter may be taken up by the Administrative Department for further guidance considering the legal and financial implications.

22. One another letter dated 18.04.2015 of the Assistant Commissioner (C), with the Divisional Commissioner, Kashmir addressed to the Commissioner/Secretary to Government, Housing and Urban Development Department, J&K, Jammu mentions that the land was acquired and was handed over to the indenting department under the provisions of Section 17 of the Act. The Collector, Housing and Urban Development Department, as per the draft award has disbursed the amount of compensation to the extent of 75% in respect of the land measuring 85 kanals and 02 marlas but no payment of land measuring 22 kanals and 06 marlas of the propriety land and 42 kanals and 15 marlas of the State and Shamlat land has been made to anyone. The final award has not been passed and that the case was taken up and reminders were sent for the purposes of making the final award but nothing has been heard.

23. The statement of facts filed on behalf of the State-respondents in the contempt petition, a copy of which is on record also mentions that the matter stands submitted to the Government through Divisional Commissioner, Kashmir to pave way for issuance of the formal award and as soon as the final approval is received from the Government, immediate necessary action would be taken accordingly.

24. The aforesaid facts would reveal that there is no dispute to the fact that the land stands acquired and that its possession has been taken over and handed over to the indenting department decades ago but till date final award has not been passed. The villagers as such have been deprived of the proper compensation of the acquired land which is clearly violative of the statutory provisions of the Land Acquisition Act and Article 300 A of the Constitution of India. It rather amounts to denial of the basic human right to the villagers for almost about forty years.

25. In *Krishna Reddy vs. Special Deputy Collector Land Acquisition*, AIR 1988 SC 2123, Supreme Court while directing the statutory authorities to make the payment of compensation at the earliest observed that a person who has been uprooted may be facing starvation, therefore, the delayed payment may lose the charm and utility of compensation. Thus, the compensation must be determined and paid without loss of time.

26. It is an alarming situation that State is acquiring private land without payment of full compensation. This kind of action or omission on the part of the State authorities is not acceptable and cannot be allowed to continue for an indefinite period. We deprecate such practice and expect that the State would henceforth take all possible measures to ensure passing of an award within a

reasonable time and payment of fair compensation to the persons interested where ever the land is acquired.

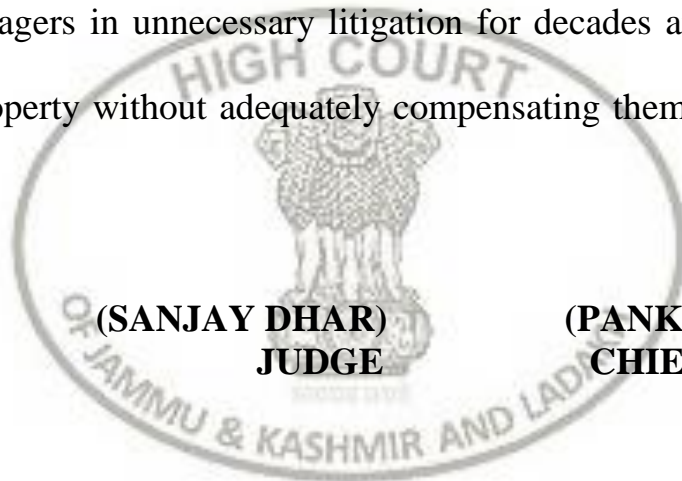
27. The acquisition proceedings in its entirety are not liable to be quashed only for the reason that the final award in terms of the Act has not been passed even though the statutory period for making the award has elapsed when by virtue of Section 17 of the Act, possession of the acquired land has already been taken and the vesting is complete. On this ground not even the tentative award could be quashed. There is no purpose to quash it as it would merge in the final award. There is no justification for directing to take up fresh acquisition proceedings as the acquisition is already over. The prayer regarding initiation of fresh proceedings for acquisition was not accepted by the Court in the earlier round of litigation and is apparently barred on the analogy of principles of constructive res-judicata. The relief to grant rent @ ₹10,000/Kanal/year is also not admissible for the reason that under the Act petitioners are only entitled to only monetary compensation and not anything else.

28. In view of the above, the villagers may not be entitled to any of the reliefs specifically claimed in the present writ petition, nonetheless, in view of the residuary prayer to grant any other relief that may be deemed fit and suitable for the court and the power of the court to mould the relief so as to do justice to the parties, the court is left with no option but to make the interim mandamus absolute by issuing a writ in the nature of mandamus commanding the State authorities to frame and pronounce the final award in respect of the above acquisition in accordance with the existing law within a period of three months from the date a copy of this order is produced before the Chief Secretary and we hope that the Chief Secretary under whom all the

departments of the State function, would take positive action in the matter and see to it that the award as directed is passed and stiff action is taken against all those officers, who were involved and responsible for not allowing the award to be passed immediately after the tentative award had been prepared and announced.

29. The villagers would be entitled to and paid compensation according to the final award along with all statutory benefits including the interest within a period of one month of the pronouncement of the final award after adjusting the amount which had already been paid to them under the tentative award.

30. The writ petition is allowed with exemplary costs of ₹ 10.00 lakhs for dragging the villagers in unnecessary litigation for decades and for depriving them of their property without adequately compensating them for such a long period.



(SANJAY DHAR)
JUDGE

(PANKAJ MITHAL)
CHIEF JUSTICE

Srinagar
15.02. 2022
Tilak

Whether the order is speaking? Yes
Whether the order is reportable? Yes