

S. No.

HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 2039/2022

CM No. 5594/2022

Reserved on: 18.08.2023

Pronounced on : 23.08.2023

Mian Khan and others

....Petitioners/Appellant(s)

Through :- Mr.C.M. Koul, Sr. Advocate with
Mr. A.R. Bhat, Advocate

V/s

UT of J&K and others

....Respondent(s)

Through :- Ms. Monika Kohli, Sr. AAG
Mr. Ravinder Gupta, AAG

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

PRAYER:

01.The petitioners, through the medium of the instant petition are seeking writ in the nature of Mandamus commanding the respondents to evaluate, compute and disburse the compensation to the petitioners at the present market rate in respect of their land taken away by the respondents forcibly for which a road has already been constructed measuring 178 metres 'PSC Motorable Bridge including approaches at Ujhan (Rajouri)', besides seeking a direction against the respondents to award interest to the petitioners on the amount due to be paid to them on account of their compensation from the date the amount of compensation fell due to be paid to the petitioners up to the date of actual disbursement.

BRIEF FACTS:

02.Petition has been filed by the petitioners collectively, claiming to be owners and in possession of the land in village Ujhan, Tehsil Darhal, District Rajouri. The specific case of the petitioners is that for the

construction of the road in Village Ujhan, Tehsil Darhal, the lands of the petitioners were required to be acquired, the details of which have been mentioned in the writ petition.

03. The further case of the petitioners is that the concerned Tehsildar has submitted the file pertaining to the lands in question for acquisition for the construction of 178 meters PSC Motorable Bridge including approaches at Ujhan. It is further submitted that thereafter the aforementioned road came to be constructed which remains in existence as on today and the same is also under use by the villagers and others who are required to move on the said road.

ARGUMENTS ON BEHALF OF PETITIONERS:

04. Mr C.M. Koul, learned Senior Counsel appearing along with Mr A.R. Bhat, has submitted that the petitioners by no stretch of imagination could be deprived of their land without following due process of law and the specific case which has been projected by the learned counsel for the petitioners in the instant petition is that the respondents without following the due process of law in reference to Land Acquisition Act, have divested the petitioners of their land and the said road has been constructed. He further submits that the same was apparently done to the disadvantage and detriment of the petitioners as no compensation has been paid to them. The further case of the petitioners is that though the said land of the petitioners was utilised and the road has already been constructed which continues to remain in existence as on today, besides the same being under use of villagers and others without blacktopping.

05. The only grievance which has been projected by the petitioners is that the respondents have not paid any compensation to the petitioners and the

land of the petitioners were forcibly taken away by the respondents without following due process of law. Learned counsel further submits that in absence of any proceedings initiated for acquiring the land in question under the Land Acquisition Act which was in vogue at that relevant point of time, the petitioners have been put to a disadvantageous position as their land has been taken forcibly and even the compensation has not been assessed and paid to the petitioners.

06. Learned counsel further submits that the petitioners cannot be deprived of their land in the absence of conforming to the requirement of the procedure prescribed under the Land Acquisition Act as admittedly, the respondents have not taken any steps contemplated under the aforementioned Act. Learned counsel further submits that petitioners have been deprived of an opportunity of being heard, therefore, according to the learned counsel, the right granted to the petitioners in terms of Article 300 A of the Constitution of India has been glaringly transgressed by the respondents.

ARGUMENTS ON BEHALF OF RESPONDENTS:

07. The reply stands filed on behalf of respondent Nos. 2, 3 & 4 by Mrs. Monika Kohli, learned Sr. AAG in which a specific stand has been taken in para B of the objections that as per spot position, Road (178 Mtr. PSC Motorable Bridge including approaches) on spot stands constructed by PWD (R&B) Department, Rajouri involving the land of the petitioners along with land owners. It is a specific case of the respondents that they have not received any indent from the intending department for the acquisition of the land in the instant case.

08. It is further projected by the learned counsel appearing on behalf of the respondents that pursuant to the request of the land owners, revenue papers were prepared and sent to respondent No. 3 vide communication dated 11.09.2018, and after verification and clarification of the same, some observations including process of revenue papers without proper indent, the case file was returned by respondent No. 3 with a direction to process the same after receiving the indent from the competent authority. The respondent No. 4 has specifically projected in the aforesaid reply that pursuant thereto, a request was made to the Executive Engineer, PWD for placement of indent before the Collector so that the process of acquisition land in question is initiated.
09. Learned counsel further submits that as soon as the indent from the competent authority is received in the instant case, the respondents will initiate the acquisition proceedings as per rules and norms in vogue.
10. However, another set of objections have been filed on behalf of respondent Nos. 5 and 6 through Mr. Ravinder Gupta, learned AAG, in which, the respondents have taken altogether a different stand, wherein in para 6, it is averred that the petitioners are not entitled for any compensation in the light of the fact that there is no provision of land compensation under NABARD as the scheme stands approved by the NABARD.
11. According to Mr. Ravinder Gupta, learned AAG appearing on behalf of respondent Nos. 5 and 6, there is no provision of land compensation under NABARD. The stand taken by the respondent Nos. 5 and 6 in para 6 of the reply runs contrary to the reply filed by respondent Nos. 2 & 3 and 4 in which a specific stand has been taken that as soon as the indent from

the competent authority is received, the acquisition proceedings in the instant case will commence and the respondents have not denied that the road has been constructed involving the lands of the petitioners along with other land owners nor the respondents have denied the entitlement of the petitioners for receiving such compensation.

LEGAL ANALYSIS

12. Heard learned counsel for the parties at length and perused the record.
13. With the consent of learned counsel for the parties, the instant petition is taken up for final disposal at this stage.
14. The pleadings of the parties and the perusal of the record, clearly reveals that the lands of the petitioners have been taken over by the respondents forcibly without the consent of the petitioners and without taking recourse to any procedure prescribed under law. It is also an admitted fact that the petitioners have not been paid any compensation with respect to the land in question. It is a classic case where the respondents after taking the land of the petitioners without their consent, have constructed the road involving the land of the petitioners without paying any compensation and initiating any process of acquisition as envisaged under law.
15. For facility of reference, it would be apt to reproduce the relevant statutory provisions of the State Land Acquisition Act, Svt. 1990

4. [Publication of preliminary notification and powers of officers thereupon.— (1) *Whenever land in any locality is needed or is likely to be needed for any public purpose the Collector shall notify it—*

*(a) through a public notice to be affixed at convenient places in the said locality and shall also cause it to be known by beat of drum and through the local Panchayats and Patwaries ; [x x x]
[x x x]*

(b) in two daily newspapers having largest circulation in the said locality of which at least one shall be in the regional language.]

(2) *[After the Collector has notified any land in the manner prescribed in clause (a) of sub-section (1) as being needed or likely to be needed for a public purpose] it shall be lawful for any officer, either generally or specially authorised by the Government in this behalf, and for his servants and workmen,—*

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil; to do all other acts necessary to ascertain whether the land is adopted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;

to make such levels, boundaries and line by placing marks and cutting trenches ; and

where otherwise the survey cannot be completed, and the levels taken and the boundaries and lines marked, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that, no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least 2[ten days] notice in writing of his intention to do so.

6. Declaration that land is required for public purpose. —(1) When the Government is satisfied after considering the report, if any, made under section 5-A, sub-section (2), that any particular land is needed for public purpose, a declaration shall be made to that effect under the signature of the Revenue Minister or of some officer duly authorised in this behalf :

[Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid wholly or partly out of the public revenues or some fund controlled or managed by a local authority.]

(2) *The declaration shall be published in official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate areas and where a plan shall have been made of the land, the place where such plan may be inspected.*

(3) *The said declaration shall be conclusive evidence that land is needed for a public purpose, and after making such declaration the Government may acquire the land in manner hereinafter appearing.*

9. Notice to persons interested. —(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be

taken, stating that the Government intends to take possession of the land, and that the claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent, before the Collector at a time and place therein mentioned (such time not being earlier than [fifteen days] after the date of publication of notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests and their objections (if any) to the measurements made under section 8. The Collector may in any case, require such statements to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered in accordance with the Postal Rules in force for the time being in that behalf.

[11-B. Period within which an award shall be made.— The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of land shall lapse :

Provided that in case where the said declaration has been published before the commencement of the State Land Acquisition (Amendment) Act, 1997, the award shall be made within a period of two years from such commencement.

16. From a bare perusal of the aforesaid statutory provisions, it is emphatically clear that whenever land in locality is needed or is likely to be needed for a public purpose, the Collector is under an obligation to notify the same through the public notice to be affixed at convenient place by publishing the same in two daily newspapers having largest circulation. Pursuant thereto, when the Government is satisfied that after considering

the report, if any made under Section 5-A Sub-Section (2) that any particular land is needed for the public purpose, a declaration shall be made to the effect which has to be published in the official gazette and is a conclusive evidence that the land is needed for public purpose after making such declaration. Pursuant to the issuance of the notice, the Collector is also under an obligation to cast public notice to be given at convenient place to the interested parties by showing the intention of the Government to take possession of the land and claim to compensation for all interested in such land may be made to them.

17. In the instant case, the land has been taken without complying the aforesaid statutory provisions and even no compensation has been paid till date, which is substantiated from the stand taken by the respondents in their reply.

18. From a bare perusal of Section 11-B of the aforesaid Act, it was incumbent on part of the Collector to have passed the award under Section 11 within a period of two years from the date of publication of the declaration and if no award is made within the period, the entire proceedings for the acquisition of the land shall lapse.

19. What to talk of the passing of the award even the declaration/public notice till date has not been issued and no acquisition proceedings have been initiated under the provisions of Land Acquisition Act and having failed to do so, the respondents are under a legal obligation to pay the compensation to the respondents under the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 after following the due process of law as envisaged in the aforesaid Act.

20. The action of the respondents to issue the indent after taking the land of the petitioners forcibly and constructing the road is unheard of and is in flagrant violation to the procedure envisaged under law. The respondents have admitted that they have acquired the land of the petitioners without following any procedure and after spot verification, it is admitted that the road stands constructed involving the lands of the petitioners and other land owners. The respondents are now initiating acquisition proceedings i.e. after acquiring the land forcibly without issuing indent at the first instance.
21. It was incumbent on part of the respondents to have issued the indent at the first instance strictly in conformity with the procedure as envisaged under Land Acquisition Act by providing an opportunity of being heard to the lawful owners and by settling the claim of the lawful owners with respect to the compensation and then the road ought to have been constructed. However, in the instant case, the respondents have initiated the process in a reverse manner which is in flagrant violation of the procedure envisaged in the Land Acquisition Act. It is not so, even the respondents have taken a contradictory stand by filing two set of objections with a view to defeat the rights of the petitioners to claim compensation.
22. From the record, it is apparently clear that the Tehsildar Darhal has submitted the file pertaining to the land in question for acquisition of the aforementioned land required for the construction of 178 meters PSC Motorable Bridge including approaches at Ujhan (Rajouri) vide letter dated 11.09.2018 and, pursuant thereto, some clarification was sought by

the Collector, Land Acquisition, Rajouri vide letter dated 09.10.2019 from Tehsildar.

23. It is an admitted case of the respondents that the indent which was the basic requirement was not placed by the intending department and this was precisely the reason that the acquisition proceedings could not be initiated well in time. Admittedly, from the record, it has emerged that the acquisition proceedings till date have not been initiated and after reorganization, a new Act i.e. Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 has come into force and the respondents as such, are under an obligation to pay compensation to the petitioners in conformity with the provisions of the aforesaid Act after following the procedure in the aforesaid Act.
24. It is well recognised that the right to property is a basic human right as guaranteed under Article 300A of the Constitution of India. It is empathetically clear that no one can be deprived of his/her property other than by following procedure prescribed under law. The facts mentioned above clearly reveals that the respondents have violated the basic rights of the petitioners and have deprived them of their valuable constitutional right without following the procedure as envisaged under law. The State and its agencies cannot dispossess a citizen of his property except in accordance with procedure established by law. The obligation to pay the compensation though not expressly included in Article 300A can be inferred from the said Article.
25. The State in exercise of its power of '**Eminent Domain**' may interfere with the right of property of a person by acquiring the same but the same

must be for a public purpose and reasonable compensation therefore must be paid. In a democratic polity governed by the rule of law, the State could not have deprived the petitioners of their property without the sanction of law and it is obligatory on part of the State to comply with the procedure for acquisition, requisition or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate itself to status beyond what is provided by the Constitution.

26. The right to property is now considered to be not only constitutional or statutory right but falls within the realm of human rights. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment etc and over the years, human rights have gained a multifaceted dimension. In an identical case, the Hon'ble Apex Court in case titled "**Vidya Devi versus State of Himachal Pradesh and others**" reported as **2020 AIR (SC) 4709**, has been pleased to held as under: -

"To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under [Article 300 A](#) of the Constitution.

Reliance is placed on the judgment in [Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai](#)⁴, wherein it is held that: -

" 6. ... Having regard to the provisions contained in [Article 300A](#) of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid."

[In N. Padmamma v. S. Ramakrishna Reddy, \(2008\) 15 SCC 517](#), the Hon'ble Apex Court has held that: -

"21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. [Article 300A](#) of the Constitution protects such right. The provisions of the Act seeking to divest such right,

keeping in view of the provisions of [Article 300A](#) of the Constitution of India, must be strictly construed.”

In [Delhi Airtech Services Pvt. Ltd. &Ors. v. State of U.P.&Ors.](#), (2011) 9 SCC 354, the Hon’ble Apex Court recognized the right to property as a basic human right in the following words:

“30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property.

"Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed, the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists.”

In [JilubhaiNanbhaiKhachar v. State of Gujarat](#), (1995) Supp. 1 SCC 596, the Hon’ble Apex Court has held as under: -

“48. ...In other words, [Article 300A](#) only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under [Article 300A](#). In other words, if there is no law, there is no deprivation.”

10.5. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in [Tukaram Kana Joshi &Ors. v. M.I.D.C. & Ors.](#) wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.”

27. From the pleadings, it has emerged that the land of the petitioners has been utilised for construction of 178 Mtr. PSC Motorable Bridge including approaches at Ujhan, but without there being a formal acquisition inasmuch as till date, no declaration under Section 6 of the Land Acquisition Act has been issued and published. The respondents have not denied the entitlement of the petitioners to receive the compensation, rather a stand has been taken by the respondents that the matter regarding completion of the acquisition proceedings stands

submitted to the competent authority and paying of the compensation would await once the proceedings are completed.

28. It goes without saying that the proceedings for acquisition of any land commences with the issuance of notification under Section 4 of the Land Acquisition Act, proposing to acquire the land for public purpose. Once the Government is satisfied on considering of report of the Collector that the land is needed for public purpose, it directs for issuance of the declaration under Section 6 of the Act and the said declaration by all means is the conclusive proof of the acquisition of land.

29. In the instant case, till date, no declaration under Section 6 of the aforesaid Act has been issued and published, meaning, thereby, that the land has not been finally acquired by following due procedure of law. The respondents could not have taken the possession of the land of the petitioners and utilised it for the purposes of construction of the road. The action of the respondents in constructing the road without acquiring the land in question after following due process of law is nothing **but an abuse of process of law** depriving the petitioners from their valuable right to possess the property.

30. In the above circumstances, I hold that the respondents are clearly guilty of violation of the human rights of the petitioners as envisaged under Section 300A of the Constitution of India and, accordingly, are liable to compensate the petitioners for such infringement.

31. I am fortified by the law laid down by the Division Bench of this Court in case titled “**Krishan Singh and Others Vs. State and Others; bearing WP(C) No. 2670/2019**” decided on 30.12.2021, wherein it has been held as under: -

“13. In the case at hand, till date no declaration under Section 6 of the Act has been issued and published, meaning thereby that the land has not been finally acquired and there is simply a proposal to acquire the said land. In such circumstances, when the land has not been finally acquired, the respondents could not have taken possession of the said land and utilized it for construction purposes. The action of the respondents in constructing a community hall on the land in question without waiting for the final acquisition of land and in the absence of the invocation of the urgency clause, is nothing but an abuse of the process of law depriving the petitioners from their valuable right to possess property.

14. In the above circumstances, the respondents are clearly guilty of violation of the human rights of the petitioners and they are liable to compensate them for such infringement. At the same time, since the community hall has already been constructed and the land cannot be restored to the petitioners, it is desirable that the respondents complete the acquisition proceedings at the earliest and make a final award so that the petitioners may be compensated in a fair manner as per the market-value.

15. In view of the aforesaid facts and circumstances, we issue a writ in the nature of mandamus commanding the respondents to forthwith distribute the estimated cost of acquisition of the aforesaid land which has been worked out to be ₹15,00,000/- within a period of one month from today and to conclude the acquisition proceedings by issuing a declaration under Section 6 of the Act and pronouncing the final award within a period of three months from today and to pay the compensation as per the award to the petitioners forthwith subject to any reference or appeal that may be preferred against the award.

16. A further writ in the nature of mandamus is issued to the respondents to pay a token compensation of ₹10,00,000/- to the petitioners for illegally depriving them of their land without any authority of law and thus violating their human rights. This amount shall be paid to the petitioners within a period of two weeks from the date a certificate copy of this order is placed before the Secretary, Rural Development Department, Government of J&K.”

32. Reliance is placed upon the judgment passed by the Hon’ble Division Bench of this Court in case titled “**Shabir Ahmad Yatoo Vs. UT of J&K and others bearing WP(C) No. 174/2021**”, decided on 30.06.2022, wherein it has been held as under: -

“5. The aforesaid facts and circumstances clearly reveal that the private land of the petitioner has been taken over by the respondents forcibly without the consent of the petitioner and without taking recourse to any procedure prescribed in law. It is also an admitted fact

that the petitioner has not been paid any compensation in respect of the said land though the determination/assessment of the compensation is under way as per the stamp duty rate.

6. It is well recognized that Right to Property is a basic human right which is akin to a fundamental right as guaranteed by Article 300 A of the Constitution of India and that no one can be deprived of his property other than by following procedure prescribe in law.

9. Accordingly, the respondents are directed to assess and determine the compensation of the aforesaid land payable to the petitioner at the stamp duty rate as prevalent today in the area within a period of 6 weeks and to make payment thereof within a further period of 3 months. The respondents at the same time shall also pay token rental compensation for the use and occupation of the aforesaid land from the year 2017 till 2021 i.e., 05 years @ Rs. 1.00 lac per year within 3 months from today.

10. In addition to the above, on account of violation of the right to property of the petitioner which is guaranteed by the Constitution, the respondents are directed to pay special penalty of Rs. 10.00 lacs to the petitioner within a period of three months.

11. In the event, the aforesaid amounts are not paid within the time stipulated, it will be open for the petitioner to move an application and to bring it to the notice of the Court whereupon the Court will swing into action and take appropriate coercive measures against the respondents for the realization of the aforesaid amount may be as arrears of land revenue.”

In the similar facts and circumstances of this case, the Division Bench of this Court in case of Chuni Lal Bhagat Vs. State and ors. reported as 2023 (3) JKJ[HC] has been pleased to held as under:-

“47. There is no law permitting the deprivation of the property of the citizens, the respondents are either to restore the land to the land owners or pay them the requisite compensation, as no one can be deprived of his Right to Property except in accordance with law in force in hte State. The petitioners being small land owners are deprived of their property without payment of any compensation till date. The petitioners are, thus, entitled to payment of compensation as it has resulted in infraction of basic rights of Right to Property as guaranteed under Article 300 A of the Constitution of India and are also entitled to use and occupation charges for the same.

48. In view of the aforesaid discussion, these petitions are also allowed. The respondents are directed to initiate the steps for acquiring the land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within a period of eight weeks. The Deputy Commissioner

concerned shall pay rent for use and occupation of the land of the petitioners from the date, the respondents have taken possession of the same.”

CONCLUSION

33. There is no law permitting the deprivation of the property of the citizens, as right to property is a valuable constitutional right, as such, the respondents could not have taken the land of the petitioners without acquiring the same. Thus, the respondents are under legal obligation either to restore the land to the land owners or pay them the requisite compensation, as no one can be deprived of his Right to Property except in accordance with law in force.

34. Since after the reorganization, Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 has come into force and admittedly, acquisition proceedings have not been initiated under the Land Acquisition Act and, thus, the respondents are under legal obligation to initiate the steps for acquiring the land under the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013.

35. In the light of the aforesaid discussion coupled with the legal proposition, the writ petition filed by the petitioners is allowed and the respondents are directed to initiate the steps for acquiring the land under Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, which is in vogue within the period of six weeks from today. The Deputy Commissioner concerned shall pay rental compensation for the use and occupation of the aforesaid land of the petitioners from the date the respondents have taken the possession of the

same till its final realisation @ 1 lac per year within a period of three months from today.

36. In addition to above, on account of violation of right to property of the petitioners, which is guaranteed by the Constitution, the respondents are also directed to pay penalty to the tune of Rs. 1,00,000/- (one lac) to the petitioners within a period of three months from today.

37. The writ petition, as such, is accordingly allowed in the manner indicated hereinabove.

38. Registry to handover the record to the learned counsel for the respondents against proper receipt.

39. **Disposed of**, accordingly.

(WASIM SADIQ NARGAL)
JUDGE

Jammu:
23.08.2023
Tarun

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

